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Attorneys for Plaintiff
DOMINGO MURCHISON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

DOMINGO MURCHISON, individually and)
on behalf of all current and former similarly)
situated employees in the State of California,)

Plaintiff,

v.

MVP EVENT PRODUCTIONS, LLC, a)
California Limited Liability Company dba)
MVP EVENT STAFFING; GREGORY)
FIELDING, an individual; LEGENDS)
HOSPITALITY, LLC, a Delaware Limited)
Liability Company (previously designated by)
the fictitious name of "DOE 1"; and DOES 2)
to 50, inclusive.)

Defendant.

CASE NO.: 30-2021-01234789-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO:
WILLIAM D. CLASTER; Dept.: CX-101

Date: August 15, 2025

Time: 9:00 AM

Dept.: CX101

DECLARATION OF NATALIE MIRZAYAN IN
SUPPORT OF PLAINTIFFS' OPPOSITION TO
PROPOSED INTERVENOR SCOTT SHUSTER'S
REQUEST FOR LEAVE TO FILE ARGUMENTS AND
EVIDENCE IN OPPOSITION TO PROPOSED
SETTLEMENT UNDER PAGA

Complaint Filed: December 6, 2021

1 I, Natalie Mirzayan, declare as follows:

2 1. I am an attorney at law, duly authorized to practice law before all of the courts of the State of
3 California and I am a shareholder at Mirzayan Law, A Professional Law Corporation. I am the
4 attorney for Plaintiffs, DOMINGO MURCHISON, and DAVINA BHULLAR (“Plaintiffs” or “Class
5 Representatives”) in this case. I submit this Declaration on behalf of the Plaintiffs in support of
6 Plaintiffs’ Opposition to Proposed Intervenor Shuster. I am familiar with the files, pleadings, and
7 facts in this case and could and would competently testify to the following facts on the basis of my
8 personal knowledge.
9

10 2. **Attempts to disrupt settlements reached by other plaintiffs’ counsel is nothing new to**
11 **Shuster’s counsel.** Scot Shuster was a class member in a prior class action filed against Legends
12 Hospitality, LLC (“Legends”) in the Superior Court of California, County of Santa Clara, Case No.
13 18CV328576 titled *Sherri Hightower v. Legends Hospitality, LLC* (“*Hightower*”). On August 9,
14 2022, after the parties in *Hightower* reached a settlement and the court preliminarily approved the
15 settlement – the settlement administrator mailed notices to class members including Shuster. After
16 Shuster received the class notice, he filed his class action lawsuit against Legends on October 3,
17 2022. ***On October 7, 2022, Shuster submitted an objection to the settlement administrator alleging***
18 ***that his claims were not adequately represented by plaintiffs on account of their unwarranted and***
19 ***unsupported discounting of the class claims as well as plaintiffs’ disregard for how the settlement***
20 ***dilutes the claims of some class members.*** On December 15, 2022, Shuster filed a motion for
21 leave to file a complaint in intervention in *Hightower*, which was denied by the court on
22 February 2, 2023. A true and correct copy of the Order RE: Motion for Leave to File Complaint in
23 Intervention; Order Granting Final Approval of Class Action Settlement is attached hereto as **Exhibit**
24 **“1”**.
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1 I declare under penalty of perjury under the laws of the State of California that the
2 forgoing is true and correct this 4th day of August 2025 in the state of California.

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6 Natalie Mirzayan
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EXHIBIT 1

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2
3 **SUPERIOR COURT OF CALIFORNIA**
4 **COUNTY OF SANTA CLARA**
5

6
7 SHERRI HIGHTOWER, as an individual and on
8 behalf of all others similarly situated,

9 Plaintiff,

10 vs.

11 LEGENDS HOSPITALITY, LLC, a Delaware
12 limited liability company; and DOES 1 through
13 100, inclusive,

14 Defendants.

Case No. 18CV328576

**ORDER RE: MOTION FOR LEAVE
TO FILE COMPLAINT IN
INTERVENTION; ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

15 The above-entitled matter came on for hearing on Wednesday, February 1, 2023, at 1:30
16 p.m. in Department 19, the Honorable Theodore C. Zayner presiding. The court reviewed and
17 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,
18 January 31, 2023.

19 The Court's Complex Civil Litigation Guidelines set out the tentative ruling procedures,
20 with a direct link to the court's tentative rulings web page, which includes Department 19. The
21 Court follows California Rules of Court, Civil Rule 3.1308 and has incorporated that procedure
22 in the court's Civil Local Rule 8.E. Rule 3.1308 states that "oral argument must be permitted
23 only if a party notifies all other parties and the court by 4:00 p.m. on the court day before the
24 hearing of the party's intention to appear." These procedures were not followed by counsel for
25 intervenor requesting a hearing on the court's tentative ruling. As counsel for all parties were
26 present at the hearing, the court permitted oral argument, over opposing counsel's objection.
27 Counsel are advised to strictly follow the tentative ruling notice procedures in the future.
28

1 **I. INTRODUCTION**

2 This is a class and representative action arising out of various alleged wage and hour
3 violations by defendant Legends Hospitality, LLC (“Defendant”). The operative Second
4 Amended Class and Representative Action Complaint (“SAC”), filed on June 2, 2021, sets forth
5 the following causes of action: (1) Failure to Pay All Overtime Wages Owed (Labor Code
6 §§ 204, 510, 558, 1194, 1198); (2) Failure to Pay All Minimum Wages Owed (Labor Code
7 §§ 1194, 1194.2, 1197); (3) Failure to Pay All Wages at the Agreed-Upon Rate (Labor Code
8 §§ 221-223); (4) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512); (5) Failure to
9 Authorize and Permit All Rest Periods (Labor Code §§ 226.7, 516); (6) Failure to Pay All Wages
10 Owed Upon Termination (Labor Code §§ 201-203); (7) Failure to Provide Accurate, Itemized
11 Wage Statements (Labor Code § 226, et seq.); (8) Failure to Reimburse Necessary Business
12 Expenses (Labor Code §§ 2802, 2804); (9) Unfair Competition (Bus. & Prof. Code §§ 17200, et
13 seq.); (10) Civil Penalties Under the Private Attorneys General Act (Labor Code §§ 2698, et
14 seq.).

15 The parties have reached a settlement. On July 7, 2022, the court granted preliminary
16 approval of the settlement, subject to approval of the amended class notice. The court approved
17 the amended notice later that same day.

18 On November 29, 2022, plaintiffs Sherri Hightower (“Hightower”) and Michael McKee
19 (“McKee”) (collectively, “Plaintiffs”) filed a motion for final approval of the settlement. The
20 motion was originally set for hearing on December 21, 2022.

21 On December 15, 2022, proposed intervenor Scott Shuster (“Shuster”) filed a motion for
22 leave to file a complaint in intervention. That same day, Shuster filed an ex parte application
23 seeking to advance the hearing on his motion to intervene or continuing the hearing on Plaintiffs’
24 motion for final approval to a date after the court had the opportunity to hear the motion to
25 intervene.

26 On December 19, 2022, the court entered an order granting the ex parte application. The
27 court advanced the hearing on the motion for leave to file a complaint in intervention and
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1 continued the motion for final approval to February 1, 2023. Plaintiffs and Defendant oppose the
2 motion to intervene.

3 **II. MOTION TO INTERVENE**

4 **A. REQUESTS FOR JUDICIAL NOTICE**

5 **1. Proposed Intervenor**

6 In connection with his moving papers, Shuster asks the court to take judicial notice of the
7 Declaration of John Ruzich in Support of Defendant’s Motion to Compel Arbitration and Stay
8 Judicial Proceedings filed in *Michael S. McKee v. Legends Hospitality, LLC* (Orange County
9 Superior Court, Case No. 30-2018-01024729-CU-OE-CXC) on October 1, 2019. In connection
10 with his reply, Shuster asks the court to take judicial notice of the docket for *Robin Edwards v.*
11 *Heartland Payment Systems Inc.* (Los Angeles County Superior Court, Case No. BC606083).

12 The existence of both items is a proper subject of judicial notice as the items are court
13 records relevant to a material issue raised by the pending motions. (See Evid. Code., § 452,
14 subd. (d) [permitting judicial notice of court records].) However, the court does not take judicial
15 notice of the truth of hearsay statements in the documents. (See *People v. Woodell* (1998) 17
16 Cal.4th 448, 455 [Evid. Code, § 452, subd. (d) permits the trial court to “take judicial notice of
17 the existence of judicial opinions and court documents, along with the truth of the results
18 reached—in the documents such as orders, statements of decision, and judgments—but [the
19 court] cannot take judicial notice of the truth of hearsay statements in decisions or court files,
20 including pleadings, affidavits, testimony, or statements of fact.”].)

21 Accordingly, Shuster’s request for judicial notice is GRANTED.

22 **2. Defendant**

23 In connection with its opposition, Defendant asks the court to take judicial notice of the
24 Notice of Motion and Uncontested Motion for Preliminary Approval of Class Action Settlement
25 filed in *Darlene Miller v. Reebok International, Ltd.* (Ventura County Superior Court, Case No.
26 56-2014-00461564) on October 22, 2015. Defendant seeks judicial notice of this item to show
27 that “Shuster’s own counsel reached a class action settlement ... without conducting formal
28

1 discovery.” (Defendant Legend Hospitality, LLC’s Opposition to Intervenor Scott Shuster’s
2 Motion for Leave to File a Complaint in Intervention, p. 9:22-23.)

3 The court declines to take judicial notice of this item. Although courts may generally
4 take judicial notice of records of any court of this state under Evidence Code section 452,
5 subdivision (d) (Evid. Code, § 452, subd. (d)(1)), a precondition to judicial notice is that the
6 matter to be noticed must be relevant to the material issue before the court (*Silverado Modjeska*
7 *Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People*
8 *ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 [the court may properly
9 take judicial notice of court records if those records are deemed to be necessary and relevant to
10 the disposition of the motion]).

11 Here, the purported fact that Shuster’s counsel reached a settlement in an unrelated case
12 without first conducting formal discovery is not relevant to the disposition of the pending
13 motion.

14 Accordingly, Defendant’s request for judicial notice is DENIED.

15 **B. LEGAL STANDARD**

16 There are two methods of intervention in a case—intervention by right and permissive
17 intervention. Code of Civil Procedure section 387 provides, in relevant part:

18 (d)(1) The court shall, upon timely application, permit a nonparty to intervene in
19 the action or proceeding if either of the following conditions is satisfied:

20 (A) A provision of law confers an unconditional right to intervene.

21 (B) The person seeking intervention claims an interest relating to the
22 property or transaction that is the subject of the action and that person is so
situated that the disposition of the action may impair or impede that
person’s ability to protect that interest, unless that person’s interest is
adequately represented by one or more of the existing parties.

23 (2) The court may, upon timely application, permit a nonparty to intervene in the
24 action or proceeding if the person has an interest in the matter in litigation, or in
the success of either of the parties, or an interest against both.

25 (Code Civ. Proc., § 387, subd. (d).)

26 **C. DISCUSSION**

27 Shuster argues that both mandatory and permissive intervention are applicable here.
28 Shuster contends that as a member of the putative class he has a direct interest in the litigation

1 and any potential settlement. Shuster states that he filed a class action lawsuit in Los Angeles
2 County Superior Court—*Scott Shuster v. Legends Hospitality, LLC* (Case No. 22STCV32193)
3 (“*Shuster*”)—and his interests will be impaired if he is not allowed to intervene because the
4 proposed settlement in this case will resolve the claims alleged in his lawsuit. Shuster asserts
5 that he is not adequately represented by Plaintiffs on account of their unwarranted and
6 unsupported discounting of class claims as well as Plaintiffs’ disregard for how their settlement
7 dilutes the claims of some class members.

8 In opposition, Plaintiffs and Defendant argue that the motion to intervene is untimely, the
9 settlement does not impair or impede Shuster’s interest, Shuster is adequately represented by
10 Plaintiffs, and the parties’ interests in settlement outweigh Shuster’s reasons for intervention.

11 As a preliminary matter, the court addresses the parties’ argument that the motion to
12 intervene is untimely. Plaintiffs and Defendant assert that the motion is not timely filed because
13 it was made after the this action settled and Shuster unreasonably delayed in filing his motion
14 after learning of the settlement.

15 The parties cite to several cases to support this position, including *County of Orange v.*
16 *Air California* (9th Cir. 1986) 799 F.2d 535 (*County of Orange*). In *County of Orange*, the court
17 stated that “[i]n determining timeliness, three factors are weighed: (1) the stage of the proceeding
18 at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for
19 and length of the delay. (*Id.* at p. 537; *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70
20 Cal.App.5th 560, 574 (*Crestwood*) [same].) The court found the motion to intervene in that case
21 was untimely because it was made only after a settlement had been reached by all the parties
22 after five years of litigation. (*County of Orange, supra*, 799 F.2d at p. 538.) The court stated
23 further that the district court did not abuse its discretion in recognizing the potential for prejudice
24 to the other parties due to the undoing of the settlement. (*Ibid.*) The court also stated that the
25 intervening party should have realized that the litigation might be resolved by negotiated
26 settlement because the local newspapers reported the ongoing negotiations between the parties
27 and therefore the intervening party should have intervened sooner. (*Id.* at p. 538.)
28

1 The parties also cite *Noya v. A.W. Coulter Trucking* (2006) 143 Cal.App.4th 838, 842
2 (*Noya*), which held that the trial court’s denial of a motion for intervention as untimely was not an
3 abuse of discretion when the proposed intervenor took no steps to participate in the litigation
4 until several years had passed and a comprehensive settlement agreement had been reached
5 between the parties. The reviewing court determined that the parties would be prejudiced by
6 allowing intervention at the late juncture as it could delay or impede the resolution reached by
7 those parties. (*Id.* at pp. 842-843.)

8 The events relevant to the timeliness analysis are as follows: This lawsuit was filed on
9 May 17, 2018, and has been litigated for almost five years.

10 On August 9, 2022—after the parties reached a settlement and the court preliminarily
11 approved the settlement—the settlement administrator mailed notices to class members,
12 including Shuster. (Notice of Errata Re Declaration of Mary Butler on Behalf of Simpluris, Inc.
13 With Respect to Opt Outs and Objections Received, Declaration of Jarrod Salinas Regarding
14 Notice and Settlement Administration, Ex. 9 Corrected Declaration of Mary Butler on Behalf of
15 Simpluris, Inc. With Respect to Opt Outs and Objections Received (“Butler Dec.”), ¶ 8.)

16 Almost two months after he received the class notice, Shuster filed his class action
17 lawsuit against Defendant on October 3, 2022.

18 Shuster subsequently submitted an objection to the settlement administrator on October 7,
19 2022. In his objection, Shuster stated at after receiving the class notice, he retained counsel to
20 prepared his objection and file *Shuster*. Shuster explained that his claims were not adequately
21 represented by Plaintiffs on account of their unwarranted and unsupported discounting of the
22 class claims as well as Plaintiffs’ disregard for how the settlement dilutes the claims of some
23 class members.

24 Finally, on December 15, 2022, Shuster filed his ex parte application and motion for
25 leave to file a complaint in intervention.

26 In light of the foregoing, Shuster was aware by October 3, 2022, that his interests would
27 arguably no longer be protected adequately by the parties. (See *Crestwood, supra*, 70
28 Cal.App.5th at p. 575[“In determining whether intervention is timely, courts ‘focus “ ‘on the date

1 the person attempting to intervene should have been aware his interest[s] would no longer be
2 protected adequately by the parties, rather than the date the person learned of the
3 litigation.’ ” ’ ”].) However, instead of moving to intervene in this action, Shuster elected to
4 initiate his own class action. Later that month, Shuster further demonstrated that he was aware
5 his interests would arguably no longer be protected adequately by the parties when he submitted
6 his objection to the settlement administration. But Shuster did not move to intervene at that time.
7 Instead, Shuster delayed for over two months before filing his motion. Shuster fails to provide
8 an adequate explanation for this delay. Moreover, the prejudice at this late stage is substantial as
9 it could jeopardize a settlement reached by the parties after years of litigation. (See *Noya, supra*,
10 143 Cal.App.4th at p. 843.)

11 For these reasons, the court finds that Shuster’s motion is untimely.

12 Even if the motion was not untimely, Shuster would not be entitled to intervention.
13 Shuster’s ability to protect his interest in preserving his claims encompassed by the settlement is
14 not practically impaired or impeded by the settlement because Shuster had the ability to opt out
15 or object to the settlement. (See *Edwards v. Heartland Payment Systems, Inc.* (2018) 29
16 Cal.App.5th 725, 733.) Despite all of Shuster’s various arguments, he only has one goal—to
17 challenge the adequacy of the settlement in this case. Shuster could have exercised his option to
18 opt out and fully preserve his causes of action. And Shuster did exercise his option to object to
19 the settlement and point out why he believes it is unfair and inadequate. As these options were
20 available to Shuster, formal intervention is unnecessary. (See *ibid.*) Furthermore, because
21 Shuster decided to remain a member of the class, he receives additional protection from this
22 court’s review and final approval of the settlement. (*Id.* at p. 734.) The fact that Shuster may
23 disagree with the court’s ultimate determination that the settlement is fair, adequate, and
24 reasonable does undermine the fact that the court’s fiduciary duties to review the settlement
25 reinforce the conclusion that Shuster’s ability to protect his interests would not be practically
26 impaired or impeded by the settlement. Given the foregoing, Shuster’s reasons for intervening
27 do not outweigh the objections by the parties.

28 Accordingly, the motion for leave to file a complaint in intervention is DENIED.

1 **III. MOTION FOR FINAL APPROVAL**

2 **A. LEGAL STANDARD**

3 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
4 class was adequate, whether certification of the class was proper, and whether the attorney fee
5 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
6 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
7 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

8 In determining whether a class settlement is fair, adequate and reasonable, the
9 trial court should consider relevant factors, such as “the strength of plaintiffs’
10 case, the risk, expense, complexity and likely duration of further litigation, the
11 risk of maintaining class action status through trial, the amount offered in
12 settlement, the extent of discovery completed and the stage of the proceedings, the
13 experience and views of counsel, the presence of a governmental participant, and
14 the reaction of the class members to the proposed settlement.”
(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
(*Officers*).)

15 “The list of factors is not exclusive and the court is free to engage in a balancing and
16 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
17 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
18 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
19 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
20 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
21 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

22 The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However “a presumption of fairness exists where: (1) the settlement
24 is reached through arm’s-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is
26 experienced in similar litigation; and (4) the percentage of objectors is small.”
(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

27 **B. DISCUSSION**

28 The case has been settled on behalf of the following class:

1 All current and former non-exempt, hourly employees of [Defendant] who
2 worked for Defendant in California at any time from May 17, 2014 through
August 20, 2021.

3 The class also includes a subset of PAGA Employees defined as:

4 All current and former non-exempt, hourly employees of [Defendant] who
5 worked for Defendant in California at any time from May 17, 2017 through
August 20, 2021.

6 As discussed in connection with preliminary approval, Defendant will pay a total non-
7 reversionary amount of \$540,000. The total settlement payment includes attorney fees up to
8 \$180,000 (1/3 of the gross settlement fund), all litigation costs (anticipated to be no greater than
9 \$50,000), service awards in the total amount of \$20,000 (\$10,000 for each class representative),
10 all settlement administration costs (anticipated to be no greater than \$35,000), and a PAGA
11 allocation of \$40,000 (75 percent of which will be paid to the LWDA and 25 percent of which
12 will be distributed to the PAGA Employees). The net settlement will be distributed to class
13 members pro rata based on the number of workweeks worked during the class period. Similarly,
14 PAGA Employees will receive a pro rata share of the 25 percent portion of the PAGA amount
15 allocated to aggrieved employees based on the number of workweeks worked during the PAGA
16 Period.

17 Checks remaining uncashed more than 180 days after mailing will be void and the funds
18 from those checks will be distributed to the cy pres recipient. Plaintiffs state the parties have
19 designated March of Dimes as the cy pres recipient. (Supplemental Declaration of Scott M.
20 Lidman in Support of Motion for Final Approval of Class Action Settlement, Class
21 Representatives' Service Awards, and Attorneys' Fees and Costs, ¶ 3.) The cy pres is approved.

22 In exchange for the settlement, the class members will release Defendant, and its related
23 entities and persons, from "all claims, demands, rights liabilities and causes of action that were
24 pled in the [SAC], or which could have been pled in the [SAC] based on the same or similar
25 factual allegations and/or claims therein, that arose during the Class Period." PAGA Employees
26 agreed to release Defendant, and its related entities and persons, from "all claims, demands,
27 rights, liabilities and causes of action for penalties under [the] California Labor Code Private
28 Attorneys General Act of 2004 ... based on allegations and/or claims in the [SAC] and or

1 Hightower’s and McKee’s LWDA PAGA letters.” Plaintiffs also agreed to a comprehensive
2 general release.

3 On August 9, 2022, notices were mailed to 8,693 class members. (Butler Dec., ¶ 8.)
4 Ultimately, 79 notice packets were undeliverable. (*Id.* at ¶¶ 9-12.) As of November 30, 2022,
5 there were five requests for exclusion submitted by the following class members: Joey F.
6 Vallejo; Bent G. Martelli; Nichols E. Carpino; Nelya Zavgorodneva; and Michael Thomas. (*Id.*
7 at ¶ 13.) There is one objection, filed by Shuster, which is discussed below. (*Id.* at ¶ 15 & Ex.
8 B.)

9 The settlement administrator estimates that the average settlement payment is \$28.18, the
10 median settlement payment is \$12.39, the lowest settlement payment is \$0.60, and the highest
11 settlement payment is \$229.23. (Butler Dec., ¶ 18.)

12 In connection with their motion for preliminary approval, Plaintiffs asserted that the
13 settlement was fair, adequate, and reasonable. Plaintiffs stated that the settlement was reached
14 through arm’s-length negotiations after extensive investigation and discovery, and mediation
15 with Jeffrey Krivis, Esq. Plaintiffs explained that the parties engaged in formal and informal
16 discovery, and Defendant produced time records and payroll data for a sampling of the putative
17 class, its wage and hour policies, and other relevant documents in advance of mediation.
18 (Compendium of Declarations Filed Concurrently with Plaintiffs’ Motion for Preliminary
19 Approval of Class Action Settlement, Declaration of Scott M. Lidman in Support of Motion for
20 Preliminary Approval of Class Settlement Action Settlement, ¶¶ 11 & 34.) Plaintiffs stated that,
21 after a detailed review, their counsel drew on their experience in similar cases to assess the
22 strengths and weaknesses of the case. (*Id.* at ¶ 11.) Plaintiffs estimated that Defendant’s
23 maximum potential exposure was \$3,560,403 for minimum and overtime wage violations;
24 \$3,235,115 for meal period violations; \$8,922,727 for rest period violations; \$10,859,550 for
25 wage statement violations; \$5,533,440 for failure to reimburse business expenses; and
26 \$21,806,400 for waiting time penalties. (*Id.* at ¶¶ 16, 18, 20, 22, 24, & 26.) Plaintiffs further
27 estimated that the maximum potential value of the PAGA claim was \$21,719,1000. (*Id.* at ¶ 28.)
28 Plaintiffs discounted the potential value of the claims given the risks inherent in continued

1 litigation, the strength of Defendant’s defenses, the difficulties involved in obtaining class
2 certification, and the court’s ability to reduce PAGA penalties. (*Id.* at ¶¶ 17, 19, 21, 23, 25, 27,
3 & 29.) Plaintiffs estimated that the realistic total recovery for the class would be approximately
4 \$2,043,016.84. (*Id.* at ¶ 30.) Plaintiffs indicated there are approximately 8,646 individuals in the
5 class and, consequently, the net settlement amount would result in an estimated average
6 individual settlement payment of \$26.02. (*Id.* at ¶ 14.)

7 Based on the analysis outlined above, the court found at preliminary approval that the
8 settlement is fair and reasonable to the class. The settlement provides for a good recovery and
9 eliminates the risk and expense of continued litigation. The parties reached an agreement
10 following the disclosure of relevant information and documents as well as months of focused
11 arms-length bargaining. Further, given that counsel here are experienced in similar litigation and
12 only one of the thousands of class members has raised an objection, the settlement is entitled to a
13 presumption of fairness. (See *Wershba, supra*, 91 Cal.App.4th at p. 245 [a presumption of
14 fairness exists where: (1) the settlement is reached through arm’s-length bargaining;
15 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently;
16 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small].)

17 In the objection, Shuster states that after receiving notice of the settlement in this action,
18 he filed his class action lawsuit, *Shuster*, “seeking to represent the narrower subclasses of
19 employees who have viable reimbursement, rest break and waiting time penalty claims for which
20 the proposed [s]ettlement provides insufficient value.” (Butler Dec., Ex. B, p. 2.) Shuster
21 explains that he does not want the court to deny approval of the settlement in this case. (*Ibid.*)
22 Rather, he asks the court to “carve out the claims based on the theories of liability asserted on
23 behalf of the narrower classes of employees alleged in *Shuster* ... from the proposed ...
24 settlement.” (*Ibid.*) In other words, Shuster is asking the court to redefine the class in this case
25 to exclude individuals who fall within the reimbursement, rest break, Labor Code § 201, and
26 pandemic subclasses alleged in *Shuster*. (*Id.* at pp. 6, 8, 10-11.)

27 But the court does not have the power to redefine the class in this action. “[N]either ‘the
28 [trial] court nor [the reviewing court] is empowered to rewrite [a] settlement agreed upon by the

1 parties. [Courts] may not delete, modify, or substitute certain provisions of the [settlement].’
2 [Citation.]” (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-539
3 (*Amaro*).) Shuster cites no legal authority, and the court is aware of none, providing that the
4 court can redefine the class covered by the parties’ settlement agreement. Consequently, the
5 court cannot provide Shuster with his requested relief.

6 Furthermore, while the court appreciates Shuster’s feedback regarding the settlement, his
7 objection does not change its view that the settlement is fair and reasonable to the class. Shuster
8 generally asserts that the parties did not provide the court with the necessary information, as
9 required by *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 (*Kullar*), for the court
10 to properly assess the settlement. Specifically, Shuster contends that class counsel did not
11 indicate what, if any, documents or factual information they received relative to the
12 reimbursement and rest break claims or identify any information justifying their discount of
13 those claims.

14 However, the record demonstrates that class counsel reviewed Defendant’s time records
15 and payroll data for a sampling of the putative class, its wage and hour policies, and other
16 relevant documents. (Compendium of Declarations Filed Concurrently with Plaintiffs’ Motion
17 for Preliminary Approval of Class Action Settlement, Declaration of Scott M. Lidman in Support
18 of Motion for Preliminary Approval of Class Settlement Action Settlement, ¶¶ 11 & 34.)
19 Plaintiffs also provided class counsel with information and documents about Defendant’s
20 policies and procedures, and information obtained from speaking with other class members.
21 (Compendium of Declarations Filed Concurrently with Plaintiffs’ Motion for Preliminary
22 Approval of Class Action Settlement, Ex. 5 Declaration of Plaintiff Sherri Hightower in Support
23 of Motion for Approval of Class Action Settlement, ¶¶ 8 & 10, & Ex. 8 Declaration of Michael
24 McKee in Support of Motion for Preliminary Approval of Class Action Settlement, ¶ 6.)

25 With respect to the reimbursement claim, Plaintiffs explain that their investigation did not
26 reveal any requirement that employees use their personal cell phones for work. Plaintiffs
27 concluded that Defendant’s correspondence with employees regarding scheduling did not
28 necessarily obligate Defendant’s to reimburse employees for their personal cell phone expenses,

1 and whether a particular class member actually incurred expenses would require a highly
2 individualized inquiry. The emails provided by Shuster in connection with his objection do not
3 undermine Plaintiffs' conclusion as the emails do not demonstrate that Defendant had any policy
4 or practice that required employees to use their personal cellphones for work. Given Plaintiffs'
5 assessment of the strength of their case, the documented risks inherent in continued litigation,
6 and the noted difficulties involved in obtaining class certification, the discount Plaintiffs applied
7 to the reimbursement claim was reasonable. (See *Wershba*, *supra*, 91 Cal.App.4th at p. 250
8 ["Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief
9 afforded by the proposed settlement is substantially narrower than it would be if the suits were to
10 be successfully litigated,' this is no bar to a class settlement because 'the public interest may
11 indeed be served by a voluntary settlement in which each side gives ground in the interest of
12 avoiding litigation.' [Citation.]"].)

13 Regarding the rest break claim, Plaintiffs state that they utilized an expert to perform an
14 analysis of the time and pay records, and determined Defendant's maximum exposure based on
15 employees' average hourly rate and the percentage of shifts that were worked in excess of 3.5
16 hours. Plaintiffs further explain that the investigation revealed that Defendant maintained a
17 facially lawful rest period policy. Moreover, the record shows that class members worked at
18 several different locations in California, worked varying shifts, and had different job
19 responsibilities and titles. Plaintiffs concluded that it would be very difficult to prevail on their
20 claim, and certify the class, given individualized issues and the absence of a widespread unlawful
21 policy that was uniformly applied. Shuster's anecdotal evidence regarding his personal
22 experience working at some job locations in southern California does not undermine Plaintiffs'
23 conclusions. In fact, Shuster's account actually supports Plaintiffs' position that the rest break
24 claim raises individualized issues and there was not a widespread unlawful policy that was
25 uniformly applied to the class. Given Plaintiffs' assessment of the strength of their case, the
26 documented risks inherent in continued litigation, and the noted difficulties involved in obtaining
27 class certification, the discount applied to the rest break claim was reasonable. (See *Wershba*,
28 *supra*, 91 Cal.App.4th at p. 250 ["Compromise is inherent and necessary in the settlement

1 process. Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower
2 than it would be if the suits were to be successfully litigated,’ this is no bar to a class settlement
3 because ‘the public interest may indeed be served by a voluntary settlement in which each side
4 gives ground in the interest of avoiding litigation.’ [Citation.]”.)

5 Finally, Shuster states that “[his] problem with the proposed [s]ettlement of the Labor
6 Code 203 claim is that the release ... embrac[es] not only derivative waiting penalties dependent
7 on success in the minimum wage, overtime and break claims, but any late payment of wages
8” (Butler Dec., Ex. B, p. 9.) However, the release of claims in the settlement is appropriately
9 tethered to the SAC’s factual allegations. (See Compendium of Declarations Filed Concurrently
10 with Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, Declaration of
11 Scott M. Lidman in Support of Motion for Preliminary Approval of Class Settlement Action
12 Settlement, Ex. 1, ¶ 3.A [stating that the class members will release Defendant, and its related
13 entities and persons, from “all claims, demands, rights liabilities and causes of action that were
14 pled in the [SAC], or which could have been pled in the [SAC] based on the same or similar
15 factual allegations and/or claims therein, that arose during the Class Period.”]; see also *Amaro*,
16 *supra*, 69 Cal.App.5th at p. 538 [explaining that a release is acceptable if it releases potential
17 claims that reasonably relate to the allegations of the complaint].)

18 For these reasons, Shuster’s objection is overruled.

19 Plaintiffs request incentive awards in the total amount of \$20,000 (\$10,000 for each class
20 representative).

21 The rationale for making enhancement or incentive awards to named plaintiffs is
22 that they should be compensated for the expense or risk they have incurred in
23 conferring a benefit on other members of the class. An incentive award is
24 appropriate if it is necessary to induce an individual to participate in the suit.
25 Criteria courts may consider in determining whether to make an incentive award
26 include: 1) the risk to the class representative in commencing suit, both financial
27 and otherwise; 2) the notoriety and personal difficulties encountered by the class
28 representative; 3) the amount of time and effort spent by the class representative;
4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
enjoyed by the class representative as a result of the litigation. These “incentive
awards” to class representatives must not be disproportionate to the amount of
time and energy expended in pursuit of the lawsuit.

1 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,
2 brackets, ellipses, and citations omitted.)

3 Plaintiffs submitted declarations detailing their participation in the action. Hightower
4 states that she spent approximately 16 hours communicating and meeting with class counsel,
5 gathering and reviewing documents, and reviewing and discussing the settlement agreement with
6 class counsel. (Compendium of Declarations Filed Concurrently with Plaintiffs' Motion for
7 Final Approval of Class Action Settlement, Class Representatives' Service Awards, and
8 Attorneys' Fees and Costs, Ex. 5 Declaration of Plaintiff Sherri Hightower in Support of Motion
9 for Approval of Class Action Settlement, ¶¶ 6 & 8.) McKee states that he spent approximately
10 60 hours participating in telephonic interviews and conferences with class counsel, speaking with
11 other class members regarding their claims, providing information and documents to class
12 counsel to support the claims, and reviewing the settlement. (Compendium of Declarations Filed
13 Concurrently with Plaintiffs' Motion for Final Approval of Class Action Settlement, Class
14 Representatives' Service Awards, and Attorneys' Fees and Costs, Ex. 8 Declaration of Michael
15 McKee in Support of Motion for Preliminary Approval of Class Action Settlement, ¶¶ 6 & 9-16.)

16 The class representatives' efforts in the case resulted in a benefit to the class. Moreover,
17 Plaintiffs undertook risk by putting their names on the case because it might impact their future
18 employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 29837, at
19 *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant
20 "reputational risk" in bringing an action against an employer].) Accordingly, the court finds the
21 incentive awards are warranted and are approved.

22 The court also has an independent right and responsibility to review the requested
23 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
24 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel
25 request attorney fees in the amount of \$180,000 (1/3 of the total settlement fund). Plaintiffs'
26 counsel provide evidence demonstrating a total combined lodestar of \$226,375. (Compendium
27 of Declarations Filed Concurrently with Plaintiffs' Motion for Final Approval of Class Action
28 Settlement, Class Representatives' Service Awards, and Attorneys' Fees and Costs, Ex. 1

1 Declaration of Scott M. Lidman in Support of Motion for Final Approval of Class Action
2 Settlement, Class Representative' Service Awards, and Attorney Fees and Costs, ¶¶ 36-37, Ex. 6
3 Declaration of James R. Hawkins in Support of Motion for Final Approval of Class Action
4 Settlement, ¶ 5 & Ex. 1, & Ex. 7 Declaration of Sean S. Vahdat in Support of Motion for Final
5 Approval of Class Action Settlement, ¶ 8 & Ex. 3.) This results in a negative multiplier. The
6 court finds the attorney fees are reasonable as a percentage of the common fund and they are
7 approved.

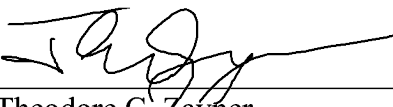
8 Plaintiffs' counsel request costs in the amount of \$21,064.24 and provide evidence of
9 incurred costs in that amount. (Compendium of Declarations Filed Concurrently with Plaintiffs'
10 Motion for Final Approval of Class Action Settlement, Class Representatives' Service Awards,
11 and Attorneys' Fees and Costs, Ex. 1 Declaration of Scott M. Lidman in Support of Motion for
12 Final Approval of Class Action Settlement, Class Representative' Service Awards, and Attorney
13 Fees and Costs, ¶ 32 & Ex. B, & Ex. 6 Declaration of James R. Hawkins in Support of Motion
14 for Final Approval of Class Action Settlement, ¶ 6 & Ex. 2.) These costs are approved. The
15 settlement administration costs of \$34,000 are also approved. (Butler Dec., ¶ 19.)

16 Accordingly, the motion for final approval of the class action settlement GRANTED.

17 The Court will enter Judgment accordingly, consistent with the submitted Amended
18 Proposed Order and Judgment.

19
20 The court will set a compliance hearing for October 4, 2023, at 2:30 p.m. in Department
21 19. At least ten court days before the hearing, class counsel and the settlement administrator
22 shall submit a summary accounting of the net settlement fund identifying distributions made as
23 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
24 the status of any unresolved issues, and any other matters appropriate to bring to the court's
25 attention. Counsel may appear at the compliance hearing remotely.

26
27 Dated: February 2, 2023

28 

Hon. Theodore C. Zayner
Judge of the Superior Court