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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ARATH RODRIGUEZ, Individually, and
on behalf of other members of the general
public similarly situated

Plaintiff

v.

ANV INVESTMENTS, INC., a California
Corporation and DOES 1-10, inclusive.

Defendants.

CASE NO. 37-2022-00006121-CU-OE-CTL

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

Date: December 12, 2023
Time: 9:00 a.m.
Dept: C-67
Judge: Hon. Eddie C. Sturgeon

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I. SUMMARY OF MOTION

This matter is a “Wage and Hour” representative (*i.e.* “PAGA”) and *proposed* class action. Plaintiff ARATH RODRIGUEZ (“Plaintiff”) bring Labor Code claims against Defendant ANV INVESTMENTS, INC. (hereinafter “Defendant” or “ANV”).

After approximately 1 and ½ years of litigation, exchanges of both formal and informal discovery, and a full day Mediation, the parties have agreed to the terms of a proposed class action. The parties have drafted and executed a Joint Stipulation of Class and PAGA Action Settlement (the “Agreement”), lodged as **Exhibit A**¹ to the declaration of Eric Yaeckel. Briefly, the parties’ settlement figures are estimated as follows:

Approximate size of class:	300 individuals
Gross settlement amount (“GSA”):	\$250,000.00
Settlement administration:	\$10,000.00 (or less)
Costs/expenses of litigation:	\$11,000.00 (or less)
Claims Period:	30 days from Mailing of Notice
Class representative incentive:	\$7,500.00
LWDA payment:	\$18,000.00 (75% Share of \$24,000 allocation)
Attorney's fees:	1/3 of GSA (\$83,333.33)

Estimated average payment (before taxes) to each Class Member based on the above figures will be **\$400.56**. These estimates are an “average” only, and do not account for the fact that class members will receive more or less than an “average” share, as the amounts owed are calculated based on the number of workweeks each individual worked for Defendant during the class period.

Please Note: This is a **non reversionary** settlement, in that the entire net settlement amount, after the awarded costs, taxes and fees are deducted, will be automatically disbursed to all class members who do not file a request to “opt-out” of participation in the lawsuit. (See **Ex. A** at ¶¶ 10-11).

The parties now move the Court for an order: **(1)** provisionally certifying the proposed class; **(2)** preliminarily approving the proposed class action settlement; **(3)** directing that Notice (defined

¹ This Memorandum incorporates by reference the definitions in the Agreement and the terms used herein are intended to have the same meaning as set forth in the Agreement.

below) of the proposed settlement be provided to Class Members; and (4) scheduling a hearing for final approval of the proposed settlement and entry of the parties' proposed Final Order Approving Class Action Settlement.

II. FACTUAL AND PROCEDURAL HISTORY

The putative class is comprised of Defendant's California-based, nonexempt employees. The relevant procedural history is set forth below.

1. The Operative Claims, Investigation and Informal Discovery Conducted

On February 16, 2022, Plaintiff Rodriguez filed the Complaint in this matter. The original Complaint alleged class action claims and representative action ("PAGA") claims, under the California Labor code involving, *inter alia*, (1) Meal and Rest Period violations; (2) Minimum wage violations; (3) Overtime violations; (4) Wage statement violations; (5) Failure to reimburse business expenses; and (6) Failure to pay wages upon separation. (Yaeckel Decl. ¶ 3; ROA # 1.)

On March 14, 2022, Plaintiff propounded discovery requests on the Defendant, including requests for admission, special interrogatories, requests for production of documents, and general and employment form interrogatories. (Yaeckel decl. ¶ 4.) Through these requests, Plaintiff sought, among other information and documents, the identities of putative class members, Defendant's compensation policies, meal and rest period policies, employee handbooks, wage statements, payroll records, time records, job descriptions, and reimbursement policies. (*Id.*)

Defendant provided discovery responses, documents, and objections to Plaintiff's requests. After a meet and confer processes, Defendant produced, *inter alia*, Plaintiff's time and wage records, copies of the relevant employee handbooks, copies of all other relevant employee policies, the contents of Plaintiff's employee file, Plaintiff's time records, and itemized wage statements. (Yaeckel decl. ¶ 5.)

Defendant also agreed to participate in a "Belaire-West" notice process to allow Plaintiff to get the contact information and time and wage records for other members of the putative class. (Yaeckel decl. ¶ 6.)

In total it appears there were at least 6 sets of written discovery exchanged between the parties. (Yaeckel decl. ¶ 7.)

1 Following substantive discovery, Defendant (through its counsel), reached out to attempt to
2 explore early resolution of this matter. As part of the settlement discussions, Defendant agreed to
3 voluntarily produce and verify thousands of pages of documents. The production included all relevant
4 policies and procedures. It also included large sampling of other class members' time and wage data.
5 (Yaeckel decl. ¶ 8.)

6 Plaintiff also requested Defendant provide additional informal discovery so that the parties
7 could experience a meaningful mediation. (Yaeckel decl. ¶ 9.) Defendant provided informal discovery
8 which consisted of, *inter alia*, the number of current and former employees who worked for Defendant
9 during the limitations period, meal and rest period premiums paid, pay periods at issue, a redacted
10 sampling of employee time records and wage statements, as well as confirmation that various policies
11 and agreements were standard as to the class. (*Id.*)

12 **2. Settlement Discussions**

13 On April 6, 2023, the Parties attended a full day mediation before the experienced "Wage and
14 Hour" mediator, Doug Glass. (Yaeckel decl. ¶ 10.) Prior to the mediation, counsel for both parties
15 agreed to the informal exchange of information pertinent to a class-wide settlement. Both parties
16 prepared and exchanged detailed mediation briefs. (*Id.*) At the conclusion of mediation, the parties
17 agreed on the key terms of a settlement that would globally resolve all class and representative wage
18 and hour claims asserted in the operative Complaint in this Action. (*Id.*)

19 The parties continued negotiation over final settlement terms. As of July 21, 2023, the parties
20 agreed on all final terms of the settlement which was memorialized in the Agreement, which is
21 attached to the declaration of Eric K. Yaeckel as **Exhibit A**. The parties now seek the Court's
22 preliminary approval of the Agreement.

23 **III. SETTLEMENT TERMS**

24 The Agreement includes the following key terms:

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

26 The parties entered into the Agreement exclusively for the purpose of resolving the action and
27 facilitating the negotiated settlement. Should the Court, for any reason, not preliminarily and/or finally
28 approve the Agreement, or if the Agreement is terminated for any reason, then the parties have agreed

that the Agreement will be null and void and this action will revert to its status with respect to any and all matters as they existed prior to the parties signing the Agreement. (**Ex. A** at ¶ 34.)

2. Description of the Settlement Classes

Solely for the purposes of the Agreement, the parties have agreed that the term “Class Member” is defined as:

all current and former non-exempt employees of Defendants who were employed in California between February 16, 2018 through June 1, 2023. (**Exhibit A** at § (I)(LL).)

The parties agree that the Settlement Class consists of approximately three hundred individuals (300) individuals, as determined by Defendant’s employment records. (**Exhibit A** at § (I)(LL).)

3. Appointment of Settlement Administrator

The parties agreed to use CAC Services, LLC, as the “Settlement Administrator” for purposes of providing the Notice to Settlement Class Members, issuing payments pursuant to the Agreement, and to administer the claims. (**Exhibit A** at § (I)(J).)CAC’s sole business has been the administration of class action settlements and class action notices, and has extensive experience. (Yaeckel decl.¶ 11.)

4. Scope of the Release

For purposes of the Agreement, Class Members release all “Wage and Hour” claims that are either or both: (1) alleged in the Complaint; or (2) or which relate to or arise out of the allegations and claims asserted in the Complaint and could have been alleged in the Complaint relating in any way to violations of the wage and hour provisions of the California Labor Code or the California Wage Orders, or any other wage and hour provisions of California law. The precise release language is reflected in **Exhibit A** at § (I)¶ DD. There is a separate release of the PAGA claims for anyone who worked within the PAGA period. **Exhibit A** at § (I)¶ EE.

5. Cash Payment and Allocation

The Agreement provides for an automatic cash payment to the members of the Class. No claims need be submitted. Class Members will be entitled to an average share of approximately **\$400.56**. (Yaeckel Decl. ¶12.) The actual share will depend on the amount of pay periods they were employed during the limitations period. The Cash Payment will be allocated as follows: twenty-five percent (25%) constitutes wages (subject to withholdings and deductions and reported as wage income

1 on a Form W-2) and seventy-five percent (75%) constitutes non-wage penalties, and interest.
2 (**Exhibit A** at ¶ 3(d).)

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

4 Subject to Court approval, the Parties agree that, within ten (10) days after the Court enters any
5 Order granting preliminary approval of the Settlement, Defendant will provide to the Settlement
6 Administrator the following information for each Settlement Class Member in a reasonable format
7 requested by the Settlement Administrator: class member names and last known home addresses,
8 telephone numbers, social security numbers, weeks worked with Defendant based on Defendant's
9 records, and last known mailing addresses for each member of the Class. (See **Exhibit A** at ¶ 15.) The
10 Settlement Administrator will perform address updates and verifications, as necessary, prior to the first
11 mailing. Within 10 days of receipt of the Class List, the Settlement Administrator will mail the Class
12 Notice ("Notice") to each Class Member, by first class mail. (See **Exhibit A**, at ¶ 16.) The Notice is
13 attached to the declaration of Eric Yaeckel as **Exhibit B**.

14 The Notice is designed to provide Class Members with detailed information about the lawsuit,
15 the Agreement, their rights and the settlement benefits, and how to participate, exclude themselves,
16 or object. (See **Exhibit B**.) From the date the Notices are mailed, the Class Members will have thirty
17 (30) calendar days to request to be excluded, or file objections. (See Exhibit "A," at ¶ HH; **Exhibit B**.)

18 The Class members will be given notice of the release and information about their expected
19 settlement amount based on the workweeks they were employed with Defendants during the Class
20 period. If they wish to receive a share of the Settlement, class members need not take any additional
21 action. Class Members are also given instructions on how to exclude themselves, file objections, or
22 appear at the final approval hearing to state objections. (**Exhibit B**).

23 The Notice program also has additional safeguards. For instance, for Notices returned as non-
24 deliverable, the Settlement Administrator will perform a skip-trace and mail or re-mail Notice to an
25 updated address (if any), upon receipt of the returned mail. (See **Exhibit A** at ¶ B) It is the intent of
26 the parties that all reasonable means be used to locate Class Members.

27 The Notice will inform Class Members of the number of weeks worked during the Class Period
28 (according to Defendant's records) and their estimated settlement amounts. (See **Exhibit B** at ¶

1 IV(C)). Class members will have the opportunity to dispute the workweek calculation by submitting
2 written documentation to the Settlement Administrator. (Id.)

3 PAGA Members do **not** require notice prior to a settlement nor may they opt out of the PAGA
4 penalty portion of the settlement. *Robinson v. S. Ctys. Oil Co.*, (2020) 53 Cal. App. 5th 476, 482–83,
5 review denied (Nov. 24, 2020). However, all PAGA members are also Class Members and can opt-out
6 to retain their individual claims. This is explained in the Class Notice. (**Exhibit B** at § V(B).)

7 **7. Contingent Costs**

8 Defendant agrees to pay Eighty Three Thousand Three Hundred Thirty Three (\$83,333.33) in
9 attorneys' fees, which is thirty-three and one-third (33 1/3%) of the total settlement, and up to Eleven
10 Thousand Dollars (\$11,000.00) in litigation costs. For costs incurred in administrating the settlement,
11 Defendant will pay actual costs, estimated at no more than Ten Thousand Dollars (\$10,000.00). (*See*
12 **Exhibit A** at ¶ 3(b).

13 Defendant also agrees to allocate Twenty Four Thousand Dollars (\$24,000.00) to Plaintiffs'
14 PAGA claims with 75% of the amount, or \$18,000.00, being paid to the LWDA, and 25%, or
15 \$6,000.00, being distributed amongst the class members. (*See* **Exhibit A** at ¶ 3(g).)

16 Defendant also agrees to pay Plaintiff Rodriguez Seven Thousand and Five Hundred Dollars
17 (\$7,500.00), as an enhancement award in consideration for his service as Class Representative. (*See*
18 **Exhibit A** at ¶ 3(a).) The enhancement award was decided pursuant to good faith negotiations and is
19 intended to recognize that it was the class representatives who initiated the lawsuit, initiated the PAGA
20 claims, provided critical documents and witnesses to his attorneys, and worked with his attorney to
21 respond to and prepare written discovery, all in an effort to obtain moneys allegedly owed not only to
22 himself, but to hundreds of other employees. (Yaeckel Decl. ¶13.)

23 **IV. SUMMARY OF CLAIMS AND ESTIMATES OF POTENTIAL DAMAGES**

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

28 Concerning the strength of the plaintiff's case, the California Court of Appeal has said that the

1 “merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the
2 operative word is ‘settlement.’” *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
3 Cal. App. 4th 1135, 1150 [citing, *inter alia*, *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d
4 448,455 (“The fact that a proposed settlement may only amount to a fraction the potential recovery
5 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
6 disapproved”); see also *Linney v. Cellular Alaska P’ship.* (9th Cir. 1998) 151 F.3d 1234, 1242 (“This
7 court has aptly held that ‘it is the very uncertainty of outcome in litigation and avoidance of wasteful
8 and expensive litigation that induce consensual settlements”); *Officers for Justice v. Civil Servo Com.*
9 (9th Cir. 1982) 688 F.2d 615, 625 (“The proposed settlement is not to be judged against a hypothetical
10 or speculative measure of what might have been achieved by the negotiators.”)]

11 Each of the primary claims also had risks to obtaining both class certification and a finding of
12 liability. If Defendants’ asserted defenses were successful, the class would not receive anything. As
13 is set forth below, Plaintiff submits that the most realistic “best case” scenario would be an average
14 recovery per class member of approximately \$1,874.15 and a worst case scenario would be a recovery
15 of \$0, by way of denial of class certification or defense verdict.

16 **A. FAILURE TO PAY ALL COMPENSATION CLAIMS**

17 Plaintiffs’ unpaid wages (and unpaid overtime) claims were based on the allegation that
18 employees were performing unpaid work that was not paid (1) due to the fact that the timekeeping
19 system “rounded” or edited employee time entries and as a result also lead to liability for lack of
20 accurate record keeping. Plaintiffs alleged this resulted in regular time and overtime pay being owed
21 where Defendants were on notice of work being performed without pay. (Yaeckel decl. ¶ 14.)

22 Defendant argued that rounding of total hours worked has been recognized under California
23 law. Defendant also denied that any unpaid work occurred, and even if some did occur, Defendant
24 claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition
25 against off-the-clock work and a mandate that all time worked must be accurately recorded. Defendant
26 asserted proof of these alleged violations would require individualized inquiries, which could preclude
27 class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 14.)

28 Based on Class Counsels’ analysis, this claim was worth as little as \$0 (a defense verdict or

denial of class certification) or as much as \$87,243.75. (Yaeckel decl. ¶ 15.)

B. MEAL AND REST PERIOD CLAIMS

Plaintiffs were able to identify numerous examples of missing or late meal periods without the provision of a meal period penalty payment. However, Defendant argued that these records do not conclusively show whether (1) it actually failed to provide the meal period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. Additionally, in light of ANV's written meal period policy, Defendant contended there was no uniform policy or practice, requiring individualized inquiries that would preclude class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 16.)

Plaintiffs also alleged the written policies were missing required language pursuant to California law. Defendant pointed out that despite any missing language Defendant's practice was to provide all meal and rest breaks in compliance with California law. Defendants also contended individualized inquiries will abound as to why individual employees may have failed to take appropriate meal periods or rest breaks. (Yaeckel decl. ¶ 16.)

While there are time records to support the existence of meal period violations, there are no corresponding rest period records, making this aspect of the claim much harder to prove. Some Courts have been disinclined to accept survey evidence that may have been needed to help establish rest period violations. See e.g. *Duran v. U.S. Bank National Assn.* (2018) 19 Cal.App.5th 630.

Based on counsels' analysis, this claim was worth as little as \$0 (a defense verdict or denial of class certification) or as much as \$465,300.00. (Yaeckel decl. ¶ 17.)

C. PLAINTIFF'S WAGE STATEMENT CLAIMS

Plaintiff acknowledges that these claims are largely derivative, in that both the gross and net wages could be found to be inaccurate, due to the above-referenced claims.

ANV argued that the failure to list gross and net wages are derivative of other claims that may ultimately fail and as a result there is no "knowing and intentional failure" to list information, which is required to prove liability under Labor Code §226(e). (Yaeckel decl. ¶ 18.)

The California Supreme Court has recently held that the failure to pay meal and rest period premiums *may* give rise to a claim for inaccurate wage statements (or waiting time penalties).

1 However, such derivative liability is not automatic and the Plaintiff still must show a “knowing and
2 intentional” or “wifful” failure to comply with the Labor Code. See *Naranjo v. Spectrum Security*
3 *Services, Inc.*, (2022) 2022 Cal. LEXIS 2878. Defendants (as with the underlying meal and rest period
4 claims) maintained individualized inquires would abound as to why breaks were missed and whether
5 meal period premiums should have been paid in the first place, requiring individualized inquiries that
6 would preclude class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 19.)

7 As is broken down further in the declaration of Eric K. Yaeckel, this claim was valued at as
8 little as \$0.00 and as much as \$231,000.00 (Yaeckel decl. ¶ 20.)

9 **D. PLAINTIFF’S REIMBURSEMENT CLAIMS**

10 Plaintiff contends that ANV violated Labor Code section 2802 by failing to reimburse its
11 employees for certain costs, including primarily cellular phone costs.

12 ANV countered that employees were not “required” to use their personal cell phone for any
13 of their job functions.

14 As is broken down further in the declaration of Eric K. Yaeckel, this claim was valued at as
15 little as \$0.00 and as much as \$3,000.00. (Yaeckel decl. ¶ 22).

16 **E. OTHER DERIVATIVE CLAIMS (PAGA, LABOR CODE SECTION 203)**

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

19 The parties agreed to allocate \$24,000 to the PAGA claims, which is 9.6% of the total
20 settlement. This PAGA allocation is in the range routinely approved by California Courts. See *Garcia*
21 *v. Gordon Trucking, Inc.* (E.D. Cal., Oct. 31, 2012, No. 1:10-CV-0324 AWISKO) 2012 WL 5364575,
22 at *7 (approving \$10,000 PAGA penalty for a California class with a \$3.7 million gross settlement
23 payment); *Syed v. M-I, L.L.C.* (E.D. Cal., Feb. 22, 2017, No. 112CV01718DADMJS) 2017 WL
24 714367, at *13 (approving 2.53% of the estimated \$3.95 million gross settlement amount allocated
25 to the California class); *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No.
26 15-CV-02198-EMC) 2016 WL 5907869 (approving allocation of \$20,000 to the PAGA claim (**0.15%**
27 of its total value of \$12,952,000) as reasonable in the context of the settlement as a whole); *In re Uber*
28 *FCRA Litigation* (N.D. Cal., June 29, 2017, No. 14-CV-05200-EMC) 2017 WL 2806698 (approving

1 a settlement agreement of \$7.5 million, where the amount allocated to the PAGA claims was only
2 \$7,500 – .01% of the total settlement amount).

3 Based on Class Counsel's analysis, the PAGA and Labor Code § 203 claims were worth as little
4 as \$0 (a PAGA defense verdict or denial of certification of the § 203 claim) or as much as
5 \$148,500.00. and \$820,800.00 respectively. (Yaeckel decl. ¶ 25.)

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

7 Plaintiff concedes he would be highly unlikely to ever be awarded an amount approaching the
8 maximum damages set forth above. To wit, the majority of the recovery would be "derivative"
9 penalties under PAGA, Labor Code § 203 and Labor Code § 226. The Court would have great
10 discretion to mitigate any penalties awarded. *Thurman v. Bayshore Transit Management, Inc.* (2012)
11 203 Cal.App.4th 1112, 1135 (disapproved on other grounds).

12 In a recent trial involving Class Counsel, the Court found liability, but then significantly
13 reduced the PAGA penalties, down to \$5 a violation. See *Carrington v. Starbucks Corp.* (2018) 30
14 Cal.App.5th 504; See accord *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK(OPx), 2011 WL
15 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because
16 employer was "not aware" of violations). And in *Carrington*, the Court also noted that other trial courts
17 have declined to "stack" (impose multiple) penalties based on the same underlying Labor Code
18 violation. See *Ruelas v. Costco Wholesale Corporation* (N.D. Cal. 2014) 67 F.Supp.3d 1137.

19 Class Counsel believes a mitigation of the damages and potential PAGA penalties would be
20 warranted here. As in the *Carrington* case, there was evidence that ANV attempted to provide meal
21 and rest periods in practice, and the written policies contained no facially non-compliant terms.

22 Given this, it is likely that some of the violations by ANV were not "willful." Finally, given
23 the defenses raised by Defendant, there was a significant risk that many of the claims would not have
24 been certified or, if they were, certification could not have been maintained through trial and appeal.

25 The Parties agree the failure to pay "ex employees" under § 203 is derivative of the other
26 claims. As ANV asserts a "good faith dispute" for withholding any unpaid wages, it would be difficult
27 to establish any liability for a "willful" failure to pay wages owed.

28 Based on the above, it would be likely that PAGA penalties would be reduced to approximately

1 \$5 per violation and the Court would find no basis for imposing Labor Code §§ 203 or 226 penalties.
2 If this occurred, the average class member's pre-tax share of a realistic best case recovery would be
3 \$1874.15. (Yaeckel decl. ¶ 30-31.)

4 However, a “best case” outcome at trial is exceedingly rare. It would also be appealed causing
5 long delays and possible reductions. Given all the risks on each claim the estimated \$400.56 average
6 recovery secured via this settlement, is a reasonable compromise and is in the best interests of the class
7 given all the risks of continued litigation.(Yaeckel decl. ¶ 32.)

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

9 Under California law, a class action is appropriate when the class is ascertainable and there is
10 “a well defined community of interest in the questions of law and fact involved affecting the parties
11 to be represented.” Cal. Code Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34
12 Cal. 4th 319, 341. State law requirements under California Code of Civil Procedure § 382 for class
13 certification mirror those of federal law under Rule 23 of the Federal Rules of Civil Procedure:
14 numerosity, typicality of the class representatives’ claims, adequacy of representation, predominance
15 of common issues, and superiority. See Fed. R. Civ. P. 23(a); see also *Hanlon v. Chrysler Corp.* (9th
16 Cir. 1998) 150 F.3d 1011, 1019. Thus, for settlement purposes, each of these elements must be
17 present. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 237-38.

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

19 The proposed class is ascertainable because all Class Members currently or formerly worked
20 for Defendant as a nonexempt employee and will be identified through Defendant’s employment
21 records. See *Rose v. City of Hayward*, 126 Cal.App.3d 926 (1981) (finding that “Class Members are
22 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference
23 to official records”). Thus, the ascertainability requirement is met.

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

25 The numerosity requirement is met if the class is so large that joinder of all members would
26 be impracticable. *In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 318. Here, Defendant’s records
27 show that approximately **300 class members** worked for the company during the class period.
28 (Yaeckel decl. ¶ 33). Thus, joinder of all members of the class would be impracticable.

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

2 The commonality requirement is met if there are questions of law and fact common to the class.
3 *See Hanlon, supra*, 150 F.3d at 1019.

4 Here, for purposes of the Settlement, the parties agree the claims of Class Members all involve
5 the same questions of law and fact. (See Ex. A at ¶ III(1)); and section IV *supra*). Namely, all class
6 members were subject to the same employment policies and practices of Defendant. (Yaeckel decl.
7 ¶ 34). The common question exists as to whether the policies and practices Class Members were
8 subjected to are illegal. Under these circumstances, the commonality requirement is satisfied. See
9 *Hanlon, supra*, 150 F.3d at 1019-20.

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

11 The typicality requirement is met if the class representatives and class counsel have no interests
12 adverse to the interests of the proposed Class Members and are committed to vigorously prosecuting
13 the case on behalf of the class. See *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

14 Here, there are no such adverse interests. Plaintiff has claims substantially the same as all the
15 other Class Members. (Yaeckel decl. ¶ 35). Factual differences may exist between the class
16 representatives and the Class Members so long as the claims arise from the same events or course of
17 conduct and are based on the same legal theories. See *Hanlon*, 150 F.3d at 1020; see also 1 *Newberg*
18 § 53.13 at 3-76-77 (“When it is alleged that the same unlawful conduct was directed at or affected both
19 the named plaintiff and the class sought to be represented, the typicality requirement is usually met
20 irrespective of varying fact patterns which under lie individual claims.”) Thus, the typicality
21 requirement is also satisfied.

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

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

1 Here, no such “inconsistencies” exist. Plaintiff will be compensated based on the same “pay
2 period” formula as all other members of the Class. (Yaeckel decl. ¶ 36).

3 Additionally, any Class Member who wishes to “opt out” of the Settlement may do so and
4 retain all of their individual rights. (Yaeckel decl. ¶ 37). There is therefore no conflict of interest
5 between the Class Representatives and the Class Members. (*Id.*) Thus, at least for settlement purposes,
6 the adequacy prong is met. (*Id.*)

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

9 Class certification is authorized where common questions of law and fact predominate over
10 individual questions, and where class-wide treatment of a dispute is superior to individual litigation.
11 See *Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 469 (1981).

12 The proposed class in this case is sufficiently cohesive because, for purposes of the Settlement
13 only, the parties have stipulated that all class certification elements are met. (**Exhibit A** at ¶ III(1)). All
14 members of the Class worked under the same conditions and experienced the same policies and
15 practices of Defendant. (See section IV, *supra*). Thus, the class is sufficiently cohesive.

16 Further, it would be preferable to resolve all of the Class Members’ claims by means of a class-
17 wide settlement than to require each Class Member to litigate individual claims. (Yaeckel decl. ¶ 38).

18 **VI. PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT IS PROPER**

19 The trial court has broad discretion to determine whether a class action settlement is fair and
20 reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Fairness is presumed where
21 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
22 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
23 litigation; and (4) the percentage of objectors is small. *Chaves v. Netflix, Inc.* (2008) 162 Cal.App.4th
24 43, 52; *Dunk v. Ford Motor Co.*(1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the
25 settlement is fair, the court must still determine on the record before it whether the settlement should
26 be approved after considering “the strengths and weaknesses of the claims and risks of the particular
27 litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. The courts will
28 consider: (i) the strength of the plaintiff’s case; (ii) the risks, expense, complexity and likely duration

1 of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount
2 offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the
3 experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any
4 reaction of putative class members to the proposed settlement. *Dunk*, 48 Cal.App.4th, at 1800-1801;
5 *In re Microsoft I-V Cases*, 135 Cal.App.4th, at 723.

6 When evaluating these factors, the court “must stop short of the detailed and thorough
7 investigation that it would undertake if it were actually trying the case,” but nonetheless it “must
8 eschew any rubber stamp approval in favor of an independent evaluation.” *Kullar*, 168 Cal.App.4th,
9 at 130. Ultimately, the court approves the proposed class action settlement when the settlement is fair
10 and falls “within the range of reasonableness.” *Hernandez v. Vitamin Shoppe Indus., Inc.* (2009) 174
11 Cal.App.4th 1441, 1446.

12 **A. FAIRNESS OF THE SETTLEMENT**

13 For preliminary approval purposes, a proposed class action settlement is *presumed* to be fair
14 where, as here, (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
15 discovery are sufficient to allow counsel and the court to act intelligently; and (3) counsel is
16 experienced in similar litigation. *Chaves, supra*, 162 Cal.App.4th at 52.

17 The proposed settlement in this action meets these criteria, and merits preliminary approval.
18 As discussed above, the parties only entered into the Agreement after engaging in a full day of
19 mediation with experienced an mediator who routinely handle “wage and hour” class action litigation,
20 Doug Glass . (Yaeckel Decl. ¶9). The mediation was preceded by substantial discovery, motion work,
21 investigation into the claims at issue, interviews of numerous Class Members, disclosure and review
22 of documents detailing company-wide policies and practices, informal information exchanges for
23 mediation purposes, and ongoing discussions about the merits between the parties’ counsel during the
24 span of the litigation. (Yaeckel Decl. ¶¶ 5-10). Thereafter, the parties memorialized the details of this
25 settlement via the Agreement. (**Ex. A**).

26 When negotiating the settlement, both sides took into account the strengths and weaknesses
27 of their opponent’s positions as pointed out by the mediator, the data available to evaluate liability and
28 damages, the lack of data or evidence on certain issues, and the substantial and evolving law applicable

1 to the merits of the claims. The Agreement was only agreed to after extensive arms-length negotiations
2 resulting in a unique compromise that permits all parties to move forward and bring this action to
3 close. In spite of a mutual desire to resolve this action, the negotiations remained at all times
4 adversarial. (Yaeckel Decl. ¶ 39).

5 As set forth below in section H, *infra.*, counsel for both parties have extensive experience in
6 litigating wage and hour class action lawsuits. Based on this experience, counsel have determined that
7 the settlement is fair, adequate, and reasonable. (Yaeckel decl. ¶ 40).

8 **B. STRENGTH OF PLAINTIFF’S CASE**

9 The most important factor courts consider when evaluating the fairness of the class action
10 settlement is the strength of the plaintiffs’ case balanced against the amount offered in settlement.
11 *Kullar*, 168 Cal.App.4th, at 130.

12 All of Plaintiff’s claims – individual, PAGA, and class claims – presented hurdles including
13 obtaining class certification, in addition to a substantial risk of a defense verdict by way of summary
14 judgment motion or at trial. (Yaeckel Decl. ¶¶ 14-32).

15 The exchange of mediation briefs, the assistance of an experienced “wage and hour” mediator,
16 and the parties’ ongoing negotiations all helped the parties realize the strengths and weaknesses of
17 their case, as well as the risks and expenses of continuing litigation.

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

23 **C. THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER** 24 **LITIGATION**

25 Plaintiff’s Counsel’s effectiveness in prosecuting this case has translated into tangible monetary
26 and non-monetary benefits for the Settlement Class Members in the following respects: (1) a
27 guaranteed favorable result; (2) guaranteed monetary recovery over a reasonably short period of time,
28 as opposed to possibly waiting additional years for a potentially worse result; and (3) significant

1 savings in attorneys' fees and costs, which would have increased had the case progressed through trial
2 and possible appeals. (Yaeckel decl. ¶ 41).

3 Without entering into the Agreement, there existed a significant chance that Defendant would
4 prevail on the merits of some or all claims and that Class Members would receive nothing. Through
5 the Agreement, participating Class Members receive guaranteed cash, and this action has also been
6 the catalyst for programmatic relief. (Yaeckel decl. ¶ 42).

7 If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
8 and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being litigated,
9 the parties may be required to hire multiple experts each (as many as 6 total). This would result in not
10 only the production of six expert reports, but six depositions as well. And, based on previous
11 discussions between counsel regarding the remaining claims (including the PAGA claims), the parties
12 anticipated at least one motion to compel, a motion for class certification and two dueling motions for
13 summary judgment / adjudication (one from each side). (Yaeckel decl. ¶ 43).

14 Importantly, even after engaging in all of the potential continued and protracted litigation set
15 forth above, the putative class would continue to have no guarantee of success on any of the claims
16 advanced in this case. Thus, the parties and their counsel believe in good faith that the proposed
17 resolution is a fair, reasonable, and adequate compromise. (Yaeckel decl. ¶ 44).

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

19 Plaintiffs had not filed a Motion for Class Certification at the time settlement was reached.
20 (Yaeckel decl. ¶ 45. Defendants presented multiple different defenses to certification during mediation
21 and throughout litigation. Even assuming Plaintiff did obtain class certification of the claims, each
22 claim is subject to substantial risk of a Defense verdict at trial. (*Id.*)

23 Regarding the representative (PAGA) claims, there is also a substantial risk that, at trial,
24 Plaintiffs will either fail to obtain a favorable judgment on one or more of these claims, or that a
25 favorable award on one or more PAGA claims may be reduced. *See Thurman v. Bayshore Transit*
26 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reversed on other grounds).

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

28 After deduction from the total "Settlement Amount" of the projected costs of administration,

1 proposed class representative service awards, potential attorney fees and costs, the “Net Settlement
2 Amount (“NSA”) will be distributed to all Class Members who do not file a request for exclusion.
3 Participating Class Members will receive their share of the NSA based on the total pay-periods they
4 worked during the Class Period. (**Exhibit A**, ¶ 3(d)).

5 Based on the current proposed figures, each Participating Class Member will receive an
6 average of \$400.56, although the actual amount will vary based on the amount of pay periods s they
7 were employed. The Class Notice will list each individual class member’s actual expected share. (See
8 **Ex. B.**) Plaintiffs’ counsel maintains this recovery was significant in light of the circumstances of the
9 case. (Yaeckel Decl. ¶ 46).

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

11 Plaintiffs propounded 6 sets of separate written discovery devices on Defendants, including
12 requests for admission, special interrogatories, requests for production of documents, and general and
13 employment form interrogatories. (Yaeckel Decl. ¶ 5.) Through these requests, Plaintiffs sought,
14 among other information and documents, the identities of putative class members, Defendants’
15 compensation policies, meal and rest period policies, employee handbooks, wage statements, time
16 records, job descriptions, and reimbursement policies. *Id.*

17 Defendant provided detailed substantive responses detailing all relevant employment policies,
18 in addition to producing thousands of pages of responsive documents. The document production also
19 included a large sampling of other putative class members time and wage records. (Yaeckel Decl. ¶
20 6-8).

21 Plaintiffs’ counsel has also interviewed at least 4 other Class Members in the course of
22 investigating and litigating this matter. (Yaeckel decl. ¶ 47). Counsel has also reviewed thousands of
23 pages of documents produced by Defendants, Plaintiffs, and Class Members.(Yaeckel decl. ¶ 8-10).

24 This information, along with documents and information obtained through formal discovery
25 and from Class Members, allowed Plaintiffs’ counsel to prepare a detailed Mediation Brief. (*Id.*) The
26 Brief was provided to opposing counsel and contained a breakdown of potential damages based on all
27 of the information obtained. (*Id.*)

28 Thus, sufficient discovery, both formal and informal, has been conducted to allow the parties

1 to participate in an informed, arms-length negotiation process.

2 **G. THE STAGE OF THE PROCEEDINGS**

3 Plaintiff already had possession of all written discovery needed for a class certification motion.
4 Depositions would have followed and then a motion for class certification would have been filed..
5 Depending on that motion, Plaintiff may have lost the ability to negotiate a class-wide or representative
6 settlement agreement on certain issues. Alternatively, Defendant stood to lose a key negotiating tool
7 in the event the Motion was decided in Plaintiff's favor. Therefore, the parties achieved a settlement
8 agreement at a point when neither side had a stated advantage in the litigation.

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

10 Class Counsel has considerable experience in wage and hour and class action litigation.
11 William Sullivan has over 28 years of experience, 27 years of which has been devoted to both
12 prosecuting and defending class action litigation. Mr. Yaeckel has over 12 years of experience in “class
13 litigation.” (Yaeckel Decl. ¶ 48).

14 Plaintiff's counsel considers the Agreement to represent a fair, adequate and reasonable
15 settlement that is well within the accepted range of recoveries for similar cases. Counsel further
16 believes the Agreement is in the best interests of the Settlement Class Members.(Yaeckel Decl. ¶ 49).

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

18 Although the State is not directly involved in this action, Plaintiff “stands in the shoes” of the
19 Labor and Workforce Development Agency (“LWDA”) by bringing his PAGA action. Consideration
20 has been made to compensate to Labor Workforce Development Agency (“LWDA”) in the amount
21 of \$18,000, even though the LWDA declined to prosecute the claims itself. (Yaeckel decl. ¶ 50; *See*
22 Exhibit “A,” at ¶ 3(g)). To confirm, 75% of the total allocation of \$24,000 amount, or **\$18,000.00**, is
23 being paid to the LWDA, and 25%, or **\$6,000.00**, being distributed amongst the class members who
24 worked during the PAGA Period. (*Id.*) Counsel for the parties believe this is a fair, reasonable, and
25 adequate allocation. (Yaeckel Decl. ¶ 50).

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

27 Prior to preliminary approval, what can be said of the reaction the class members is limited.
28 However, Plaintiff's counsel has spoken to some Class Members since the parties reached a proposed

1 settlement agreement, and all were in favor of the settlement. (Yaeckel Decl.¶ 51).

2 As explained in the Agreement, the Settlement Administrator will send a Notice to the
3 Settlement Class Members. (See Exhibit A at ¶¶ 14-18). The negotiated Notice form is attached to the
4 declaration fo Eric K. Yaeckel as Exhibit B.

5 The proposed Notice advises the Settlement Class Members of their anticipated recovery under
6 the Agreement, how they can object, how they can exclude themselves, the amount of fees and costs
7 sought by Settlement Class Counsel, the amount of enhancement payment sought on behalf of the class
8 representative, and the date of the final approval hearing. (See Exhibit “B.”) Thus, the proposed Notice
9 complies with the notice requirements set forth in CRC Rule 3.766(d) and Rule 3.769(f).

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

11 Assuming the Settlement merits Preliminary Approval from the Court, Plaintiffs request that
12 the Court set a Final Approval Hearing in accordance with the chronology of events set forth in the
13 Agreement:

- 14 • Within 10 calendar days of the Court’s Preliminary Approval: ANV will provide to the
15 Settlement Administrator the Class List including Class Members’ names, last known
16 addresses, social security numbers, and the dates of employment during the Class Period;
 - 17 • Within 10 calendar days after receipt of the class list: Settlement Administrator will mail the
18 Notice Packets to Class Members;
 - 19 • 30 Calendar Days After Settlement Administrator has mailed the Notice Packets to Class
20 Members: Deadline for Class Members to postmark and submit all disputes of pay period
21 information, Requests for Exclusion, or to file written objections to the settlement;
 - 22 • Approximately 5 Calendar days after the conclusion of the Notice and Claims Period: Plaintiffs
23 will file a Motion for Final Approval; and
 - 24 • 16 Court days after the filing of the Final Approval motion: the Court can conduct the Final
25 Approval Hearing.
- 26
27
28

1 Based on this timeline, Plaintiff requests a Final Approval hearing that is approximately 80
2 days (or the first available court date thereafter) after the date the Court enters an Order granting
3 preliminary approval of the Settlement.

4 **VI. CONCLUSION**

5 Based on the foregoing, Plaintiff respectfully requests that the Court issue an Order:

- 6 i. Certifying the Proposed Settlement Class;
7 ii. Preliminarily approving the settlement as set forth in the Agreement; and
8 iii. Approving the proposed Notice Packet to be directed to the Settlement Class.

9
10 Dated: August 10, 2023

SULLIVAN & YAECKEL LAW GROUP, APC

11 

12
13 Eric K. Yaeckel

Ryan T. Kuhn

14 Attorneys for Plaintiff ARATH RODRIGUEZ, in a
15 representative, Individually, and on behalf of other
16 members of the general public similarly situated
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