

1 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com

2 JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com

3 SEPIDEH ARDESTANI, ESQ. (SBN 274259)
sepideh@crosnerlegal.com

4 **CROSNER LEGAL, PC**

5 9440 Santa Monica Blvd. Suite 301

Beverly Hills, CA 90210

6 Tel: (866) 276-7637

7 Fax: (310) 510-6429

8 Attorneys for Plaintiff DENNIS HERRERA

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11
12 DENNIS HERRERA, on behalf of
13 himself, the State of California, and others
similarly situated and aggrieved,

14 Plaintiff,

15
16 v.

17 SIGNATURE FLIGHT SUPPORT LLC, a
18 Delaware limited liability company; and
19 DOES 1-100, inclusive,

20 Defendants.

Case No.: 22STCV18367

Assigned for All Purposes to:
Hon. Robert B. Broadbelt
Dept. 53

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

[Filed concurrently with Notice of Motion and
Motion; Declarations of Sepideh Ardestani,
Dennis Herrera, and Julie Green; [Proposed]
Order]

Date: January 4, 2024

Time: 10:00 a.m.

Dept.: 53

Reservation No.: 551321600195

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND/LITIGATION HISTORY	1
III.	INVESTIGATION	3
IV.	TERMS OF THE PROPOSED SETTLEMENT	4
A.	Deductions from the Settlement	4
B.	Calculation of the Individual Settlement Payments to Class and Aggrieved Employees ..	4
C.	Uncashed Funds to Unclaimed Property Fund	5
D.	Notice and Extended Response Deadline for Re-Mailed Notices	6
E.	Responses to the Settlement and Deadline Thereon.....	6
F.	Funding and Distribution of the Settlement	7
G.	Release of Claims	7
H.	The Class Representative Service Awards Are Justified Given the Risks and Should be Preliminarily Approved.....	7
V.	ARGUMENT	8
A.	The Settlement was Reached as a Result of Arm’s Length Negotiations	9
B.	The Settlement is the Result of Thorough Investigation and Discovery	9
C.	Counsel for the Parties are Experienced in Similar Litigation	9
D.	The Proposed Settlement is a Reasonable Compromise of Claims.....	10
E.	The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s Case and the Risks and Costs of Further Litigation	10

1 1. The Settlement Amount is Reasonable Based on Plaintiff’s Evaluation of the Claims
2 and Defenses 18
3 F. Provisional Class Certification Should be Granted 10
4 1. The Proposed Class is Sufficiently Numerous and Ascertainable..... 18
5 2. The Typicality and Adequacy Requirements Are Met 18
6 3. The Commonality Requirement is Met..... 18
7 G. CPT Should be Appointed as the Settlement Administrator 19
8
9 VI. CONCLUSION 19
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135.....	16
<i>Aguilar v. Cintas Corp. No. 2</i> (2006)144 Cal.App.4th 121 (2006)	11
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157.....	14
<i>Augustus v. ABM Security Serv., Inc.</i> (2016) 2 Cal.5th 257.....	12
<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal. App. 4th 715.....	8
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610	9
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004.....	12
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504.....	15
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal. App. 4th 1380.....	7
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	18
<i>Cochran v. Schwan's Home Serv.</i> (2014) 228 Cal.App.4th 1137.....	14
<i>Dunbar v. Albertson's Inc.</i> (2005) 141 Cal.App.4th 1422 (2006)	11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	8, 9
<i>Glob. Minerals & Metals Corp. v. Superior Court</i> (2013) 113 Cal.App.4th 836.....	17
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	17

1	<i>Hebbard v. Colgrove</i>	
2	(1972) 28 Cal. App. 3d 1017	17
3	<i>Jennings v. Open Door Mktg. Inc.</i>	
4	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	15
5	<i>Jones v. Farmers Ins. Exch.</i>	
6	(2013) 221 Cal.App.4th 986.....	18
7	<i>Kullar v. Foot Locker Retail, Inc.</i>	
8	(2008) 168 Cal.App.4th 116.....	10
9	<i>Lane v. Facebook, Inc.</i>	
10	(9th Cir. 2012) 696 F.3d 811	16
11	<i>McGhee v. Bank of America</i>	
12	(1976) 70 Cal.App.3d 442	18
13	<i>McKenzie v. Fed. Express Corp.</i>	
14	(C.D. Cal. 2011) 765 F. Supp. 2d 1222.....	14
15	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
16	(2010) 186 Cal.App.4th 399	10
17	<i>Rose v. City of Hayward</i>	
18	(1981) 126 Cal. App. 3d 926.....	17
19	<i>Sav-On v. Superior Court</i>	
20	(2004) 34 Cal.4th 319 (2004).....	11
21	<i>Sees Candy Shops, Inc. v. Superior Court</i>	
22	(2012) 210 Cal.App.4th 889.....	13
23	<i>Slavkov v. First Water Heater Partners I</i>	
24	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	15
25	<i>In re Taco Bell Wage and Hour Actions</i>	
26	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557	15
27	<i>Van Kempen v. Matheson Tri-Gas, Inc.</i>	
28	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	15
	<i>Wershba v. Apple Computer</i>	
	(2001) 91 Cal.App.4th 224.....	16, 17
	<i>White v. Experian Information Solutions, Inc.</i>	
	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	16, 17
	<i>Williams v. Superior Court</i>	
	(2013) 221 Cal.App.4th 1353.....	19

STATUTES

1		
2	Cal. Code Regs. Tit. 8 § 13520	14
3	Cal. Lab. Code section 2699(i).....	1
4	Cal. Lab. Code section 2699(1)(2)	1
5	California Code of Civil Procedure section 384(a).....	5
6	Code of Civil Procedure section 382.....	8, 17
7	Code of Civil Procedure section 877.6.....	10
8	Labor Code sections	15
9	Labor Code section 510.....	13
10	Labor Code sections 512	11
11	Labor Code sections 226.7	11
12	Labor Code § 2699(e)(2).....	15

OTHER AUTHORITIES

14		
15	Fed.R.Civ.Proc. 23(b)(3).....	17
16	Federal Judicial Center, <i>Managing Class Action Litigation: A Pocket Guide for</i>	
17	<i>Judges</i> (3d ed. 2010), available at	
	http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf	17
18	Federal Rules of Civil Procedure Rule 23.....	17
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff Dennis Herrera hereby moves the Court for an order granting preliminary approval
3 to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of
4 approximately 1,108 individuals employed by Defendant Signature Flight Support LLC (“SFS” or
5 “Defendant”) as non-exempt employees during the period of March 16, 2018 to the date of
6 preliminary approval. The proposed \$1,185,840 settlement will provide at least \$679,060 in
7 combined cash payments to the settlement class and aggrieved employees, with an average of \$590
8 for class members and \$38 for aggrieved employees. The balance of approximately \$506,780,
9 subject to Court approval, will cover a modest enhancement award to the named Plaintiff (up to
10 \$10,000), reasonable attorney’s fees (up to \$395,280) and actual litigation costs (up to \$13,000),
11 settlement administration costs (up to \$13,500), and payment of civil penalties allocated to the
12 LWDA (up to \$75,000)¹. The settlement is the product of Plaintiff’s pre- and post-filing
13 investigation, extensive formal and informal discovery, and arms-length and adversarial
14 negotiations overseen by experienced and well-regarded mediator Todd Smith, Esq.

15 As demonstrated below, the settlement is within the “range of reasonableness” for
16 preliminary approval, and is fair, reasonable and adequate. Plaintiff’s counsel believe the settlement
17 is a significant result for the class given the substantial risks inherent in this matter. Accordingly,
18 Plaintiff requests the Court enter an order: (1) granting preliminary approval to the proposed class
19 action settlement;² (2) conditionally certifying the settlement class as defined below; (3) appointing
20 Crosner Legal, P.C. as Class Counsel; (4) appointing plaintiff Dennis Herrera as the Class
21 Representative; (5) appointing CPT Group, Inc. as the Settlement Administrator; (6) approving the
22 form of notice to the class and the procedure for providing such notice; and (7) scheduling a final
23 fairness hearing.

24 **II. BACKGROUND/LITIGATION HISTORY**

25 Defendant Signature Flight Support LLC, headquartered in Orlando, Florida, operates the
26

27 ¹ A PAGA penalty award of \$100,000 will be sought, of which \$75,000 will be allocated to the LWDA while the
remaining \$25,000 will be allocated to aggrieved employees, pursuant to Cal. Lab. Code section 2699(i).

28 ² Approval of the PAGA penalty award shall occur concurrently with final approval. Pursuant to Cal. Lab. Code
section 2699(l)(2), a copy of the proposed settlement agreement has been submitted to the LWDA.

1 world's largest network of fixed base operations at airports. Defendant has over 200 locations all
2 over the world providing essential support services for business and private aviation, including
3 refueling, hangarage, maintenance, repair, and overhaul. Plaintiff worked for SFS as a line service
4 technician from October 2018 to June 2021, when he went on workers compensation leave
5 following a work-related injury. His duties included fueling aircraft, helping passengers with
6 luggage, lavatory services in the airplanes, and towing planes. He typically worked 5 days a week
7 and at least 8 hours per day, and he alleges he regularly worked both overtime and "off the clock"
8 without proper pay. (Declaration of Sepideh Ardestani ("Ardestani Decl."), ¶ 14.)

9 On March 16, 2022, Plaintiff served the Labor & Workforce Development Agency
10 ("LWDA") and SFS with a PAGA notice. After exhausting his administrative remedies, he filed a
11 PAGA-only complaint against Defendant in Los Angeles County Superior Court on June 3, 2022
12 (the "PAGA Action") alleging Defendant's failure to pay all minimum wages, overtime wages,
13 premium wages in lieu of missed and denied meal and rest periods, failure to reimburse business
14 expenses and failure to pay all wages due at separation of employment. He alleged his PAGA
15 claims on behalf of Aggrieved Employees including all non-exempt employees that worked for
16 Defendant in California from March 30, 2021 to the present. (Ardestani Decl., ¶ 15; Exhs. 4-5.)

17 On March 16, 2022, Plaintiff also filed a separate class action complaint on behalf of
18 himself and a putative class defined to include all non-exempt individuals who are or previously
19 employed by SFS in California during the class period of March 16, 2018 through the present,
20 based on the same alleged wage and hour violations as the PAGA Action (the "Class Action"). On
21 June 6, 2022, Defendant removed the Class Action to federal court under the Class Action
22 Fairness Act, where it remains pending. (Ardestani Decl., ¶ 16.)

23 On May 24, 2023, the Parties participated in a global mediation with Todd Smith, Esq., a
24 respected wage and hour class action mediator. The mediation lasted a full day and with the
25 mediator's assistance, and following a mediator's proposal, the Parties reached agreement on all
26 major issues to resolve both cases. They then memorialized the proposed settlement to the Class
27 Action and PAGA Settlement Agreement ("Agreement") now before the Court for approval. The
28 Agreement has since uploaded to the LWDA. (Ardestani Decl., ¶ 17; Exhs. 1, 6.)

1 Finally, in order to fully effectuate the proposed settlement of both the PAGA Action and
2 Class Action, the Parties stipulated to the filing of a First Amended Complaint in this matter that
3 added the class claims alleged in the Class Action. As of the filing of this motion, Plaintiff submitted
4 the stipulation to file the FAC and will file the amended complaint upon receiving leave of court.
5 The FAC when filed will be the operative pleading. (Ardestani Decl., ¶ 18.)

6 **III. INVESTIGATION**

7 After Plaintiff filed his complaints, both Parties propounded and responded to written
8 discovery in the Class Action, and SFS deposed Plaintiff over two days in December 2022 and
9 February 2023. In the PAGA Action, SFS filed a motion to stay the case pending resolution of the
10 Class Action, which this Court denied on November 18, 2022. Eventually, after engaging in several
11 meet and confer discussions regarding discovery, potential law and motion, and other case
12 management issues, the Parties ultimately agreed to attempt mediation in both cases. The Parties
13 also agreed to undertake additional and substantial informal discovery to facilitate an exchange of
14 information necessary to engage in a meaningful mediation. (Ardestani Decl., ¶ 19.)

15 Accordingly, prior to the mediation Defendant provided Plaintiff with extensive informal
16 discovery, including Plaintiff's personnel, time, and payroll records, time and payroll records for a
17 randomly selected sampling of about 5% of the Class Members, wage statement exemplars,
18 Defendant's employee handbooks, including Defendant's policies and procedures regarding the
19 payment of wages, meal and rest breaks, timekeeping policies (including recording hours), expense
20 reimbursement, and information regarding the number of putative Class Members who are current
21 and former employees, the number of Aggrieved Employees, the number of workweeks throughout
22 the Class Period, and the number of pay periods throughout the PAGA Period. From this
23 information, Plaintiff analyzed Defendant's potential liability for the claims asserted in this case
24 and, with the assistance of consulting experts from Berger Consulting Group, the potential exposure
25 and damages. (Ardestani Decl., ¶ 20.)

26 Based on this formal and informal discovery on all claims/theories, Plaintiff ultimately
27 contends the Class Members/Aggrieved Employees were not paid all minimum and overtime wages,
28 not provided with legally compliant meal and rest periods, did not receive reimbursement for certain

1 business expenses, did not receive compliant wage statements, and did not receive all wages due on
2 separation of employment. In considering the reasonableness of the proposed settlement, Plaintiff
3 considered each of Defendant's counterarguments, which sharply contested Plaintiff's claims.
4 Plaintiff and Counsel weighed the strength of Defendant's arguments, including the risks of
5 prevailing at class certification and on the merits, and determined that the proposed settlement is in
6 the best interests of the Class. Although remaining confident in the strength of the claims, these
7 factors led Plaintiff to discount the exposure analysis, discussed below. (Ardestani Decl., ¶ 21.)

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

9 **A. Deductions from the Settlement**

10 The Parties have agreed (subject to the Court's approval) to resolve this matter for the non-
11 reversionary amount of \$1,185,840.00 ("Gross Settlement Amount" or "GSA") (Agreement, § 3.1.),
12 which includes: (a) attorney's fees of up to \$395,280.00 (33.33% of the GSA) to compensate Class
13 Counsel for work already performed and all work remaining to be performed (Agreement, § 3.2.2.);
14 (b) actual litigation expenses as documented and not to exceed \$13,000.00. (Agreement, § 3.2.2.);
15 (c) an Enhancement Award to Plaintiff in an amount not to exceed \$10,000.00 (Agreement, § 3.2.1.);
16 (d) Administration Costs to CPT Group, Inc. (the proposed settlement administrator) in an amount
17 not to exceed \$13,500.00 (Agreement, § 3.2.3.); and (e) PAGA Penalties of \$100,000, of which 75%
18 (\$75,000) will go the LWDA and the remaining 25% (\$25,000.00) will be distributed pro rata to the
19 Aggrieved Employees.³ (Agreement, § 3.2.4.) Defendant will pay all employer-side payroll taxes
20 separate and apart from the GSA. (Agreement, § 3.1.)

21 **B. Calculation of the Individual Settlement Payments to Class and Aggrieved** 22 **Employees**

23 After all Court-approved deductions from the GSA, about \$654,060 ("Net Settlement
24 Amount" or "NSA") will be distributed to the estimated 1,108 Class Members, with an average
25 individual settlement amount of around \$590.⁴ Additionally, 25% of the PAGA Penalties
26

27 ³ Defined as all non-exempt individuals who are or previously were employed by Defendant in California
28 during the PAGA Period of March 16, 2021 and preliminary approval. (Agreement, § 1.4.)

⁴ \$654,060 NSA/1,108 Class Members

1 (\$25,000.00) will be distributed to the estimated 653 Aggrieved Employees, resulting in an average
2 Individual PAGA Payment of about \$38⁵ per Aggrieved Employee. (Ardestani Decl., ¶ 23.) Under
3 no circumstances will any portion of the Settlement revert to Defendant. (Agreement, § 3.1.)

4 Subject to the terms and conditions of the Settlement, CPT will calculate and issue Individual
5 Class Payments to Participating Class Members by (a) dividing the Net Settlement Amount by the
6 total number of Workweeks worked by all Participating Class Members during the Class Period and
7 (b) multiplying the result by each Participating Class Member's Workweeks. (Agreement, § 3.2.5.)
8 Additionally, CPT will calculate and issue Individual PAGA Payments to Aggrieved Employees
9 based (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
10 (\$25,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
11 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
12 Period Pay Periods. (Agreement, § 3.2.4.1.)

13 Each Class Member's settlement share will be apportioned as follows: twenty percent (20%)
14 wages and eighty percent to expense reimbursement, penalties and interest. (Agreement, § 3.2.5.)
15 CPT will issue Form W-2s for amounts deemed "wages" and Form 1099s for the portions allocated
16 to expenses, penalties and interest. (Agreement, §§ 3.2.5.)

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

18 Settlement checks must be cashed or deposited within 180 days after the checks are mailed
19 to the Participating Class Members and Aggrieved Employees. (Agreement, § 4.4.1.) In the event a
20 settlement check remains uncashed, the unclaimed funds will go to the State Controller's Unclaimed
21 Property Fund in the name of the Participating Class Member and/or Aggrieved Employee.
22 (Agreement, § 4.4.3.) Because this lawsuit benefits Class Members/Aggrieved Employees who are
23 releasing claims by participating in the lawsuit, the funds representing their settlement shares should
24 remain their property. By sending the uncashed funds to the Unclaimed Property Fund, they can
25 reclaim their property at a future date, and there will be no unpaid residue or unclaimed or abandoned
26 Class Member funds under California Code of Civil Procedure section 384(a).

27 ////

28 ⁵ \$25,000 (25% PAGA Payment) /653 Aggrieved Employees

1 /////

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

3 Within 15 calendar days after entry of the Preliminary Approval Order, Defendant will
4 provide CPT with the Class Data, which CPT will maintain as private and confidential. (Agreement,
5 § 4.2.) Prior to mailing, CPT will search for updated addresses in the National Change of Address
6 Database. (Agreement, § 8.4.2.) CPT will use the NCOA and skip traces to attempt to find current
7 addresses for any Notice returned as undeliverable. If CPT is unable to obtain a better address for a
8 Class Member, the Notice will be deemed undeliverable. (Agreement, § 8.4.3.) Within 14 calendar
9 days after receipt of the Class Data, CPT will mail a Notice to all Class Members via regular First-
10 Class mail. (Agreement, § 8.4.2.; Ardestani Decl., Exh. 3.)

11 **E. Responses to the Settlement and Deadline Thereon**

12 Class Members will have sixty days from the initial mailing of the Notice to respond to the
13 class portion of the settlement by submitting a challenge to the number of weeks or pay periods
14 attributed to them, submitting an objection, or requesting exclusion. (Agreement, § 8.4.4.)

15 Class Members can object to the class portion of the settlement in writing via mail or fax by
16 submitting a document with their name, the words “Notice of Objection” or “Formal Objection” and
17 a description of the arguments supporting their objection. The Court also will hear objections from
18 any Class Member who attends the Final Approval Hearing. (Agreement, § 8.7.) Class Members
19 can also submit a written request for exclusion from the settlement by mailing or faxing a written
20 request, including his or her name, address, and phone number, and a statement demonstrating his
21 or her intent to opt out of the settlement. (Agreement, § 8.5.) The Notice also informs the Class
22 Member – as well as Aggrieved Employees - that they can dispute the number of weeks/pay periods
23 allotted to them to calculate their settlement payments by contacting CPT before the Response
24 Deadline and including any documentation supporting the dispute. CPT will investigate the dispute,
25 request additional information from Defendant, and make a final decision as to the number of
26 eligible work weeks/pay periods. (Agreement, § 6.6.)

27 /////

28 /////

1 /////

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

3 Defendant shall fund the settlement in within 30 calendar days of the Effective Date.
4 (Agreement, § 4.3.). CPT shall disburse all payments under the settlement within 14 calendar days
5 of receipt of the GSA. (Agreement, § 4.4.)

6 **G. Release of Claims**

7 Upon final approval, Participating Class Members shall forever release the Released Parties⁶
8 for the Released Claims for the Class Period, including all claims pleaded in the Operative
9 Complaint, and which could reasonably have been alleged, based on the Class Period facts,
10 allegations, and/or claims stated in the Operative Complaint, for work performed during the Class
11 Period, and as specifically detailed in Section 6.2 of the Agreement. Additionally, the Aggrieved
12 Employees will the Released Parties from all claims for PAGA penalties that were alleged, or
13 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
14 Complaint, and PAGA Notice, and as detailed in Section 6.3 of the Agreement.

15 Plaintiff and his counsel are convinced that the proposed settlement is in the Class Members’
16 best interests based on the negotiations and a detailed knowledge of the issues present in this action.
17 The length and risks of continued litigation and trial, Defendant’s affirmative defenses, the
18 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
19 establishing specific damages, and possible delays and appeals, all were carefully considered in
20 arriving at the proposed settlement. (Ardestani Decl., ¶ 32.)

21 **H. The Class Representative Service Awards Are Justified Given the Risks and**
22 **Should be Preliminarily Approved**

23 The Agreement provides for a service payment not to exceed \$10,000.00 to Plaintiff.
24 (Agreement, § 3.2.1.) Courts routinely approve service payments, or incentive awards, to
25 compensate named plaintiffs for the services they provide and the risks they incur during class
26

27 ⁶ “Released Parties” means Defendant and its past and present corporate affiliates, subsidiaries, parents,
28 attorneys, insurers, predecessors, successors, assigns, divisions, related entities, divested businesses and
business units, and, the board members, officers, employees, agents, representatives, insurer and attorneys of
any of the above-referenced entities. (Agreement, § 1.41.)

1 litigation. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393 (“These
2 awards are discretionary . . . and are intended to compensate class representatives for work done on
3 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
4 and, sometimes, to recognize their willingness to act as a private attorney general.”); *Bell v. Farmers*
5 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
6 representatives).

7 The requested service award is reasonable in light of the benefits Plaintiff conferred upon
8 the entire Class, resulting in a benefit to all Class Members and the State of California, the time
9 spent assisting counsel with the investigation and prosecution of these claims, commitment to
10 responding to discovery, including sitting through two lengthy and contentious deposition sessions,
11 and consenting to the proposed Agreement. Furthermore, by attaching his name to a lawsuit,
12 Plaintiff also took on the reputational risk that future employers would learn of their participation
13 in this case and unfairly associate them with costly litigation, costing them future employment
14 opportunities. Any future employer could easily perform a simple Google search – an unauthorized
15 simple background check unknown to Plaintiff that can still provide a plethora of information – and
16 conclude Plaintiff are not worth the risk of hiring. This kind of reputational risk that an incentive
17 award is meant to compensate. Furthermore, in pursuing this action on behalf of the Class, Plaintiff
18 risked a judgment for attorney’s fees and costs in the event this matter had been lost. For these
19 reasons, at final approval, Plaintiff will request an enhancement payment not exceed \$10,000.
20 (Ardestani Decl., ¶ 33; Declaration of Dennis Herrera, ¶¶ 2-9.)

21 **V. ARGUMENT**

22 In deciding whether to approve a proposed class action settlement under Code of Civil
23 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
24 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*
25 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217].
26 A proposed class action settlement is **presumed** fair under the following circumstances: (1) the
27 parties reached settlement after arms-length negotiations; (2) investigation and discovery were
28 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

1 litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following shows, all of
2 these elements are present here and the Court should grant of preliminary approval.

3 **A. The Settlement was Reached as a Result of Arm’s Length Negotiations**

4 The proposed settlement was reached as a result of arm’s-length negotiations, facilitated by
5 a respected neutral. Though cordial and professional, the settlement negotiations were at all times
6 adversarial and non-collusive. Following mediation, the Parties’ counsel conducted extensive arm’s
7 length negotiations on all terms memorialized in the Agreement. (Ardestani Decl., ¶ 34.)

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

9 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
10 their arguments before reaching the proposed settlement, and engaged in sufficient investigation,
11 research and discovery to support the settlement. The proposed settlement was only possible
12 following significant analysis and evaluation of Defendant’s relevant policies and procedures, as
13 well as the data it produced for the putative Class, which permitted Plaintiff’s counsel and experts
14 to engage in a comprehensive analysis of liability and potential damages to prepare for mediation.
15 (Ardestani Decl., ¶¶ 20, 35-36.) This litigation has reached the stage where “the Parties certainly
16 have a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement.
17 *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

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

19 Counsel for the Parties are experienced in wage and hour employment law, class actions and
20 PAGA actions. Plaintiff’s counsel have prosecuted numerous cases on behalf of employees for wage
21 and hour violations and are qualified to evaluate the class and PAGA claims, the viability of SFS’s
22 defenses, and the risks and benefits of settlement versus trial. This experience informed Plaintiff’s
23 counsel on the risks and uncertainties of further litigation and guided their determination to endorse
24 the proposed settlement.⁷ (Ardestani Decl., ¶¶ 8-13.)

25 ////

26 ////

27 _____
28 ⁷ The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action
Settlement has been provided to the Class and they have had an opportunity to respond. This information will be
provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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

2 An understanding of the amount in controversy is an important factor in considering
3 whether settlement “of the class members’ claims is reasonable in light of the strengths and
4 weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail,*
5 *Inc.* (2008) 168 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
6 (2010) 186 Cal.App.4th 399, 409. Indeed, the most important factor in this regard is “the strength
7 of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Kullar,*
8 168 Cal.App.4th at 129.

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

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

22 The proposed settlement was only possible following significant analysis and evaluation of
23 Defendant’s relevant policies and procedures, as well as the data that Defendant produced for the
24 Class. This permitted Plaintiff’s Counsel to comprehensively analyze liability and potential
25 damages. The discovery conducted resulted in Plaintiff’s central theories of liability, which are
26 based on Plaintiff’s claims that Defendant failed to provide compliant meal and rest periods, failed
27 to pay all minimum and overtime wages, failed to reimburse business expenses, failed to provide
28 accurate, itemized wage statements and failed to pay all wages due on separation of employment.

1 On the other hand, Defendant maintains the information and documents produced demonstrate it
2 would succeed at both class certification and on the merits. (Ardestani Decl., ¶¶ 20, 35-36.)

3 Plaintiff believes this case is suitable for certification as there are company-wide policies
4 that he contends violate California wage and hour law and uniformly affect the Class Members.
5 Defendant's counterarguments, however, raise uncertainties as to both class certification and
6 success on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court*
7 (2004) 34 Cal.4th 319 (2004), class certification is always a matter of the trial court's sound
8 discretion, and decisions following *Sav-On* have reached different conclusions with respect to
9 certification of wage and hour claims.⁸ While remaining confident in the strengths of their claims,
10 all of these factors led Plaintiff to discount their claims. (Ardestani Decl., ¶ 37.)

11 **1. The Settlement Amount is Reasonable Based on Plaintiff's Evaluation of**
12 **the Claims and Defenses**

13 Defendant provided Plaintiff with class-wide data from which Plaintiff's Counsel could
14 extrapolate a damage analysis in preparation of mediation. Prior to mediation, there was an
15 estimated total of 1,108 Class Members who worked approximately 98,820 work weeks in the Class
16 Period, and 653 Aggrieved Employees and 25,287 PAGA Pay Periods within the PAGA Period.
17 (Agreement, § 4.1; Ardestani Decl., ¶ 38.)

18 First, Plaintiff contends Defendant failed to provide legally compliant meal and rest breaks,
19 and he contends SFS's written policies did not comply with California law on their face for at least part
20 of the Class Period. For example, Plaintiff argued the policies didn't specify that meal periods must be
21 taken before the end of the fifth hour of work and restricting employees from leaving the premises during
22 a lunch break or rest break. Plaintiff also contends employees were required to carry two-way radios and
23 respond to calls during their meal and rest periods. Beyond these infirm policies, Plaintiff's review of
24 the time records produced suggests significant "de facto" meal period violations, with around 35% of
25 all shifts reflecting at least one unique violation, mainly due to being missed or late. Additionally,
26 Plaintiff claims this violates Labor Code sections 512, 226.7, and the applicable IWC Wage Orders,

27 ⁸ E.g., *Walsh v. IKON Solutions, Inc.*, (2006) 148 Cal.App.4th 1440 (affirming decertification of class claiming
28 misclassification); *Aguilar v. Cintas Corp. No. 2*, (2006) 144 Cal.App.4th 121 (2006) (reversing denial of certification);
Dunbar v. Albertson's Inc. (2005) 141 Cal.App.4th 1422 (2006).

1 as well as *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 and *Augustus v. ABM*
2 *Security Serv., Inc.* (2016) 2 Cal.5th 257 for failure to provide all required meal periods, and within
3 the required time frames, and for failing to relinquish control over how Class Members utilize their
4 meal and rest period times. (Ardestani Decl., ¶ 39.)

5 Defendant denies Plaintiff's contentions, claiming it made meal and rest breaks available to
6 Class Members in compliance with California law. Defendant contends its meal and rest break
7 policies are lawful and that its policies and practices comport with the flexibility the *Brinker* court
8 held was integral to California's meal and rest period requirements. Per SFS, Class Members were
9 frequently reminded to take all meal and rest breaks, and Defendant contends its time records
10 demonstrate that Class Members took duty-free, timely meal and rest breaks. SFS further
11 emphasized it paid millions in meal period premiums for documented violations. Finally, Defendant
12 argues that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims
13 would require individualized inquiry, including whether there was an unlawful companywide
14 policy, whether employees had the opportunity to take meal and rest periods, whether they
15 voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them
16 from taking meal and rest periods. Accordingly, Defendant contends these claims are vulnerable to
17 a ruling that class treatment is not appropriate. (Ardestani Decl., ¶ 40.) Without taking into
18 consideration any of Defendant's defenses to certification or on the merits, Plaintiff and his experts
19 estimate SFS faces **\$2,117,000** in damages for meal period violations based on a 100% violation
20 rate less premiums actually paid, and **\$10,051,000** in damages under on the rest period claims, also
21 based on a 100% violation rate. (Ardestani Decl., ¶ 41.)

22 Plaintiff further contends Defendant failed to pay all minimum wages due, and alleges
23 employees were uncompensated for working off-the-clock. Plaintiff claims he and the Class
24 Members were required to continue working after clocking out to complete unfinished tasks, and he
25 further alleges Defendant applied a rounding policy to employee time punches that favored SFS and
26 resulted in employees losing substantial amounts of compensable time. Based on Plaintiff's own
27 experience, he worked, on average, one hour off-the-clock per workweek and was required by his
28 supervisors to continue finishing job tasks after clocking out for his workday. This time was

1 certainly not “de minimis” and was also not compensated by Defendant. Based on expert analysis,
2 off-the-clock damages amount to about **\$2,765,000**, assuming one hour of off-the-clock work per
3 shift by each employee during the Class Period. Based on expert analysis of a 5% sampling of time
4 and wage records, rounding occurred during the first part of the Class Period and ended on April
5 10, 2020. During this time frame, employee clock in punches were rounded to the quarter hour
6 which resulted in underpayment of significant minimum wages. Per Plaintiff’s experts, the rounding
7 policy resulted in the loss of about 1,800 hours in compensable time and underpayment of wages by
8 about **\$48,000**. (Ardestani Decl., ¶ 42.)

9 SFS employees also worked substantial overtime hours throughout the Class Period but were
10 only paid overtime pay when they worked over forty hours per workweek, as Plaintiff contends SFS
11 failed to pay daily overtime when a Class Member worked over eight hours in one workday. Labor
12 Code section 510 provides that any work in excess of eight hours in one workday **and** any work in excess
13 of 40 hours in any one workweek shall be compensated at the rate of no less than one and one-half times
14 the regular rate of pay for an employee. Based on the sampling provided to Plaintiff’s expert, 10.2% of
15 pay periods showed unpaid daily overtime, resulting in the loss of about **\$80,000** in overtime premiums
16 to the Class. (Ardestani Decl., ¶ 43.)

17 SFS denied all of these allegations and contended in properly tracked and paid for all
18 compensable employee hours worked at the correct rates, and that its policies prohibited off the
19 clock work. It further emphasized time rounding policies and/or procedures are permissible under
20 California law if they are “fair and neutral” on their face and “used in such a manner that will not result,
21 over a period of time, in failure to compensate the employees properly for all the time they have actually
22 worked,” *Sees Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, and any time rounding
23 complied with this mandated. Finally, Defendant argued the off the clock claims are not susceptible
24 to common proof, as the claims would require individualized inquiry as to whether any employee
25 was asked to work off the clock and whether the company was aware of any such work. Accordingly,
26 Defendant contends these claims are not appropriate for class treatment. (Ardestani Decl., ¶ 44.)

27 On the expense reimbursement claims, Plaintiff claims Defendant failed to reimburse for use
28 of their personal cell phones for work purposes, and also failed to reimburse for certain tools needed

1 to perform the job. *Cochran v. Schwan's Home Serv.* (2014) 228 Cal.App.4th 1137, 1144. In
2 response, SFS contended there was no need for employee's to use their personal phones, and any
3 use of their own phones was purely for personal convenience and not compensable. It likewise
4 contended it provided employees with all equipment required to perform their duties. Without taking
5 into consideration any of Defendant's defenses to certification or on the merits, Plaintiff's experts
6 calculated Defendant's maximum exposure for this claim at about **\$490,000** in damages based on
7 \$20/month in unreimbursed expenses. (Ardestani Decl., ¶ 46.)

8 On the wage statement claim, Plaintiff alleges SFS's wage statements were inaccurate based
9 on the minimum wage/overtime issues discussed above, and also that the wage statements were
10 inaccurate on their face because they failed to correctly state the total hours worked and failed to
11 accurately list the applicable hourly rates of pay. Specifically, Defendant's wage statements do not
12 provide accurate overtime rates and accurate overtime hours because instead of multiplying the regular
13 rate of pay by one and one-half, Defendant's wage statements provide two overtime rate categories (an
14 "overtime" and "overtime premium" category). As such, "the total regular and overtime hours listed in
15 [Defendant's] wage statements, when added together, do not sum up the total hours worked by the
16 employee during the pertinent time period. Without additional information regarding the wage
17 statement, an employee cannot simply arrive at the sum of hours worked." *McKenzie v. Fed. Express*
18 *Corp.* (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1229. Plaintiff also derivatively alleges SFS failed to
19 timely pay all wages that were due and owing upon separation of employment. Should the primary
20 claims for unpaid wages fail, Plaintiff's derivative claims for wage statement penalties and waiting
21 time penalties would also fail. Defendant also contends it would not be liable for waiting time
22 penalties because a "good faith dispute" exists over the payment of past wages. Cal. Code Regs. Tit.
23 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant
24 contends Plaintiff would have to prove that Defendant "willfully" failed to pay Class Members
25 appropriate wages due upon separation of employment. Without taking into consideration any of
26 Defendant's defenses to certification or on the merits, Plaintiff's experts calculated Defendant's
27 maximum exposure for wage statement penalties at **\$2,203,000** and based on 673 employees and
28

1 20,567 pay periods in the applicable limitations period. Based on 617 separated employees during
2 the limitations period, waiting time penalties amount to about **\$3,386,000**. (Ardestani Decl., ¶ 46.)

3 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$8.7 million
4 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at
5 issue. (Ardestani Decl., ¶ 47.) As with the class claims, Plaintiff discounted the potential PAGA
6 penalties based on Defendant's various defenses on the merits and also accounted for the Court's
7 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
8 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties
9 of \$5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage*
10 *and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied
11 after trial). Accordingly, the Parties allocated \$100,000 to PAGA penalties. (Agreement, § 3.2.5.)

12 Plaintiff submits this amount is reasonable under the circumstances and in line with
13 comparable settlements in other wage and hour class actions in California. *E.g.*, *Van Kempen v.*
14 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
15 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
16 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
17 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
18 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
19 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
20 and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D. Cal. Oct. 3, 2018)
21 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
22 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
23 objected to the settlement").

24 Lastly, SFS emphasized that around 80-85% of the putative class members signed arbitration
25 agreements with both class action and PAGA waivers and accordingly these individuals could be
26 required to arbitrate their claims individually rather than participate in a class action. This
27 development further complicated an already difficult path to class certification and, although
28 Plaintiff believes that are arguments for deeming the arbitrating agreements unconscionable and

1 unenforceable, this factor nevertheless significantly influenced Plaintiff's evaluation of the case.
2 (Ardestani Decl., ¶ 48.)

3 Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the
4 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
5 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
6 real and substantial risks – settlement on the proposed terms and without prolonged and costly
7 litigation was in the best interests of the class. The overall \$1,185,840 recovery represents a
8 significant percentage of Defendant's potential exposure, and given Defendant's multi-layered
9 defenses and all other potential risks of continued litigation, a total recovery for the class of
10 \$1,185,840, which will result in average award of some \$590 per class member, plus additional
11 sums under PAGA, is a significant result well within the range of reasonableness considering all
12 potential outcomes, and it will provide direct monetary awards to all Class Members without further
13 delay. (Ardestani Decl., ¶ 49.)

14 Importantly, the mere fact that a settlement does not provide the same recovery as might be
15 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
16 Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
17 process...even if the relief afforded by the proposed settlement is substantially narrower than it
18 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
19 public interest may indeed be served by a voluntary settlement in which each side gives ground in
20 the interest of avoiding litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*
21 (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a
22 fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is
23 grossly inadequate and should be disapproved"); *White v. Experian Information Solutions, Inc.*
24 (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and
25 reasonable even though it represented 99% discount off the maximum value of the claims); Lane v.
26 Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is
27 fundamentally fair . . . is different from the question whether the settlement is perfect in the
28 estimation of the reviewing court"). Importantly as well, the proposed settlement is non-

1 reversionary and will provide immediate benefits to the Class Members without a claims process.
2 *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal Judicial Center, *Managing Class Action Litigation: A*
3 *Pocket Guide for Judges* (3d ed. 2010) at 20, available at
4 <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf>. (reversionary provisions and/or
5 cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the
6 settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

7 **F. Provisional Class Certification Should be Granted**

8 A class action is appropriate when the class is ascertainable and there is “a well-defined
9 community of interest in the questions of law and fact involved affecting the parties to be
10 represented.” Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule
11 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class
12 representatives’ claims, adequacy of representation, predominance of common issues, and
13 superiority. Fed.R.Civ.Proc. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
14 1019. While a court must certify a class for settlement purposes if a class has not already been
15 certified, “it is well established that trial courts should use different standards to determine the
16 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
17 standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court*
18 (2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v. Apple*
19 *Computer* (2001) 91 Cal.App.4th 224, 237-38.

20 **1. The Proposed Class is Sufficiently Numerous and Ascertainable**

21 First, the class is both sufficiently numerous, consisting of approximately 1,108 individuals,
22 and ascertainable by reference to Defendant’s personnel and payroll records. (Ardestani Decl., ¶
23 50.) “There is no set number required to maintain a class action, and the statutory test is whether a
24 class is so numerous that ‘it is impracticable to bring them all before the court.’” *Hebbard v.*
25 *Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the
26 numerosity prerequisite, but that a class of as few as 28 is acceptable); *Rose v. City of Hayward*
27 (1981) 126 Cal. App. 3d 926, 932 (finding that “Class Members are ‘ascertainable’ where they may
28

1 be readily identified without unreasonable expense or time by reference to official records.”).

2 **2. The Typicality and Adequacy Requirements Are Met**

3 The typicality requirement is met if the claims of the named representative are typical of
4 those of the Class, though, “they need not be substantially identical.” *Classen v. Weller* (1983) 145
5 Cal.App.3d 27, 46-47. Here, Plaintiff contends his claims are typical of the Class Members’ claims
6 because they arise from the same factual basis and are based on the same legal theories applicable
7 to the Class Members. Plaintiff further contends Defendant’s policies applied to all Class Members
8 and each Class Member is challenging the same policies and practices. As such, the typicality
9 requirement is satisfied for purposes of settlement. (Herrera Decl., ¶¶ 3-5; Ardestani Decl. ¶ 51.)

10 Adequacy requires that the Plaintiff have no interests adverse to the interests of the proposed
11 Class Members and be committed to vigorously prosecuting the case on behalf of the Class. *McGhee*
12 *v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will continue to be
13 committed to vigorously prosecuting this case, and he has no conflicts of interest with the Class.
14 (Herrera Decl., ¶¶ 3-7; Ardestani Decl., ¶ 51.)

15 **3. The Commonality Requirement is Met**

16 Next, common questions of law and fact predominate – particularly for purposes of a
17 settlement class – as the Class Members all were subject to the same meal and rest break policies
18 and alleged “de facto” policies resulting in meal period violations, and similarly subject to the same
19 improper “off the clock” work policies. Since the focus of the claims against Defendant concerns
20 the legality of common policies applied uniformly to the entire class, common issues predominate
21 over individualized inquiries concerning liability. For instance, Defendant’s meal and rest break
22 policy is company-wide policy applied equally and consistently to all class members, and this policy
23 is either compliant with California law or it is not. Regardless of that determination, it will decide
24 liability for all class members one way or another. Similarly, whether the class members lost pay
25 due to time rounding is another question common to all class members. [Ardestani Decl., ¶ 52.]

26 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
27 violating California law is sufficient to satisfy the requirements for class certification. *Jones v.*
28 *Farmers Ins. Exch.* (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy

1 consistently applied to a group of employees is in violation of the wage and hour laws are of the
2 sort routinely, and properly, found suitable for class treatment”); *Williams v. Superior Court* (2013)
3 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact or law
4 that supports commonality for class certification”). Lastly, a class action is superior to other means
5 for the fair and efficient adjudication of this controversy. [Ardestani Decl., ¶ 53.]

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

7 The Parties agreed to use CPT Group, Inc. as the Settlement Administrator in this matter.
8 (Agreement, § 7.1.) CPT is highly qualified and experienced as a settlement administrator,
9 committed to the security of data, carries insurance for the theft of money or data, and has no
10 relationship with any Counsel or Party. (Declaration of Julie Green, ¶¶ ____; Exhs. A-B; Ardestani
11 Decl., ¶ 54.)

12 **VI. CONCLUSION**

13 Plaintiff respectfully submits the proposed settlement is in the best interests of the Class
14 Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court certify the
15 class for settlement purposes, appoint Plaintiff as the Class Representative, appoint Plaintiff’s
16 Counsel Crosner Legal, P.C. as Class Counsel, appoint CPT Group, Inc. as the Settlement
17 Administrator, approve the method of notice and the Notice to be sent to the Class, preliminarily
18 approve the Settlement Agreement, enter the proposed order filed herewith, and set a Final Approval
19 hearing date.

20
21 Dated: July 17, 2023

CROSNER LEGAL, PC

22
23 By: 
24 Zachary M. Crosner, Esq.
25 Jamie K. Serb, Esq.
26 Sepideh Ardestani, Esq.
27 Attorneys for Plaintiff,
28 DENNIS HERRERA