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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO COUNTY**

ROBERT JORDAN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MONDELEZ GLOBAL LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2202758

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

Date: August 31, 2023

Time: 9:00 a.m.

Dept.: S-26

Complaint Filed: February 4, 2022

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on August 31, 2023, at 9:00 a.m. before the Honorable
3 David Cohn, judge presiding in Department S-26 of the above-referenced Court, located at 247
4 West Third Street, San Bernardino, California 92415, Plaintiff Robert Jordan (“Named Plaintiff” or
5 “Class Representative”) will and hereby does move the Court for the following relief with respect
6 to the Joint Stipulation of Class and Representative Action Settlement (“Stipulation” or
7 “Agreement”) entered into by Named Plaintiff and Defendant Mondelez Global LLC
8 (“Defendant”) (together with Named Plaintiff, the “Parties”):

9 1. That the Court approve the Settlement Agreement referenced above;

10 2. That the Court preliminarily certify the following Class for settlement purposes
11 only: All non-exempt employees employed by, or formerly employed by, Mondelēz Global LLC in
12 the positions of driver, warehouse associate, stockhandler, combo driver/warehouse associate,
13 combo stock driver, combo stockhandler, working foreperson, foreman, and related positions in the
14 State of California during the period of February 4, 2018, through August 31, 2023 (the “Class
15 Period”).

16 3. That Named Plaintiff Robert Jordan be appointed as the Class Representative, and
17 Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C., and
18 William L. Marder of Polaris Law Group, be appointed as Class Counsel.

19 4. That the Court preliminarily approve the Settlement Agreement and the total
20 Settlement Fund in the amount of One Million One Hundred Thousand Dollars (\$1,100,000.00);

21 5. That the Court finds on a preliminary basis that the Settlement Agreement appears to
22 be within the range of reasonableness of a settlement, including the amount of the PAGA penalties,
23 the Incentive Award to the Named Plaintiff, attorneys’ fees and costs, settlement administration
24 costs, and the allocation of individual payments to Class Members, that could ultimately be given
25 final approval by this Court.

26 6. That the Court approve the mailing of the proposed Notice of Settlement of Class
27 and Representative Action (“Notice”) to be sent to Class Members.

28 7. That the Court appoint CPT Group as the Claims Administrator; and

1 8. That the Court schedule the matter for a final approval hearing.

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

5 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
6 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of
7 Class Members to participate in, opt out of, or object to the settlement. This Motion is based on the
8 Memorandum of Points and Authorities included herein, the Stipulation and the proposed class
9 Notice, the supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal,
10 William L. Marder, Plaintiff Robert Jordan, the oral arguments of counsel (should there be any), and
11 the complete records and file herein.

12
13 DATED: August 9, 2023

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

14
15 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

William L. Marder

Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	9
II. PROCEDURAL HISTORY	10
A. The PAGA Notice.....	10
B. The Consolidation of the PAGA and Class Action.	10
C. The Operative First Amended Complaint.....	11
D. The Parties Engaged in Formal and Informal Written Discovery.....	11
E. The Parties Participate in Private Mediation.....	12
III. DISCUSSION.....	13
A. The Approval Process.....	13
B. The Proposed Class Definition.....	15
C. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation.....	16
1. The Settlement Carries a Strong Presumption of Fairness.....	16
2. The Class and PAGA Claims Are Contested.....	17
a. Meal and Rest Period Violations.....	17
b. Unpaid Wages: Auto Deduct Policy.....	18
c. Unpaid Time: Rounding Violation.....	19
d. Overtime Regular Rate Violations.....	19
e. Wage Statement Violation.	20
f. Derivative Waiting Time Penalties.	21
3. The Recovery of Unpaid Wages and Statutory Penalties.....	22
4. The Recovery of Civil PAGA Penalties Is Uncertain.....	22
5. The Settlement is Reasonable When Compared to the Value of the Underlying Labor Code Claim and Inherent Uncertainty of Litigation.....	23

D.	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.	24
E.	Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendant.....	26
F.	Scope of the Release of Class Members’ and Aggrieved Employees’ Claims.....	26
G.	Tax Treatment of Settlement Payments to Class Members and Aggrieved Employees.	27
H.	Attorneys’ Fees and Litigation Costs.	28
I.	Proposed Incentive Award to Named Plaintiff.	28
J.	Settlement Administration Fees.....	29
K.	LWDA Has Been Provided Notice Of This Settlement.....	29
IV.	THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS	29
V.	CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL.....	31

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	22
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794, 1803 (1996)	14
<i>Ferra v. Loews Hollywood Hotel, LLC</i> , 11 Cal. 5th 858 (2021)	19
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	28
<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325, 1334 (2008).....	29
<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal. App. 5th 1308 (2018)	21
<i>Marin v. Costco Wholesale Corp.</i> , 169 Cal. App. 4th 804, 807 (2008).....	19
<i>McGhee v. Bank of Am.</i> , 60 Cal. App. 3d 442, 450 (1976)	30
<i>Naranjo v. Spectrum Security Services, Inc.</i> , 88 Cal.App.5th 937, 949 (2023).....	20, 21
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	28
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224, 240 (2001).....	14, 28

Federal Cases

<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D. Cal. Mar. 20, 2015)	24
<i>Dilts v. Penske Logistics, LLC</i> , 267 F.R.D. 625 (S.D. Cal. 2010)	18
<i>Granite Outlet, Inc. v. Hartford Cas. Ins. Co.</i> , 190 F. Supp. 3d 976, 986 (E.D. Cal. 2016)	21
<i>Hammon v. Barry</i> , 752 F.Supp. 1087 (D.D.C. 1990)	16
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (1998).....	30
<i>Harris v. Vector Mktg. Corp.</i> , 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009)	20
<i>In re Armored Car Antitrust Litig.</i> , 472 F.Supp. 1357 (N.D. Ga. 1979)	16
<i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475, 478 (S.D.N.Y. 1984).....	14
<i>In re Chicken Antitrust Litig.</i> , 560 F.Supp. 957, 962 (N.D. Ga. 1980).....	16
<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir. 2000)	23
<i>Loeza v. JP Morgan Chase Bank, N.A.</i> , 2014 WL 4912730, at *6 (S.D. Cal. Sept. 30, 2014)	20

1	<i>Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.</i> , 834 F.2d 677, 682 (7th Cir.	
2	1987)	16
3	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523, 528 (C.D. Cal. 2004).....	16
4	<i>Nguyen v. Baxter Healthcare Corp.</i> , 275 F.R.D. 596, 600 (C.D. Cal. 2011)	19
5	<i>Priddy v. Edelman</i> , 883 F.2d 438, 447 (6th Cir. 1989).....	16
6	<i>Rangel v. PLS Check Cashers of California, Inc.</i> , 899 F.3d 1106 (9th Cir. 2018).....	27
7	<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n</i> , 79 F.R.D. 571 (E.D. Pa. 1978)	16
8	<i>Steinberg v. Carey</i> , 470 F.Supp. 471 (S.D.N.Y. 1979).....	16
9	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) 24	
10	<i>Villalpando v. Excel Direct Inc.</i> , 303 F.R.D. 588, 605-606 (N.D. Cal. 2014).....	29
11	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390, at p.*6	
12	(N.D. Cal. Nov. 21, 2012).....	24
13	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997)	28
14	<i>Wilson v. TE Connectivity Networks, Inc.</i> , 2017 WL 1758048 at *11 (N.D. Cal. Feb. 9, 2017) .	19
15	_Statutes	
16	Business and Professions Code §17200, <i>et seq.</i>	11
17	California Civil Code § 1542	29
18	IWC Wage Order No. 1-2001	17
19	Labor Code § 1194.....	10, 11, 30
20	Labor Code § 1197.....	10, 11, 30
21	Labor Code § 1197.1.....	10, 11, 30
22	Labor Code § 201.....	10, 11, 30
23	Labor Code § 201-203	11
24	Labor Code § 202.....	10, 11, 30
25	Labor Code § 203.....	10, 11, 21, 30
26	Labor Code § 203(a)	21
27	Labor Code § 226.....	11
28	Labor Code § 226(a)	10, 11, 30

1	Labor Code § 226(a)(9)	20
2	Labor Code § 226.7.....	passim
3	Labor Code § 2698 et. seq.	11
4	Labor Code § 2699.....	10
5	Labor Code § 2699€(2).....	22
6	Labor Code § 510.....	10, 11, 30
7	Labor Code § 512.....	10, 11, 30
8	Labor Code § 512(a)	17
9	Labor Code § 558.....	10, 11, 30
10	Other Authorities	
11	Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> § 11.26 (4th ed. 2002)..	14, 15, 16
12	<i>Manual for Complex Litigation, Third</i> § 30.41 (Fed. Jud. Ctr., 3rd ed. 1995)	13

1 **I. INTRODUCTION**

2 After extensive investigation, discovery, mediation and negotiations, Plaintiff Robert
3 Jordan (“Named Plaintiff” or “Class Representative”) and Defendant Mondelez Global LLC
4 (“Defendant”) have reached a class and PAGA action settlement, the terms of which are
5 reflected in the Parties’ Joint Stipulation of Class and Representative Action Settlement
6 (“Stipulation” or “Agreement”).¹ Named Plaintiff now seeks preliminary approval of the
7 proposed settlement, which includes a \$1,100,000.00 non-reversionary Settlement Fund.

8 The following represents the key terms of the Agreement:

- 9 ▪ Settlement Fund of \$1,100,000.00, which will be paid by Defendant and
10 distributed to the class on a **non-reversionary basis, such that no monies will**
11 **revert back to Defendant** (SA at §§ VIII.7(b)(iv); VIII.7(c)(ii));
- 12 ▪ Class size of approximately 300 individuals (Agnew Decl. ¶ 15);²
- 13 ▪ Class Members do not need to submit claim forms to participate in the settlement
14 (*see* SA at § VIII.3(a); *see also* Notice);
- 15 ▪ An Incentive Award of up to \$10,000 to Named Plaintiff, for his efforts in
16 prosecuting this action on behalf of other Class Members and in consideration for
17 providing a general release of all claims, including a waiver under Civil Code
18 section 1542 (SA at § VIII.6(c));
- 19 ▪ Class Counsel’s attorneys’ fees of up to 33.33% of the Settlement Fund, or up to
20 \$366,666.66 (SA at § VIII.6(a));
- 21 ▪ Class Counsel’s litigation costs of up to \$25,000.00 (SA at § VIII.6(b));

23
24 ¹ Joint Stipulation of Class Action Settlement is attached to the Declaration of Kristen M. Agnew
as **Exhibit B**.

25 ² Pursuant to Section II.H of the Agreement, the “Class” consists of “all non-exempt employees
26 employed by, or formerly employed by, employed by or formerly employed by, Mondelēz
27 Global LLC in the positions of driver, warehouse associate, stockhandler, combo
28 driver/warehouse associate, combo stock driver, combo stockhandler, working foreperson,
foreman, and related positions in the State of California during the Class Period.”

- Claims Administrator’s costs of up to \$10,000.00 (SA at § VIII.6(e));
- Payout Fund of approximately \$638,333.34 (Agnew Decl. ¶17);
- Payment to the LWDA of \$37,500.00, representing seventy-five percent of the
PAGA Payment of \$50,000.00 (SA at § VIII.6(d)); and
- The remaining twenty-five percent of the PAGA Payment of \$50,000.00, or
\$12,500.00, to be distributed to Aggrieved Employees³ on a *pro rata* basis, based
on the number of pay periods worked during the PAGA Period (SA at §
VIII.6(d))

As set forth more fully below, the Parties believe that the terms of the Agreement are fair, adequate, and reasonable, considering all known circumstances and the expenses and risks inherent in litigation. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class and Representative Action Settlement.

II. PROCEDURAL HISTORY

A. The PAGA Notice.

On January 12, 2022, Named Plaintiff Robert Jordan filed a written notice to the California Labor & Workforce Development Agency (“LWDA”) alleging that Defendant violated Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to Labor Code section 2699 (“PAGA Notice”). (Agnew Decl. ¶ 3.)

B. The Consolidation of the PAGA and Class Action.

On February 4, 2022, Named Plaintiff initiated this Action against Defendant in the San Bernardino County Superior Court (the “Action”). (Agnew Decl. ¶ 4.) As set forth in the initial complaint, Named Plaintiff asserted putative class claims for: (1) violation of Labor Code sections 226.7 and 512; (2) violation of Labor Code sections 1194, 1197 and 1197.1; (3)

³ Pursuant to Section II.J of the Agreement, the “Aggrieved Employees” consist of all non-exempt employees, employed by or formerly employed by, Mondelēz Global LLC in the positions of driver, warehouse associate, stockhandler, combo driver/warehouse associate, combo stock driver, combo stockhandler, working foreperson, foreman, and related positions in the State of California during the period of January 12, 2021 through August 31, 2023 (the “PAGA Period”).

violation of Labor Code sections 510, 558, and 1194; (4) violation of Labor Code section 226; and (5) violation of Business and Professions Code section 17200, *et seq.* (*Id.*) The putative class action complaint also alleged penalties pursuant to Labor Code sections 201-203 in connection with the first, second, and third causes of action. (*Id.*)

On March 18, 2022, Named Plaintiff filed a separate representative action pursuant to the Private Attorneys General Act, entitled *Robert Jordan v. Mondelēz Global LLC*, Case No. CIVSB2206168 (the “PAGA Action”). (Agnew Decl. ¶ 5.) On November 2, 2022, the Court consolidated the PAGA Action with the putative class action filed on February 4, 2022, and both actions are now proceeding under this Action, Case No. CIVSB2202758. (*Id.*)

C. The Operative First Amended Complaint.

On May 31, 2023, Named Plaintiff filed the operative First Amended Consolidated Class and Representative Action Complaint. (Agnew Decl. ¶ 6.) The First Amended Consolidated Class and Representative Action Complaint is the “Operative Complaint.” (*Id.*) As alleged in the Operative Complaint, Named Plaintiff contends that Defendant (1) failed to provide off-duty meal and/or rest periods to employees or pay meal/rest period premiums in lieu thereof, in violation of Labor Code sections 226.7 and 512; (2) failed to pay for all hours worked in violation of Labor Code sections 510, 558, 1194, 1197, and 1197.1; (3) failed to provide accurate, itemized wage statements, in violation of Labor Code section 226(a); (4) failed to pay all wages upon termination of employment, in violation of Labor Code sections 201, 202, 203; (5) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders; and (6) violated PAGA, Labor Code section 2698 *et. seq.* (*Id.*) Named Plaintiff seeks to represent the Class and other Aggrieved Employees, and seeks damages, penalties, attorneys’ fees, and costs. (*Id.*)

D. The Parties Engaged in Formal and Informal Written Discovery.

On October 18, 2022, Named Plaintiff propounded written discovery, including Special Interrogatories (Set One) and Requests for Production of Documents (Set One). (Agnew Decl. ¶ 7.) The discovery required Defendant to provide documents and information relevant to class certification, including the number of employees in the putative class, time and payroll records,

1 Defendant's meal and rest period policy, and documents pertaining to the display of shift
2 differential wages on wage statements provided to putative class members. (*Id.*)

3 Shortly after Named Plaintiff propounded the initial round of discovery, the Parties
4 agreed to redirect their efforts towards an early resolution of the Action and agreed to participate
5 in private mediation. (Agnew Decl. ¶ 8.) In lieu of formal responses to the discovery, the Parties
6 agreed to the informal exchange of information leading up to mediation. (*Id.*) Defendant
7 provided hundreds of pages of documents, which included Defendant's collective bargaining
8 agreements and Named Plaintiff's time and payroll records, and numerous data points relating to
9 the number of Class Members, the number of shifts worked by Class Members during the Class
10 Period, the number of pay periods at issue during the Class Period, the average hourly rates of
11 Class Members during the Class Period, the number of wage statements issued to Class
12 Members, and the number of Class Members who separated employment, as well as similar data
13 relating to the PAGA claims. (*Id.* at ¶ 9.)

14 With the assistance of an expert statistician, Class Counsel conducted a full damages
15 analysis as to the class and PAGA claims. (Agnew Decl. ¶ 10.) Based on the information
16 provided by Defendant, Class Counsel was able to determine the total number of Class Members
17 and Aggrieved Employees, the number of meal and rest period eligible shifts worked during the
18 Class Period and PAGA Period, the number of pay periods in which non-discretionary incentive
19 pay was earned in the same workweek as overtime and/or meal period premiums, the aggregate
20 amount of time lost due to the alleged rounding, the number of employees who separated
21 employment, and the average rate of pay for all employees. (*Id.*)

22 Counsel for the Parties further investigated the applicable law as applied to the facts
23 discovered regarding the alleged claims of Named Plaintiff and potential defenses thereto, and
24 the damages claimed by Named Plaintiff on behalf of himself and the Class Members. (*Id.* at ¶
25 11.)

26 **E. The Parties Participate in Private Mediation.**

27 On February 13, 2023, the Parties engaged in a full-day mediation with mediator
28 Christopher M. Barnes. (Agnew Decl. ¶ 12.) As a result of the mediation, and after the exchange

1 of further information and extended negotiations following mediation, Named Plaintiff and
2 Defendant reached the present class-wide Settlement, memorialized by a written Memorandum
3 of Understanding (“MOU”) fully executed on May 15, 2023. (*Id.* at ¶ 13.) The Parties
4 subsequently executed the Joint Stipulation of Class and Representative Action Settlement, a true
5 and correct copy of which is attached as **Exhibit B** to the Declaration of Kristen M. Agnew. (*Id.*
6 at ¶ 14.) The settlement discussions were conducted at arm’s-length. (*Id.*)

7 The Parties recognize the risk, expense, and delay in continuing litigation with the class
8 and PAGA claims, and believe the settlement to be fair, reasonable, and adequate. (Agnew Decl.
9 ¶ 51; Declaration of Larry W. Lee (“Lee Decl.”) at ¶ 2; Declaration of Nicholas Rosenthal
10 (“Rosenthal Decl.”) at ¶ 2; Declaration of William L. Marder (“Marder Decl.”) at ¶ 2.)
11 Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims
12 arising from or relating to the afore-referenced claims and allegations.

13 **III. DISCUSSION**

14 **A. The Approval Process.**

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

19 Approval of class action settlements involves a two-step process.
20 First, counsel submits the proposed terms of settlement, and the
21 court makes a preliminary fairness evaluation. If the preliminary
22 evaluation of the proposed settlement does not disclose grounds to
23 doubt its fairness or other obvious deficiencies, such as unduly
24 preferential treatment of class representatives or of segments of the
25 class, or excessive compensation for attorneys, and appears to fall
26 within the range of possible approval, the court should direct that
27 notice...be given to the class members of a formal fairness
28 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

1 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
2 concerning a tentative settlement proposal may vary. The court may find that the settlement
3 proposal contains some merit, is within the range of reasonableness required for a settlement
4 offer or is presumptively valid subject only to any objections that may be raised at a final
5 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.26 (4th ed.
6 2002).

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

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

14 *Id.* § 11.24.

15 Here, the Parties have reached such an agreement and have submitted to this Court in
16 connection with this Motion a copy of the Stipulation fully setting forth the agreement reached
17 by the Parties. The Stipulation sets forth all terms of the agreement reached by the Parties as to
18 settlement of the class and PAGA claims. Said terms in the Stipulation include, among other
19 things, the method for calculating the Class Members’ and Aggrieved Employees’ individual
20 portions of the settlement payment. (SA at § VIII.7.)

21 The parties also may, at the preliminary approval stage, request that the court
22 provisionally approve certification of the class for settlement purposes—conditional upon final
23 approval of the settlement. “[P]re-certification settlements are routinely approved if found to be
24 fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001); *accord*
25 *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1803 (1996) (although the settlement was
26 reached before any “adversary certification,” the court was satisfied that it was “fair, adequate
27 and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many
28 courts have employed this practice in the name of judicial efficiency in order to facilitate

1 apparently beneficial settlement proposals”). As further explained by Professor Newberg:

2 The strength of the findings made by a judge at a preliminary
3 hearing or conference concerning a tentative settlement
4 proposal...may be set out in conditional orders granting tentative
5 approval to the various items submitted to the court. Three basic
6 rulings are often conditionally entered at this preliminary hearing.
7 These conditional rulings may approve a temporary settlement
8 class, the proposed settlement, and the class counsel’s application
9 for fees and expenses.

10 4 *Newberg on Class Actions* § 11.26.

11 In addition to such terms as class identification, settlement amount, and payment
12 procedures, the Stipulation reached by the Parties contains a provision pursuant to which the
13 Parties stipulate to the Court’s provisional certification of the Class for the purposes of this
14 settlement only. (SA at § VIII.2.)

15 **B. The Proposed Class Definition.**

16 The current settlement is being settled on behalf of the following Class: all non-exempt
17 employees employed by, or formerly employed by, employed by or formerly employed by,
18 Mondelēz Global LLC in the positions of driver, warehouse associate, stockhandler, combo
19 driver/warehouse associate, combo stock driver, combo stockhandler, working foreperson,
20 foreman, and related positions in the State of California during the time period beginning on
21 February 4, 2018 and ending on August 31, 2023. (SA at § II.F.) Defendant has represented that
22 approximately 300 individuals comprise the Class. (Agnew Decl. ¶ 15.) With respect to PAGA,
23 the settlement covers the claims of the following Aggrieved Employees: all non-exempt
24 employees employed by, or formerly employed by, employed by or formerly employed by,
25 Mondelēz Global LLC in the positions of driver, warehouse associate, stockhandler, combo
26 driver/warehouse associate, combo stock driver, combo stockhandler, working foreperson,
27 foreman, and related positions in the State of California during the time period beginning on
28 January 12, 2021 and ending on August 31, 2023. (SA at § II.G.)

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1 **C. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
2 **Litigation.**

3 **1. The Settlement Carries a Strong Presumption of Fairness.**

4 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
5 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
6 *Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
7 *re Chicken Antitrust Litig.*, 560 F.Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
8 judgment for that of the proponents, particularly where, as here, settlement has been reached
9 with the participation of experienced counsel familiar with the litigation. *Nat’l Rural Telecomms.*
10 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F.Supp.
11 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F.Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
12 *Antitrust Litig.*, 472 F.Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
13 *& Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

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

23 Here, both Class Counsel and Defendant’s counsel have a great deal of experience in
24 wage and hour class action litigation. Class Counsel has been approved as class counsel in a
25 number of wage and hour class actions and have extensive litigation experience. (Agnew
26 Declaration at ¶¶ 52-58; Lee Decl. at ¶¶ 4-7; Rosenthal Decl. ¶ 4; Marder Decl. ¶¶ 4-10.)

27 //

28 //

1 **2. The Class and PAGA Claims Are Contested.**

2 **a. Meal and Rest Period Violations.**

3 Named Plaintiff asserts claims for failure to provide meal and rest periods. (Agnew
4 Declaration at ¶ 25.) Labor Code section 226.7 requires employers to provide meal and rest
5 breaks to employees in compliance with the applicable California Industrial Welfare
6 Commission (“IWC”) Wage Order, which in this case, is IWC Wage Order No. 1-2001. Section
7 11(A) of said IWC Wage Order provides that employees who work in excess of five hours a day
8 must be provided with a thirty minute meal break and further that employees who work in excess
9 of ten hours per day must be provided with a second thirty minute meal period. The first thirty
10 minute meal break can be mutually waived if the employee’s total work shift is six hours or less.
11 Lab. Code § 512(a). The second meal break can also be waived, if the employee did not waive
12 the first meal period and worked a shift of no more than twelve hours. *Id.* Here, Named Plaintiff
13 contends that the volume of work assigned to Class Members, combined with the pressure of
14 Defendant’s productivity goals, resulted in employees working through meal and rest periods
15 and/or taking shortened breaks. (Agnew Declaration at ¶ 25.)

16 Named Plaintiff further contends that Defendant did not pay meal and rest period
17 premiums to Named Plaintiff and Class Members for late, interrupted or missed breaks. Named
18 Plaintiff’s own payroll records support this point. (Agnew Declaration at ¶ 25.) Indeed, despite
19 Named Plaintiff’s contention that he routinely receiving non-compliant meal and rest periods, his
20 wage statements do not reflect the payment of a single meal or rest period penalty during the
21 Class Period. (*Id.*)

22 Defendant maintains that it complied with the law, had lawful and compliant practices,
23 and provided Class Members with duty-free meal and rest periods. (Agnew Declaration at ¶ 26.)
24 Defendant disputes the existence of a common policy that required Class Members to interrupt
25 their breaks to perform work related tasks. (*Id.*) Defendant further argues that the claim is not
26 suitable for class treatment because there is no common method of proof to establish liability.
27 (*Id.*) According to Defendant, an adjudication of the alleged meal and rest period violations
28 would require individualized assessments as to the circumstances of each missed, delayed or

1 interrupted break. (*Id.*) Defendant further argues that, even if Named Plaintiff was able to
2 establish that some employees experienced a meal and/or rest period violation, such a claim
3 would not be manageable. (*Id.*)

4 Defendant further argues that a significant number of Class Members are exempted from
5 California's meal and rest period requirements altogether. (Agnew Declaration at ¶ 27.)
6 Defendant argues that the requirements of Labor Code section 226.7 are preempted by the
7 Federal Motor Carrier Safety Administration's ("FMCSA") regulations. (*Id.*) As argued by
8 Defendant, the FMCSA regulations—and not California law—govern the break requirements of
9 Class Members who operate commercial motor vehicles in interstate commerce. Defendant
10 further contends that the vast majority of Class Members are union members covered by various
11 Collective Bargaining Agreements ("CBAs"). (*Id.*) Citing to Labor Code section 512(e) and (f),
12 Defendant contends that the unionized Class Members engaged in commercial driving are
13 exempt from California's meal break requirements. (*Id.*) Instead, the CBAs govern and any
14 disputes must be resolved according to the terms of the CBA. (*Id.*)

15 **b. Unpaid Wages: Auto Deduct Policy.**

16 Defendant's timekeeping system did not automatically flag missed, delayed or
17 interrupted meal breaks. (Agnew Decl. ¶ 29.) Instead, Named Plaintiff alleges that Defendant's
18 system automatically deducted a 30-minute meal period for each shift in excess of five hours.
19 (*Id.*) Numerous courts have held that auto-deductions for meal periods can be the basis for class
20 certification. For instance, in *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625 (S.D. Cal. 2010),
21 the court certified a meal period auto-deduction class based on the following rationale:

22 The ultimate underlying factual issue is the existence of the thirty minute auto-
23 deduct. If class members were not paid for time they actually worked, then
24 Defendant is liable. And there is no question that Defendant deducted thirty
25 minutes per day regardless of whether a break was taken. Thus, the common
issues predominate over the individual issues on the question of liability.

26 *Id.* at 635. Other courts have also found that auto-deducted meal periods can be the basis
27 for a certified class. See *Nguyen v. Baxter Healthcare Corp.*, 275 F.R.D. 596, 600 (C.D.
28

1 Cal. 2011); *Wilson v. TE Connectivity Networks, Inc.*, 2017 WL 1758048 at *11 (N.D.
2 Cal. Feb. 9, 2017).

3 In response, Defendant argues that Named Plaintiff's theory involves
4 individualized questions, such as whether an employee waived the opportunity to have
5 work-free break. (Agnew Decl. ¶ 29.)

6 **c. Unpaid Time: Rounding Violation.**

7 Named Plaintiff asserts a claim for unpaid minimum/overtime wages predicated on
8 Defendant's alleged unlawful rounding policy. (Agnew Declaration at ¶ 31.) Named Plaintiff
9 alleges that Defendant maintained and enforced a uniform policy by which it regularly and
10 consistently rounded the time punches for Named Plaintiff and Class Members, resulting in
11 unpaid minimum and overtime wages. (*Id.*) Based on Defendant's time and pay records, Class
12 Counsel was able to determine that out of 742 shifts worked by Named Plaintiff, 361 were
13 rounded in favor of Defendant. (*Id.*) Named Plaintiff alleges that this resulted in twelve
14 uncompensated hours due to rounding. (*Id.*)

15 Defendant contends that its rounding policy complies with California law. (Agnew
16 Declaration at ¶ 32.) In many instances the rounding is either neutral or in favor of the employee.
17 (*Id.*) Thus, according to Defendant, the cumulative effect of the rounding practice, resulted in the
18 overpayment of wages to the Class. (*Id.*)

19 **d. Overtime Regular Rate Violations.**

20 Named Plaintiff asserts an overtime claim based on the alleged miscalculation of the
21 regular rate of pay. (Agnew Declaration at ¶ 34.) Pursuant to California law, employers must
22 include all non-discretionary items of pay, such as shift differentials, into the regular rate of pay
23 for purposes of computing overtime wages. *See Marin v. Costco Wholesale Corp.*, 169 Cal. App.
24 4th 804, 807 (2008), as modified on denial of reh'g (Jan. 21, 2009) ("Where a bonus payment is
25 considered part of the regular rate at which an employee is employed, it must be include in
26 computing his regular hourly rate of pay and overtime compensation"); *see Ferra v. Loews*
27 *Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021) (holding that meal period premium payments must
28 be calculated at the "regular rate of pay that included all non-discretionary remuneration").

1 Here, during workweeks where Named Plaintiff and other Class Members earned overtime
2 and other types of pay that Named Plaintiff contends were non-discretionary, Defendant failed to
3 properly calculate the regular rate of pay for purposes of paying overtime. (Agnew Declaration at
4 ¶ 34.) However, the Parties sharply disagree as to whether certain forms of pay are accurately
5 considered non-discretionary and whether they should be included in the regular rate of pay, and
6 therefore disagree as to the potential scope of the alleged violations. (*Id.*)

7 **e. Wage Statement Violation.**

8 Named Plaintiff brings a wage statement claim based on Defendant's failure to list the
9 rate and hours used to calculate shift differential wages. (Agnew Declaration at ¶ 36.) Labor
10 Code section 226(a)(9) mandates that "An employer, semimonthly or at the time of each
11 payment of wages, shall furnish to his or her employee...an accurate itemized statement in
12 writing showing...(9) all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee..." As alleged by
14 Named Plaintiff, whenever shift differential wages were paid, the wage statement omitted the
15 applicable hourly rate and corresponding hours used to calculate the wage. (Agnew Declaration
16 at ¶ 36.) Instead, only the gross amount of the shift differential was listed. Thus, Named Plaintiff
17 alleges that there is no plausible way an employee could determine the hours or rate for shift
18 differential wages on their own. (*Id.*)

19 Defendant maintains that any alleged omission of information from the wage statements
20 was not a "knowing and intentional failure" by Defendant to comply with Labor Code section
21 226(a), nor did any omission result in any "injury" to Named Plaintiff or the Class Members, and
22 penalties are therefore unwarranted. *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128,
23 1145-46 (N.D. Cal. 2009); *Loeza v. JP Morgan Chase Bank, N.A.*, 2014 WL 4912730, at *6
24 (S.D. Cal. Sept. 30, 2014) (holding that an employer is only liable for damages as a result of
25 failing to furnish conforming wage statements to employees that suffer injury as a result of a
26 knowing and intentional failure by an employer to comply with [section 226\(a\)](#)); *Naranjo v.*
27 *Spectrum Security Services, Inc.*, 88 Cal.App.5th 937, 949 (2023) (holding that an employer's
28 failure to include meal and rest period premium pay on the wage statements was not "knowing

1 and intentional” because it had a good faith belief that it was not in violation of Labor Code
2 section 226) (petition for review granted, May 31, 2023). Named Plaintiff also pursues a wage
3 statement violation that is purely derivative in nature (Agnew Declaration at ¶¶ 37, 38), and
4 therefore vulnerable to a motion for summary judgment based on the weaknesses of the
5 underlying primary claims. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308
6 (2018) (finding that the employees did not suffer a violation under 226(a) where their wage
7 statement cause of action was derived from an underlying wage and hour violation for overtime).
8 Defendant further contends that individualized inquiries would be needed to determine whether
9 an employee was injured and whether any purported wage statement error or omission was
10 “knowing and intentional,” and that this claim is not susceptible to class-wide adjudication.
11 (Agnew Declaration at ¶ 38).

12 **f. Derivative Waiting Time Penalties.**

13 Named Plaintiff seeks waiting time penalties based on Defendant’s alleged underpayment
14 and/or non-payment of wages, and meal and rest period premiums. (Agnew Declaration at ¶ 40.)
15 In order to establish liability for waiting time penalties under Labor Code section 203, it is the
16 plaintiff’s burden to prove not only that there was a failure to pay final wages in a timely
17 manner, but also that the failure to pay wages in a timely manner was “willful.” Cal. Lab. Code §
18 203(a); *Granite Outlet, Inc. v. Hartford Cas. Ins. Co.*, 190 F. Supp. 3d 976, 986 (E.D. Cal. 2016)
19 (“The ‘willful’ factor...is a requisite element to impose penalties under Labor Code section
20 203”). Defendant maintains that Named Plaintiff cannot establish the predicate fact that any
21 earned wages were not paid at the time of termination. (Agnew Declaration at ¶ 40.) Citing
22 *Naranjo v. Spectrum Security Services, Inc.*, Defendant contends that Named Plaintiff cannot
23 recover section 203 penalties that are predicated on the non-payment of meal/rest periods. 88
24 Cal.App.5th 937, 949 (2023) (holding that an employer’s failure to pay meal period premiums to
25 departing employees was not “willful” under Section 203 because the employer had a good faith
26 belief that it was in compliance with the law). Defendant further contends, that to the extent that
27 Named Plaintiff overcomes this hurdle, Named Plaintiff would need to prove that Defendant
28 willfully delayed each final payment, and this is an inherently fact intensive inquiry, which is not

1 susceptible to class-wide adjudication. (Agnew Decl. ¶ 40.)

2 **3. The Recovery of Unpaid Wages and Statutory Penalties.**

3 Class Counsel retained Econ One to calculate the potential damages/penalties at issue.
4 (Agnew Decl. ¶ 24.) Based on the class data provided by Defendant, Class Counsel estimated
5 that Defendant would face potential liability of up to approximately \$7,606,247 in unpaid wages
6 and statutory penalties, if Named Plaintiff succeeded at trial on all class claims. (*Id.*) The
7 breakdown for the calculation of the class damages and penalties is set forth in detail in the
8 Agnew Declaration. (*Id.* at ¶¶ 24-42.)

9 **4. The Recovery of Civil PAGA Penalties Is Uncertain.**

10 Due to the discretionary nature of PAGA penalties, PAGA civil penalties are difficult to
11 evaluate. Defendant has indicated that, at the time of mediation, there were approximately
12 15,987 pay periods in which Aggrieved Employees worked during the PAGA Period. (Agnew
13 Decl. ¶ 43.) Assuming that Named Plaintiff was to prevail on the merits of the PAGA claim,
14 applying the standard penalty of \$100 per pay period (regardless of the number of violations)
15 yields \$1,598,700 in potential liability. (*Id.*) However, in the alternative, if the Court were to
16 “stack” penalties (*i.e.*, award multiple PAGA penalties for different Labor Code violations in the
17 same pay period), the potential PAGA penalties could total as high as \$6,673,100. (*Id.* at ¶ 44.)

18 However, even assuming Named Plaintiff ultimately prevails on his PAGA claims, the
19 Court has discretion to reduce any PAGA penalties. Pursuant to Labor Code section 2699(2),
20 the Court can decline to award PAGA penalties where “if, based on the facts and circumstances
21 of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
22 oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v.*
23 *Starbucks Corp.*, 30 Cal.App.5th 504 (2018), while the plaintiff prevailed on his PAGA claim
24 upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
25 employer’s good faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court
26 of Appeal found such a reduction to be proper. *Id.* at p. 539.

27 Although Named Plaintiff believes in the merits of the alleged claims and maintains that
28 there is no reason for reducing PAGA penalties, Named Plaintiff is aware that Defendant may

1 raise defenses to the claims and further with respect to the reduction of PAGA penalties and that
2 it could be persuasive to the Court. (Agnew Decl. ¶ 46.) Thus, even if Named Plaintiff was to
3 successfully prove his claims at trial, there is a possibility that the Court may only award a small
4 percentage of PAGA penalties, as the Court has discretion to do so. The Settlement Fund was
5 premised with this risk in mind, associated with the possibility of the Court significantly
6 reducing Named Plaintiff's PAGA penalties, along with other attendant risks, even if Named
7 Plaintiff was to prevail at trial. (*Id.* at ¶¶ 46-48.)

8 **5. The Settlement is Reasonable When Compared to the Value of the**
9 **Underlying Labor Code Claim and Inherent Uncertainty of**
10 **Litigation.**

11 The settlement for each Class Member is fair, reasonable, and adequate, given the
12 inherent risks of litigation, including the substantial risks relative to class certification, the costs
13 of pursuing such litigation, and the risks associated with the Court's discretion to reduce PAGA
14 penalties. (Agnew Decl. ¶51; Lee Decl. ¶ 2; Rosenthal Decl. ¶ 2; Marder Decl. ¶2.) Here, based
15 on the amounts explained above, the total exposure for Named Plaintiff's class and PAGA
16 claims amount to \$14,279,347. (*See* Agnew Decl. ¶ 49.) However, this figure assumes that the
17 Court would award \$6,673,100 in civil PAGA penalties, which presumes the award of multiple
18 PAGA penalties for different Labor Code violations in the same pay period. (*Id.* at ¶¶ 44, 49.)
19 However, if the Court applies a single \$100 PAGA penalty per pay period, the civil PAGA
20 penalties total \$1,598,700. (*Id.* at ¶ 43.) Considering this reduced penalty calculation, the realistic
21 exposure on the class and PAGA claims totals \$9,204,947. (*Id.* at ¶ 49.) The Settlement Fund
22 here is \$1,100,000.00, and thus amounts to approximately 11.95% of the total estimated liability.
23 (*Id.*)

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

1 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
2 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair
3 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor*
4 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D. Cal. Mar. 20, 2015)
5 (holding that class action settlement recovering between **8.5% and 25%** of the defendant’s
6 potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-
7 cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class settlement
8 which obtained **only 9.1%** of projected damages, given the risks of continued litigation); *Villegas*
9 *v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at p.*6 (N.D.
10 Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the
11 potential recovery was fair and reasonable).

12 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
13 Settlement of Class and Representative Action (“Notice”), should any Class Member wish to
14 pursue his or her own case for the claims being released herein, each Class Member has the right
15 to submit a request for exclusion (*i.e.*, opt-out) from the settlement. (*See* Notice, attached as
16 **Exhibit 1** to the Stipulation.) Moreover, as set forth in the Notice, Class Members are advised of
17 their right to object to any of the terms contained in the Stipulation and attend the final approval
18 hearing.⁴ (*Id.*)

19 **D. Amount and Manner of Distribution of the Compensation to be Provided to**
20 **Class Members, Including the Amount, or an Estimate, of What Each Class**
21 **Member Will Receive.**

22 The Agreement provides for One Million One Hundred Thousand Dollars
23 (\$1,100,000.00) as the Settlement Fund. (SA at § VIII.5.) The Payout Fund, calculated after
24

25
26 ⁴ Class Members do not need to do anything should they wish to receive their share of the
27 settlement funds. In other words, because this is not a claims-made settlement, Class Members
28 will not be required to make a submission to participate in the settlement. This substantially
decreases the amount of burden on each Class Member to receive their share of the settlement
funds.

deduction of attorneys' fees (up to \$366,666.66), litigation costs (up to \$25,000.00), the PAGA Payment (\$50,000.00), the Incentive Award to the Class Representative (up to \$10,000.00), and settlement administration costs (up to \$10,000.00), is estimated to be approximately \$638,333.34. (Agnew Decl. at ¶¶ 17, 50.) Each Class Member that does not opt-out of the settlement will be awarded a portion of the Payout Fund. One Hundred percent (100%) of the Payout Fund shall be allocated to all Class Members who do not timely and validly request exclusion from the settlement ("Settlement Class Members"). (SA at §VIII.7(b)(iv).) Settlement Class Members will be entitled to receive a portion of this amount on a *pro rata* basis, based upon the total number of pay periods each Settlement Class Member worked during the Class Period. (*Id.*)

Based thereon, on a raw average, and assuming the participation of approximately 300 Class Members, each Class Member may potentially recover approximately \$212.78 from the Payout Fund. (Agnew Decl. ¶ 50.) The amount actually paid to each Class Member may increase or decrease depending on the actual number of pay periods worked during the Class Period and the number of opt-outs received. (*Id.*) To the extent that there are valid opt-outs, the Claims Administrator will proportionately increase the individual settlement payments to each Settlement Class Member so that the amount distributed to Settlement Class Members equals 100% of the Payout Fund. (*Id.*)

Additionally, twenty-five percent of the PAGA Payment, or \$12,500.00, will be distributed to Aggrieved Employees who worked during the PAGA Period, on a pro rata basis, based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period as compared to the total number of pay periods during the PAGA Period. (SA at § VIII.7(c)(i).)

Finally, the terms of the Settlement provide that uncashed checks (upon the expiration date) shall be distributed to the California Department of Industrial Relations Unclaimed Wage Fund in the name of the Settlement Class Member or Aggrieved Employee. (SA at § VIII.11(e).)

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1 **E. Whether, and Under What Circumstances, Amounts Available for Payment**
2 **in Settlement Might Not Be Paid to Class Members or Might Revert to the**
3 **Defendant.**

4 None of the settlement funds will revert to Defendant. (SA at § VIII.7(b)(iv);
5 VIII.7(c)(ii).)

6 **F. Scope of the Release of Class Members’ and Aggrieved Employees’ Claims**

7 As a condition of participating in this Settlement, Class Members who do not opt out of
8 the Settlement (“Settlement Class Members”), including Named Plaintiff, will provide a release
9 of the following claims against the Released Parties⁵ (the class component of the “Released
10 Claims”):

11 [A]ll claims alleged or that could have been alleged against
12 Defendant and all Defendant-related persons and entities based
13 upon the facts pleaded in the First Amended Consolidated Class
14 and Representative Action Complaint under any theory of law,
15 including but not limited to all claims for unpaid wages, including
16 but not limited to minimum wages, straight time wages, or
17 overtime wages (including but not limited to those claims brought
18 on an off-the-clock, rounding, regular rate, or overtime
19 computation theory); meal and rest period claims; pay stub claims;
20 recordkeeping claims; claims arising under the California Labor
21 Code sections 201, 202, 203, 226(a), 226.7, 510, 512, 558, 1194,
22 1197 and 1197.1; and any and all associated penalties and damages
23 on any and all claims (including but not limited to pay stub
24 penalties, waiting time penalties, late payment penalties, meal and
25 rest period penalties, and liquidated damages), that accrued during
26 the Class Period.

27 (SA § VIII.3(a).) The Settlement Class Members agree not to sue or otherwise make a claim
28 against any of the Released Parties that is related to the class component of the Released Claims.

29 (SA § VIII.3(c).) The Parties agree that this class release is for the period of February 4, 2018,
30 through August 31, 2023. (*See id.* at § II.F.) The Parties further agree that this class release shall

31 ⁵ Pursuant to Section VIII.3(a) of the Agreement, the “Released Parties” consist of Mondelēz
32 Global LLC and its former and present parents, subsidiaries, and affiliated corporations and its
33 and their officers, directors, employees, partners, shareholders and agents, and any other
34 successors, assigns, or legal representatives.

1 have full *res judicata* effect as to Fair Labor Standards Act claims for all Settlement Class
2 Members as described in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (9th
3 Cir. 2018), regardless of whether that Settlement Class Member endorses and cashes his or her
4 settlement check. (SA § VIII.3(a).)

5 Class Members, who are Aggrieved Employees, will also provide a release of the
6 following PAGA claims against the Released Parties (the PAGA component of the “Released
7 Claims”):

8 [A]ny and all claims for penalties under the California Private Attorneys
9 General Act, including interest, costs and attorneys’ fees related thereto,
10 predicated on the violation of Labor Code sections 201, 202, 203, 226(a),
11 226.7, 510, 512, 558, 1194, 1197, 1197.1, IWC Wage Orders, local
12 ordinance, or otherwise, that accrued during the PAGA Period and were or
13 could have been alleged against Defendant and all Defendant-related
persons and entities based upon the facts pleaded in the First Amended
Consolidated Class and Representative Action Complaint under any
theory of law.

14 (SA § VIII.3(a).) The Aggrieved Employees agree not to sue or otherwise make a claim against
15 any of the Released Parties that is related to the PAGA component of the Released Claims. (SA
16 § VIII.3(c).) The Parties agree that the PAGA release is for the period of January 12, 2021,
17 through August 31, 2023. (*See id.* at § II.G.)

18 Given that the release is tailored to the claims alleged or that could have been alleged in
19 the Operative Complaint against Defendant and Defendant-related persons and entities based on
20 the facts pleaded therein, the release is appropriate in scope.

21 **G. Tax Treatment of Settlement Payments to Class Members and Aggrieved**
22 **Employees.**

23 The Parties have agreed that all Individual Settlement Class Payments shall be allocated
24 as one-third (1/3) to wages, one-third (1/3) to interest, and one-third (1/3) to penalties. (SA §
25 VIII.7(b)(iii).) Employer-side payroll taxes on the wage portion of the Individual Class
26 Settlement Award will be paid by Defendant separately and in addition to the Settlement Fund.
27 (*Id.*) With respect to PAGA, all Individual PAGA Payments shall be allocated as 100% as
28 penalties. (SA § VIII.7(c)(iii).)

1 **H. Attorneys' Fees and Litigation Costs.**

2 California state and federal courts have recognized that an appropriate method for
3 determining award of attorneys' fees is based on a percentage of the total value of benefits to class
4 members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001);
5 *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Vincent v. Hughes Air West, Inc.*, 557
6 F. 2d 759, 769 (9th Cir. 1997). Indeed, most recently, the California Supreme Court has also now
7 held that the award of attorneys' fees in common fund wage and hour class action settlements
8 should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503
9 (2016). The Parties have agreed to a payment of a maximum of 33.33% of the Settlement Fund
10 (\$366,666.66) for payment of Class Counsel as attorneys' fees. (SA at § VIII.8.) Further, the
11 Parties have agreed to reimbursement of class counsel's litigation costs of up to \$25,000. (*Id.*)
12 Class Counsel have at their own risk, expended costs, for example, to file this instant action, service
13 of process, and payment of other litigation related costs. (Lee Decl. ¶ 3.) Based on the foregoing,
14 the Court should preliminarily approve the attorneys' fees and costs being requested by the Parties.

15 **I. Proposed Incentive Award to Named Plaintiff.**

16 Named Plaintiff requests a service award in the amount of \$10,000. (SA at § VIII.8.)
17 Named Plaintiff personally met with Class Counsel on various occasions to discuss the case,
18 provide documents and information, and review case documents, including the PAGA Notice,
19 Complaints and the Stipulation. (Jordan Decl. ¶ 9.) Moreover, as part of his duties as the
20 representative for Class Members and Aggrieved Employees, Named Plaintiff provided
21 invaluable information, evidence, and documents that resulted in this settlement. In addition to
22 the invaluable services that Named Plaintiff provided, he also took significant risks, both
23 professionally and monetarily, in acting as the Class Representative and seeking benefits on
24 behalf of the Class Members and Aggrieved Employees. (*Id.*) Because the claims alleged by
25 Named Plaintiff involved the payment of costs to the prevailing party, Named Plaintiff could
26 have possibly faced paying the fees and costs of Defendant, had Named Plaintiff not prevailed in
27 this action. (Jordan Decl. ¶ 11.) Furthermore, given that future employers are much less likely to
28 hire individuals who have filed suit against their prior employer, particularly cases of this nature,

1 Named Plaintiff may face prejudice in the future from other potential employers. Named Plaintiff
2 took this risk upon himself and the whole Class benefited. Class Members did not have to file
3 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
4 have to face the potential for retaliation and not getting future employment had they filed a
5 public lawsuit.

6 Moreover, in consideration for the Incentive Award, Named Plaintiff also executed a
7 general release of all claims including a waiver under California Civil Code § 1542, which other
8 Class Members did not have to do. (Jordan Decl. ¶ 12.)

9 **J. Settlement Administration Fees**

10 The Parties have agreed to an estimated payment of approximately \$10,000 to the Claims
11 Administrator, CPT Group, to send notices and to administer this settlement. (SA at § VIII.6(e).)
12 The Parties believe that this claims administration fee is reasonable and should be approved.
13 (Agnew Decl. ¶ 22.)

14 **K. LWDA Has Been Provided Notice Of This Settlement.**

15 Concurrent with the filing of this Motion, Named Plaintiff provided notice of this Motion
16 to the LWDA. (Agnew Decl. ¶ 59, Exhibit C.)

17 **IV. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS**

18 Although Defendant disagrees with Named Plaintiff's contentions for purposes of
19 settlement, Defendant has agreed to certify the Class for settlement purposes only.

20 The Class that Named Plaintiff seeks to conditionally certify is ascertainable. "Class
21 members are 'ascertainable' where they may be readily identified without unreasonable expense
22 or time by reference to official records." *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334
23 (2008). Here, members of the Class are readily identifiable. Defendant has determined that there
24 are approximately 300 individuals that comprise the Class. (Agnew Decl. ¶ 15.) Furthermore, the
25 Class is sufficiently numerous. Courts generally find that numerosity is satisfied if the class
26 includes forty or more members. *See Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606
27 (N.D. Cal. 2014).

1 The commonality requirement is met when there are questions of law and fact common to
2 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
3 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
4 facts couple with disparate legal remedies within the class”). Named Plaintiff alleges, in part, that
5 Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by:
6 (1) failing to provide off-duty meal and/or rest periods to employees or pay meal/rest period
7 premiums in lieu thereof, in violation of Labor Code sections 226.7 and 512; (2) failing to pay for
8 all hours worked in violation of Labor Code sections 510, 558, 1194, 1197, and 1197.1; (3) failing
9 to provide accurate, itemized wage statements, in violation of Labor Code section 226(a);
10 (4) failing to pay all wages upon termination of employment, in violation of Labor Code sections
11 201, 202, 203; and (5) engaging in Unfair Business Practices in violation of the UCL, the
12 California Labor Code, and the applicable IWC Wage Orders. (Jordan Decl. ¶¶ 4-7.) In other
13 words, Named Plaintiff was allegedly subjected to the same policy and practice as other Class
14 Members. Thus, Named Plaintiff’s claims are typical to those of class members.

15 The adequacy requirement is also met. “Adequacy of representation depends on whether
16 the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests
17 are not antagonistic to the interests of the class.” *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442,
18 450 (1976). Here, Named Plaintiff does not have any interests adverse to the class, nor has any
19 such issues been raised or presented. (Jordan Decl. ¶ 8.) Named Plaintiff has taken all necessary
20 steps to represent the interests of the Class, including by remaining abreast of the status of the case,
21 providing information and documents to Class Counsel, and reviewing case documents. (Jordan
22 Decl. ¶¶ 9, 10.) For such reasons, Named Plaintiff asserts that they have adequately represented the
23 Class Members and will continue to do so.

24 Further, as detailed in their declarations, Class Counsel are experienced and well-qualified
25 class action litigators who have litigated many wage and hour class actions and have each been
26 certified as class counsel in numerous other class actions, particularly wage and hour class actions.
27 (Agnew Decl. ¶¶ 52-58; Lee Decl. ¶¶ 4-7; Rosenthal Decl. ¶ 4; Marder Decl. ¶ 4-10.) From the
28

1 inception of the case, Class Counsel has solely represented the interest of the Class. (Agnew Decl.
2 ¶ 2; Lee Decl. ¶ 8; Rosenthal Decl. ¶ 5; Marder Decl. ¶ 11.)

3 **V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
4 **PRELIMINARY APPROVAL**

5 The settlement presented here is fair, adequate, and reasonable. The settlement will result
6 in substantial monetary benefits to Class Members and Aggrieved Employees; it is non-
7 collusive; and it was achieved as the result of informed, extensive, and arm's-length negotiations
8 conducted by counsel for the respective Parties who are experienced in wage and hour class
9 action litigation and facilitated by an experienced and neutral mediator. For the foregoing
10 reasons, Named Plaintiff respectfully requests that the Court grant preliminary approval of the
11 proposed settlement as set forth in the Stipulation, sign the proposed Preliminary Approval
12 Order, approve and authorize mailing of the proposed Notice, and set a date for a final approval
13 hearing.

14
15 DATED: August 9, 2023

DIVERSITY LAW GROUP, P.C.
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16
17 By: _____

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