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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

HEA YON SUZZIE DORN, on behalf of
herself and all similarly aggrieved
employees,

Plaintiff,

v.

CENTRAL COAST FEDERAL CREDIT
UNION; and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV000335

(Assigned to the Honorable Thomas W. Wills,
Dept. 15)

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

Date: June 30, 2023

Time: 9:00 a.m.

Dept.: 15

Complaint Filed: February 3, 2022

Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 30, 2023 at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Thomas W. Wills, judge presiding, in Department 15 of the above referenced Court, located at 1200 Aguajito Road, Monterey, California 93940, Plaintiff Hea Yon Suzzie Dorn (“Plaintiff”) will and hereby does move this Court for the following relief with respect to the Joint Stipulation and Settlement of Class Action Claims (“Stipulation,” “Settlement Agreement,” or “Settlement”) entered into by Plaintiff and Defendant Central Coast Federal Credit Union (“Defendant”):

1. That the Court approve the Stipulation referenced above;
2. That the Court certify the following Class for settlement purposes: all non-exempt employees who are or previously were employed by Central Coast Federal Credit Union in California during the Class Period (the “Class”);
3. That Plaintiff Hea Yon Suzzie Dorn be appointed as the Class Representative and B. James Fitzpatrick, Laura L. Franklin, and Alison Baker of Fitzpatrick & Swanston, and Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C. be appointed as Class Counsel;
4. That the Court preliminarily approve the Stipulation and the Gross Settlement Amount in the amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00);
5. That the Court finds on a preliminary basis that the Stipulation appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, Class Representative service award, attorneys’ fees and costs, settlement administration fees, and the allocation of payments to Settlement Class Members, that could ultimately be given final approval by this Court;
6. That the Court approve the mailing of the proposed Notice of Pendency of Class Action (“Notice of Proposed Settlement”) to be sent to Class Members;
7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and
8. That the Court schedule the matter for a Final Fairness and Final Approval

1 hearing.

2 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
3 provides for court approval of the settlement of a purported class action and allows the Court
4 to preliminarily certify a class for settlement purposes.

5 The basis for this Motion, filed without any opposition from Defendant, is that the
6 proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the
7 Parties are adequate to ensure the opportunity of class members to participate in, opt-out of, or
8 object to the settlement.

9 This Motion will be based on the attached Memorandum of Points and Authorities, the
10 Settlement Agreement and the Notice of Proposed Settlement, and the supporting Declarations
11 of B. James Fitzpatrick, Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, and Plaintiff
12 Hea Yon Suzzie Dorn, upon the oral arguments of counsel (should there be any), and on the
13 complete records and file herein.

14
15 Dated: June 7, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

16
17 By: 
18 B. James Fitzpatrick
19 Larry W. Lee
20 Nicholas Rosenthal
21 Attorneys for Plaintiff
22 HEA YON SUZZIE DORN,
23 on behalf of herself and all similarly
24 aggrieved employees
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27
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Manual for Complex Litigation, Third § 30.41 (Fed. Jud. Ctr., 3rd ed. 1995)10

1 **I. INTRODUCTION**

2 This is a wage and hour class and representative PAGA action arising from Defendant
3 Central Coast Federal Credit Union's ("Defendant") various alleged Labor Code violations.
4 Specifically, Plaintiff Hea Yon Suzzie Dorn ("Plaintiff") asserted that Defendant failed to pay
5 wages, including overtime, for all hours worked, provide off-duty meal and rest breaks or
6 compensation in lieu thereof, timely pay wages and upon separation of employment, reimburse
7 all work-related expenses, and provide accurate wage statements. Based on these claims,
8 Plaintiff asserts violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 1174, 1175, 1198,
9 2802, and 2698, *et seq.* (the "PAGA"), and Business and Professions Code § 17200, *et seq.*
10 (the "UCL"). Defendant denies each, every, and all of the allegations of the complaint and
11 contends that its wage and hour practices comply with the Labor Code.

12 Prior to the settlement of this action, Plaintiff and Defendant (jointly referred to as the
13 "Parties") thoroughly investigated the facts relating to the claims alleged in the operative
14 Complaint against Defendant, including, but not limited to, the exchange of discovery and
15 various payroll data/information for members of the class. Thereafter, the Parties commenced
16 settlement negotiations through a private mediator and were ultimately able to reach the
17 current settlement. **Significantly, this entire amount is non-reversionary, such that no**
18 **monies will revert back to Defendant.**

19 The Parties believe that this amount is fair, adequate, and reasonable, especially given
20 the risks and uncertainty of class certification and the merits of this case.

21 While Plaintiff and her counsel are confident that they could prevail on the merits of
22 the claims at trial, they recognize the inherent risks in drawn-out litigation and the specific risk
23 that Plaintiff could fail to establish liability. Based on their own independent investigation and
24 evaluation, the Parties and their respective counsel are of the opinion that the settlement for the
25 consideration and on the terms set forth in the Joint Stipulation and Settlement of Class Action
26 Claims (the "Stipulation," "Settlement Agreement" or "Settlement") is fair, reasonable, and
27 adequate and is in the best interests of the Class and Defendant in light of all known
28 circumstances and the expenses and risks inherent in litigation.

1 Therefore, the Parties respectfully request that the Court grant this Motion for
2 Preliminary Approval of Class Action Settlement.

3 **II. DISCUSSION**

4 On February 3, 2022, Plaintiff filed a class and representative action complaint
5 (“Complaint”) in the Superior Court of California, County of Monterey on behalf of herself
6 and all similarly situated employees against Defendant Central Coast Federal Credit Union
7 (the “Action”). Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 2.

8 The Complaint asserts claims for: (1) violation of Labor Code §§ 226.7 and 1198 (meal
9 periods); (2) violation of Labor Code §§ 226.7 and 1198 (rest periods); (3) violation of Labor
10 Code §§ 1194 and 1198; (4) violation of Labor Code §§ 226, 1174, and 1175; (5) violation of
11 Labor Code §§ 201-203; (6) violation of Labor Code § 2802; (7) violation of the Labor Code §
12 2698, *et seq.*; and (8) violation of the Unfair Competition Law (“UCL”), California Business
13 & Professions Code § 17200, *et seq. Id.* Specifically, Plaintiff alleges that Defendant failed to
14 provide an uninterrupted 30-minute meal period for every shift of 5 hours and more and a
15 duty-free 10-minute rest period for every shift of about 4 hours, or pay premium compensation
16 in lieu of said breaks. Plaintiff also alleges that Defendant failed to pay overtime wages and
17 sick pay at the regular rate of pay, reimburse work-related business expenses, and pay all
18 wages owed in a timely manner and upon separation of employment. As a result of the
19 foregoing, the wage statements provided to Plaintiff and other employees were inaccurate.
20 Plaintiff’s PAGA claim is predicated on the same violations of the Labor Code referenced
21 above. *Id.*

22 The Parties engaged in both formal and informal discovery. *Id.* ¶ 4. Among other
23 relevant topics, the discovery required Defendant to provide documents and information
24 relevant to class certification, including the number of putative class members, the number of
25 weeks worked and pay periods at issue, the number of wage statements at issue, data relating
26 to bonuses issues to the putative class, as well as Defendant’s employee handbook. *Id.*
27 Defendant’s production allowed Plaintiff to conduct a complete damages analysis. *Id.* ¶ 4.

28 In September 2022, the Parties agreed to engage in private mediation of the Action. *Id.*

¶ 5. On February 27, 2023, the Parties attended mediation before the Honorable Wynne S. Carville (Ret.). While the Parties did not reach an agreement, they continued their settlement discussions following the mediation. After thorough investigation and evaluation of the facts and claims, and facilitated by Judge Wynne, the Parties ultimately reached an agreement to resolve all claims. *Id.* ¶ 5. In resolution of Plaintiff’s class and PAGA claims, the Parties entered into the Joint Stipulation and Settlement of Class Action Claims, a true and correct copy of which is attached as **Exhibit A** to the Declaration of Nicholas Rosenthal. *Id.* ¶ 5.

III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

The Parties recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate. Rosenthal Decl. ¶ 19. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the afore-referenced claims.

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The *Manual for Complex Litigation, Third* § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice...be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

(Fed. Jud. Ctr., 3rd ed. 1995).

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at

1 a final hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th
2 ed. 2002).

3 The procedures for the parties’ submission of a proposed settlement for preliminary
4 approval by the court also are discussed in *4 Newberg on Class Actions*:

5 When the parties to an action reach a monetary settlement, they will usually prepare
6 and execute a joint stipulation of settlement, which is submitted to the court for
7 preliminary approval. The stipulation should set forth the central terms of the
8 agreement, including but not limited to, the amount of settlement, form of payment,
9 manner of determining the effective date of settlement and any recapture clause.

10 *Id.* § 11.24.

11 Here, the Parties have reached such an agreement and have submitted to this Court in
12 connection with this Motion a copy of the Stipulation fully setting forth the agreement reached
13 by the Parties. The Stipulation sets forth all terms of the agreement reached by the Parties,
14 which include, among other things, the method for calculating the Class Members’ Individual
15 Settlement Payments.

16 **A. Proposed Class Definition**

17 The current settlement is being settled on behalf of “all non-exempt employees who are
18 or previously were employed by Central Coast Federal Credit Union in California during the
19 Class Period (the “Class”).” *See* Stipulation ¶ 4. The Class Period is defined as “the period of
20 February 3, 2018, through the date of approval of this settlement, or May 19, 2023, whichever
21 occurs first.” *See* Stipulation ¶ 5. Thus the end date for the Class Period is May 19, 2023.

22 Pursuant to the Stipulation, Defendant has represented that there are approximately 81
23 individuals that comprise the Class. *See* Stipulation ¶ 4.

24 **B. Settlement Terms and Evaluation**

25 Courts presume the absence of fraud or collusion in the negotiation of settlement
26 unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir.
27 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682
28 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts
do not substitute their judgment for that of the proponents, particularly where, as here,
settlement has been reached with the participation of experienced counsel familiar with the

1 litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
2 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.
3 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979);
4 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

5 While the recommendations of counsel proposing the settlement are not conclusive, the
6 Court can properly take them into account, particularly where, as here, they have been
7 involved in informal discovery and negotiations for some period of time, appear to be
8 competent, have experience with this type of litigation, and have exchanged substantial
9 evidence from the opposing party. *See Newberg on Class Actions, supra*, § 11.47; *Nat'l Rural*
10 *Telecomms. Coop.*, 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length
11 negotiation process is preserved, however, a strong initial presumption of fairness attaches to
12 the proposed settlement...[citations] and ‘great weight’ is accorded to the recommendations of
13 counsel, who are most closely acquainted with the facts of the underlying litigation”).

14 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
15 and hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a
16 number of wage and hour class actions and have extensive litigation experience. Declaration
17 of B. James Fitzpatrick (“Fitzpatrick Decl.”) ¶¶ 4-5; Declaration of Larry W. Lee (“Lee
18 Decl.”) ¶¶ 6-8; Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶¶ 2-7; Rosenthal Decl. ¶¶
19 24-25.

20 Each side has apprised the other of their respective factual contentions, legal theories,
21 and defenses, resulting in negotiations taking place between the Parties. Rosenthal Decl. ¶ 18.

22 Based on the class data provided by Defendant, Plaintiff estimated that Defendant
23 would face potential liability of up to approximately \$1,656,437 for Plaintiff’s class claims.
24 Rosenthal Decl. ¶ 9. Specifically, this amount was calculated based on the following
25 breakdowns for each class claim:

- 26 • \$494,465 for meal period violations, based on 14,164 shifts worked with an
27 hourly rate of \$34.91;
- 28 • \$494,465 for rest period violations, based on 14,164 shifts worked with an

hourly rate of \$34.91;

- \$123,615 for unpaid overtime wages, assuming 10 minutes of unpaid overtime per shift worked with an overtime rate of \$52.37;
- \$216,850 for Labor Code § 226(e) penalties $((81 \times \$50) + (2,128 \times \$100))$;
- \$25,420 for unreimbursed business expenses, based on owed reimbursement of \$10 per month worked during the class period; and
- \$301,622 in waiting time penalties, based on 36 separated employees $(36 \times 30 \times 8 \times \$34.91)$.

See Rosenthal Decl. ¶ 9.

With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that Defendant could face civil penalties of up to a maximum of \$1,104,500 if Plaintiff were successful at trial, and without any reduction by the Court. *Id.* ¶ 10. Specifically, this amount was calculated based on the following breakdowns for each class claim:

- \$220,900 for meal period violations;
- \$220,900 for rest period violations;
- \$220,900 for unpaid overtime wages;
- \$220,900 for Labor Code § 226(e) penalties; and
- \$220,900 for unreimbursed business expenses.

See Rosenthal Decl. ¶ 10.

C. Analysis of Claims

As to the above-referenced claims, there is substantial risk that class certification may be denied by the Court or there is a finding of no liability. Plaintiff will address the major risks to recovery and analyze each individual claim. Importantly, there was no "sampling" necessary to determine the value of the instant lawsuit. Plaintiff was provided with complete data as to the class size, the shifts worked, and the bonuses paid. Thus, no sampling of time or pay records was needed. It is also noteworthy that this settlement recovers over \$2,750 per

class member, which is uncommonly high for a class action.¹

1. A Majority of the Class Signed Arbitration Agreements Containing A Class Action Waiver

As a preliminary matter, a large portion of the putative class signed arbitration agreements containing a class action waiver. Specifically, 47 of the approximately 81 putative class members signed an arbitration agreement with Defendant. Were these arbitration agreements to be enforced, it would prevent any employee signatories from participating in a class action, which in effect reduce the total potential class damages in this case by over half. Plaintiff's counsel has reviewed the arbitration agreement and believes there is a significant chance the Court would enforce it, as it appears to meet the requirements for employment arbitration agreements established by the *Armendariz* case. A copy of the arbitration agreement is attached to the Declaration of Nicholas Rosenthal for the Court's review. (Rosenthal Decl. ¶ 12, **Exh. B**).

2. Meal and Rest Periods

The meal and rest period claims brought by Plaintiff are both based on the theory that even when employees were on their breaks they would sometimes be asked to do work, whether because they were approached by a customer, there was a phone call for them, or because a situation arose at the bank that required their attention. These claims would be difficult to certify because there is no policy Plaintiff can point to that would apply to all non-exempt employees that would establish a basis for class certification. Indeed, Defendant's handbook has a specific policy against "off the clock" work. (Rosenthal Decl. ¶ 13, **Exh. C**). This is also not a claim that could be established by looking at time records, as time records by their very nature do not reflect work that was performed when an employee was not clocked in.

An additional hurdle specific to the rest break claim is that an employee can voluntarily waive rest periods, meaning that even if it were established that employees had their rest

¹ As the data provided by Defendant was through the end of February 2023 but the Class Period runs through May 19, 2023, there is a chance the class member count will increase slightly, but Plaintiff does not anticipate a significant expansion.

1 periods interrupted by work, an individualized inquiry would be necessary to determine
2 whether employees chose to allow such interruptions.

3 Thus, Plaintiff would attempt to get the meal and rest period claims certified based on
4 employee testimony, but there are built-in obstacles to certification that may be
5 insurmountable.

6 **3. Unpaid Minimum and Overtime Wages**

7 Plaintiff's claim for unpaid wages is based on the same theory that when employees
8 were not clocked in they would be required to do work whether because they were approached
9 by a customer, there was a phone call for them, or because a situation arose at the bank that
10 required their attention. Again, Defendant has a policy specifically prohibiting off-the-clock
11 work. As mentioned above, time records would not be of any assistance because they do not
12 capture "off-the-clock" work. Thus, getting this claim certified on this grounds would be an
13 uphill battle.

14 **4. Waiting Time Penalties**

15 Waiting time penalties under Labor Code Section 203 are entirely derivative of the
16 meal/rest and unpaid wage claims in this case. In other words, if there is no liability on the
17 other claims, there will not be any liability found under Labor Code Section 203. Moreover,
18 even if liability is found on some or all of the other claims, there still needs to be a finding by
19 the Court that Defendant was not acting in "good faith." *See Chavez v. Converse, Inc.*, 2020
20 WL 1233919 at *2 (N.D. Cal March 13, 2020) (rejecting waiting time penalties under Labor
21 Code § 203 on the basis that Defendant acted in "good faith.") In other words, if Defendant
22 had a reasonable basis for believing it was in compliance with the law it may avoid liability
23 under Labor Code Section 203. Indeed, the California Court of Appeal recently addressed this
24 very issue and held that a court may find against the issuance of waiting time penalties under
25 Labor Code § 203 based on non-compliant meal periods where there was uncertainty about the
26 law and the employer had a "good faith" belief it was in compliance. *Naranjo v. Spectrum*
27 *Security Services, Inc.*, 88 Cal. App. 5th 937, 947 (2023).

28 //

1 **5. Wage Statements**

2 Similarly, the wage statement claims at issue here are entirely derivative of the
3 underlying wage claims. If there are no meal/rest period violations or unpaid wages, there is
4 no wage statement violation.

5 **6. Business Expenses**

6 Plaintiff's business expense claim is based on her allegation that she and her co-
7 workers would sometimes need to respond to work-related matters when outside the office on
8 their personal cell phones. Again, Defendant's policy is that off-the-clock work is not
9 permitted, so there is no policy Plaintiff can point to in order to establish certification.

10 **7. PAGA**

11 All Plaintiff's PAGA claims are entirely derivative of her class claims, meaning if she
12 cannot prove her class claims, her PAGA claims will fail as well. Further, even assuming
13 Plaintiff prevailed on her PAGA claim, the Court still has discretion to reduce any PAGA
14 penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA
15 penalties where "if, based on the facts and circumstances of the particular case, to do
16 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
17 Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal.
18 App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court
19 reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith
20 attempt at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such
21 reduction to be proper. *Id.* at p. 539.

22 **8. Overall Fairness of Settlement**

23 Numerous courts have held that gross settlements over 8% of the defendant's potential
24 exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454,
25 459 (9th Cir.2000) (holding that class action settlement recovering 16% of potential exposure
26 was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a
27 fraction of the potential recovery does not per se render the settlement inadequate or unfair.
28 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of

pursuing the litigation to judgment”; noting that whether the settlement is fair and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the Defendants’ potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained 9.1% of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable). Here, the \$225,000.00 Gross Settlement Amount is approximately 13.5% of the maximum potential class damages and penalties.

D. Distribution of the Settlement

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Pendency of Class Action (“Notice of Proposed Settlement” or “Notice”), should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement. *See* Notice, attached as **Exhibit A** to the Stipulation. Moreover, as set forth in the Notice, Class Members are advised of their right to object to any of the terms contained in the Settlement Agreement. *Id.*

1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Stipulation provides for Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) as the Gross Settlement Amount. *See* Stipulation ¶ 38. The Net Settlement Amount (calculated after deduction of attorneys’ fees (up to \$75,000.00), costs (up to \$25,000.00), Class Representative Service Payment (up to \$5,000.00), payment of PAGA penalties to the California Labor and Workforce Development Agency (\$15,000.00), and settlement administration costs (up to \$5,250.00)) is estimated to be approximately \$99,750.00. *See id.* ¶¶ 15, 38, 42-45. Each Class Member that does not opt-out of the

1 settlement will be awarded a portion of the Net Settlement Amount on a pro-rata basis, based
2 upon the total number of pay periods he or she worked during the Class Period. *See id.* ¶ 40.a.

3 Based thereon, on a raw average, each Class Member potentially may recover
4 approximately \$1,231.48. Rosenthal Decl. ¶ 8. The amount actually paid to each Class
5 Member will increase or decrease depending on the actual number of pay periods he or she
6 worked during the Class Period. Finally, funds from any checks that have not been cashed
7 within 180 days of issuance shall be paid to the Watsonville Law Center as the designated *cy*
8 *pres* recipient. *See* Stipulation ¶ 40.g.

9 **2. Whether, and Under What Circumstances, Amounts Available for**
10 **Payment in Settlement Might Not Be Paid to Class Members or Might**
Revert to the Defendants

11 None of the settlement funds will revert to Defendant. *See* Stipulation ¶ 38.

12 **3. Scope of the Release of Class Members' Claims**

13 As a condition of participating in this class action settlement, Class Members shall
14 provide the following limited release:

15 Upon the Effective Date, and except as to such rights or claims as may be created
16 by this Settlement Agreement, each Settlement Class Member and the Class
17 Representative fully releases and discharges the Released Parties from the Released
18 Claims that arose or accrued at any time during the Class Period. Any individuals
who have excluded themselves from the Class Settlement will release only the
Released PAGA Claims as set forth below.

19 *See* Stipulation ¶ 60. Specifically, the Released Claims consist of: “any and all claims,
20 demands, liabilities, and causes of action, reasonably arising from, or related to, the same set
21 of operative facts as those set forth in the operative complaint during the Class Period,
22 including claims under Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 558, 1174,
23 1175, 1194, 1197, 1197.1, and 2802, and Business and Professions Code § 17200, *et seq.*”
24 Stipulation ¶ 20.

25 With respect to the PAGA claims, Aggrieved Employees will release “claims under
26 California Labor Code § 2698, *et seq.* that were brought or could have reasonably been
27 brought based on the facts alleged in Plaintiff’s LWDA Letter during the PAGA Period,
28 including violation of Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1174,

1 1175, 1194, 1197, 1197.1, and 2802 (“Released PAGA Claims”).” Stipulation ¶ 21. Aggrieved
2 Employees are defined as “all non-exempt employees who are or previously were employed
3 by Central Coast Federal Credit Union in California during the PAGA Period.” *Id.* ¶ 2.

4 Class Members who timely and validly opt out of the settlement will remain Aggrieved
5 Employees and be bound by the Released PAGA Claims. Stipulation ¶¶ 21, 61.

6 Given that the release is tailored only to claims as pled in the Complaint and Plaintiff’s
7 LWDA Letter and nothing more, the release is appropriately limited.

8 **4. Tax Treatment of Settlement Amounts**

9 As Plaintiff’s lawsuit sought unpaid wages, interest, and penalties, the Parties have
10 agreed that eighty percent (80%) of the settlement payments to Class Members shall be
11 classified as penalties and ten percent (10%) shall be classified as interest. Stipulation ¶ 40.dd.
12 The remaining ten percent (10%) shall be classified as wages and subject to required
13 withholdings and deductions for payments. *Id.* The penalties and interest portion of the
14 settlement payments shall be deemed IRS Form 1099 income and not subject to withholdings
15 and deduction. *Id.*

16 **5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations**

17 As stated above, Class Members do not need to do anything should they wish to
18 receive their share of the settlement funds. In other words, because this is not a claims-made
19 settlement, Class Members will not be required to make a submission to participate in the
20 settlement. Thus, this substantially decreases the amount of burden each Class Member must
21 bear in order to receive an Individual Settlement Payment. If a Class Member does not wish to
22 take part in this settlement and be bound by the release, the Class Member must submit a
23 request for exclusion. *See* Stipulation ¶ 53.

24 **E. Notice to Class Members**

25 Should the Court grant the instant motion, Defendant will provide the Settlement
26 Administrator with a list containing the names, telephone numbers, last known addresses,
27 Social Security numbers, and the total number of pay periods worked by each Class Member
28 during the Class Period (“Class Member List”) within fourteen (14) calendar days of

1 preliminary approval. Stipulation ¶ 48. Upon receipt of the information and prior to mailing
2 the Notice to Class Members, the Settlement Administrator shall perform a search based on
3 the National Change of Address Database for information to update and correct for any known
4 or identifiable address changes. *Id.* ¶ 50. Within ten (10) calendar days of receipt of the Class
5 Member List from Defendant, the Settlement Administrator will mail the Notice out to Class
6 Members. *Id.* Any Notice returned to the Settlement Administrator as non-deliverable on or
7 before the opt-out deadline shall be sent via regular first-class U.S. mail to the forwarding
8 address affixed thereto. *Id.* If no forwarding address is provided, the Settlement Administrator
9 shall perform an advanced skip trace to locate the most current address and resend the Notice
10 within five (5) calendar days. *Id.*

11 As set forth in the Notice, Class Members will be allowed to opt out of or object to the
12 settlement by a certain deadline. Stipulation at **Exhibit A**.

13 **F. Typicality and Adequacy of Representation**

14 **1. Class Representative's Claims are Typical of the Class**

15 The commonality requirement is met when there are questions of law and fact common
16 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of
17 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of
18 salient facts couple with disparate legal remedies within the class”). Commonality requires
19 only that some common legal or factual questions exist; the plaintiffs need not show that all
20 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
21 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v.*
22 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13
23 (1971). Where the employer’s conduct is uniformly directed at a class of employees, as it is
24 here, the class wide impact of the Defendant’s policies satisfies the commonality requirement.
25 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

26 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or
27 procedure violated the Labor Code by failing to pay all wages owed, failed to provide off-duty
28 meal and rest breaks or compensation in lieu thereof, failed to timely pay wages and upon

1 separation of employment, failed to reimburse all work-related expenses, and failed provide
2 accurate wage statements. Declaration of Hea Yon Suzzie Dorn (“Dorn Decl.”) ¶¶ 4-6. In
3 other words, Plaintiff contends that she was subjected to the same policy and practice as other
4 Class Members and that her claims are typical to those of the Class.

5 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
6 issues been raised or presented. Dorn Decl. ¶ 7. Plaintiff has taken all necessary steps to
7 represent the interests of the Class, and by providing information and documents to Plaintiff’s
8 counsel. *Id.* ¶ 8. For such reasons, Plaintiff has adequately represented the Class Members and
9 will continue to do so.

10 **2. Class Counsel Have Adequately Represented the Class and Have
Experience with Wage and Hour Class Actions**

11 From the inception of the case, Class Counsel have zealously represented the interests
12 of the Class. The settlement was obtained for the benefit of the Class, as opposed to the
13 individual Class Representative. Further, Class Counsel have been approved as class counsel
14 on a number of prior cases, have litigated numerous other class action cases, and are
15 competent to represent the class. Fitzpatrick Decl. ¶¶ 4-5; Lee Decl. ¶¶ 6-8; Agnew Decl. ¶¶ 2-
16 7; Rosenthal Decl. ¶¶ 24-25.

17 **G. Costs and Fees**

18 **1. Attorneys’ Fees and Costs**

19 California state and federal courts have recognized that an appropriate method for
20 determining award of attorneys’ fees is based on a percentage of the total value of benefits to
21 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
22 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
23 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
24 of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
25 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
26 entire burden alone.” *Vincent*, 557 F.2d at 769.

27 The Common Fund doctrine is predicated on the principle of preventing unjust
28 enrichment. When a litigant’s efforts create or preserve a fund from which others derive

1 benefits, she may require the passive beneficiaries to compensate those who created the fund.
2 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at
3 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.
4 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine
5 has been applied “consistently in California when an action brought by one party creates a
6 fund in which other persons are entitled to share.” The reasons for applying the common fund
7 doctrine include: “fairness to the successful litigant, who might otherwise receive no benefit
8 because his recovery might be consumed by the expenses; correlative prevention of an unfair
9 advantage to the others who are entitled to share in the fund and who should bear their share of
10 the burden of its recovery; encouragement of the attorney for the successful litigant who will
11 be more willing to undertake and diligently prosecute proper litigation for the protection or
12 recovery of the fund if he is assured that he will be properly and directly compensated should
13 his efforts be successful.” *Id.*

14 Indeed, most recently, the California Supreme Court has also now held that the award
15 of attorneys’ fees in common fund wage and hour class action settlements should start with the
16 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
17 overwhelming majority of federal and state courts in holding that when class action litigation
18 establishes a monetary fund for the benefit of the class members, and the trial court in its
19 equitable powers awards class counsel a fee out of that fund, the court may determine the
20 amount of a reasonable fee by choosing an appropriate percentage of the fund created”).

21 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
22 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
23 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
24 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
25 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

26 The Parties have agreed to a payment of a maximum of one-third of the Gross
27 Settlement Amount, or \$75,000.00, for payment to Class Counsel as attorneys’ fees.
28 Stipulation ¶ 43. The Parties have agreed to a payment of the foregoing attorneys’ fees and,

1 thus, this payment should be presumed to be fair. Further, the parties have agreed to
2 reimbursement of Class Counsel's litigation costs up to \$25,000.00. Stipulation ¶ 43. Class
3 Counsel have, at their own risk, expended costs, for example, to file this instant action,
4 effectuate service of process, pay mediation fees, and pay other litigation-related costs.

5 Based on the foregoing, the Court should preliminarily approve the attorneys' fees and
6 costs being requested by the Parties.

7 **2. Proposed Payment to the Class Representative**

8 Class Representative Hea Yon Suzzie Dorn requests an enhancement of \$5,000.00.
9 Stipulation ¶ 44. The Class Representative met and conferred with Class Counsel on a number
10 of occasions to discuss the case, provided documents and information to Class Counsel, and
11 reviewed the Settlement Agreement. As part of her duties as the Class Representative, Plaintiff
12 provided invaluable information, evidence, and documents that resulted in this settlement.
13 Dorn Decl. ¶ 8. In addition to the invaluable services that Plaintiff provided, she also took a
14 significant risk, both professionally and monetarily, in acting as the Class Representative and
15 seeking benefits on behalf of the Class. Because the claims alleged by the Class
16 Representative involved the payment of costs to the prevailing party, Plaintiff could have
17 possibly faced paying the costs of Defendant, had she not prevailed in this action.

18 Furthermore, given that future employers are much less likely to hire individuals who
19 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
20 prejudice in the future from other potential employers. Plaintiff took this risk upon herself and
21 the whole Class benefited from these risks taken by Plaintiff. Class Members did not have to
22 file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did
23 they have to face the potential for retaliation and not getting future employment had they filed
24 a public lawsuit.

25 **3. Settlement Administration Fees**

26 The Parties have agreed to an estimated payment of \$5,250.00 to the Settlement
27 Administrator, Phoenix Settlement Administrators, to send notices and to administer this
28 settlement. Stipulation ¶¶ 25, 42. Phoenix Settlement Administrators is a well-recognized class

1 action settlement administrator. The Parties believe that the administration fee is reasonable
2 and should be approved. Plaintiff recognizes that on a per class member basis the
3 administration fees are over \$60 per class member. Plaintiff's counsel solicited bids from
4 multiple administrators and the bid from Phoenix Settlement Administrators was the lowest.
5 Rosenthal Decl. ¶ 22. Further, many of the costs of any settlement administration are fixed
6 regardless of the size of the class. (Declaration of Jodey Lawrence, ¶ 15). As a result, the
7 smaller the class, the larger the costs on a per class member basis.

8 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
9 **PRELIMINARY APPROVAL**

10 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
11 substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the
12 result of informed, extensive, and arm's length negotiations conducted by counsel for the
13 respective parties who are experienced in wage and hour class action litigation. For the
14 foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of
15 the proposed settlement, sign the proposed Order, approve and authorize mailing of the
16 proposed Notice, and set a date for a final approval hearing.

17 Dated: June 7, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

19 By: 
20 B. James Fitzpatrick
21 Larry W. Lee
22 Nicholas Rosenthal
23 Attorneys for Plaintiff
24 HEA YON SUZZIE DORN,
25 on behalf of herself and all similarly
26 aggrieved employees
27
28

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On June 7, 2023, I served the following document(s) described as:

- 1. PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 2. DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 4. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 5. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 6. DECLARATION OF HEA YON SUZZIE DORN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 7. DECLARATION OF DECLARATION OF JODEY LAWRENCE ON BEHALF OF PHOENIX SETTLEMENT ADMINISTRATORS IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 8. [PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

1 on the interested parties in this action as follows:
2

3 Anthony Ocegura
4 anthony.oceguera@lewisbrisbois.com

5 Koreen Janus
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7 George Theofanis
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9 Lewis Brisbois
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Attorneys for Defendant Central Coast Federal Credit Union

10 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
11 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
the above-entitled case. The service transmission was reported as complete and a copy of the
12 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
in this office.

13
14 I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on June 7, 2023, at Los Angeles, California.

15
16 
17 Erika Mejia