

JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
SEPIDEH ARDESTANI, ESQ. (SBN 274259)
sepideh@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff VINCE BURKLUND
on behalf of himself, the State of California, and others similarly
situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

VINCE BURKLUND on behalf of himself,
the State of California, and others similarly
situated and aggrieved,

Plaintiff,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT, a California public school
district; and DOES 1-100, inclusive,

Defendants.

Case No.: 30-2022-01260573-CU-OE-CXC

Assigned for All Purposes to:
Hon. Melissa R. McCormick
Dept. CX-104

**AMENDED MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION, COLLECTIVE ACTION,
AND PAGA SETTLEMENT**

Date: June 21, 2024
Time: 2:00 p.m.
Dept.: CX-104

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL BACKGROUND AND PROCEDURAL POSTURE	1
III.	THE PROPOSED SETTLEMENT TERMS.....	4
A.	Certification of the Settlement Class.....	4
B.	The Benefit Conferred on the Settlement Class	4
C.	Settlement Administration.....	5
D.	The Class Notice	5
E.	Right to Correct Information, Opt Out, or Object.....	6
F.	Release of Claims.....	6
G.	Plaintiff’s Enhancement	7
H.	Attorney’s Fees and Costs.....	8
I.	PAGA Claims and Notice to the LWDA	8
IV.	ARGUMENT	8
A.	Standard of Review for a Class Action Settlement.....	8
B.	The Proposed Settlement Class Should Be Conditionally Certified	9
C.	The Settlement is a Fair and Reasonable Settlement of a Bona Fide Dispute	11
D.	The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness.....	11
V.	CONCLUSION	16

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135.....	15
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504.....	13
<u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	8
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	8, 9
<u>Fleming v. Covidien</u> (C.D. Cal. 2011) 2011 U.S.	13
<u>Global Minerals & Metals Corp. v. Superior Court</u> (2003) 113 Cal.App.4th 836.....	9
<u>Haralson v. U.S. Aviation Servs. Corp.</u> (N.D. Cal. 2019) 383 F.Supp.3d 959	14
<u>Jennings v. Open Door Mktg. Inc.</u> (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	14
<u>Jones v. Farmers Ins. Exch.</u> (2013) 221 Cal.App.4th 986.....	10
<u>Jordan v NCI Grp., Inc.</u> (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297	14
<u>Kullar v. Foot Locker Retail, Inc.</u> (2008) 168 Cal.App.4th 116.....	11, 12
<u>Lane v. Facebook, Inc.</u> (9th Cir. 2012) 696 F.3d 811	15
<u>Lazarin v. Pro Unlimited, Inc.</u> (N.D. Cal. July 11, 2013) No. C11-03609 HRL, 2013 WL 3541217	6
<u>Lynn's Food Stores v. Unites States</u> (11th Cir. 1982) 679 F.2d 1350.....	11
<u>North County Contractors Ass'n, Inc. v. Touchstone Ins. Servs.</u> (1994) 27 Cal.App.4th 1085.....	9

1	<u>Potter v. Pacific Coast Lumber Co.</u>	
2	(1951) 37 Cal.2d 592.....	8
3	<u>Rodriguez v. W Publ'g Corp.</u>	
4	(9th Cir. 2009) 563 F.3d 948.....	7
5	<u>Slavkov v. First Water Heater Partners I</u>	
6	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	14
7	<u>Staton v. Boeing</u>	
8	(9th Cir. 2003) 327 F.3d 938.....	7
9	<u>In re Taco Bell Wage and Hour Actions</u>	
10	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	13
11	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
12	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	13
13	<u>Wershba v. Apple Computer</u>	
14	(2001) 91 Cal.App.4th 224.....	8, 9, 15
15	<u>White v. Experian Information Solutions, Inc.</u>	
16	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	15
17	<u>White v. Starbucks Corp.</u>	
18	(N.D. Cal. 2007) 497 F.Supp.2d 1080	12
19	<u>Williams v. Superior Court</u>	
20	(2013) 221 Cal.App.4th 1353.....	10

1 **Statutes**

2 Code of Civil Procedure section 382..... 10

3 Labor Code § 2699(e)(2)..... 13

4 Labor Code section 2699(l)(2) 8

5 Cal. Rule of Court. 3.769 8

6 Cal. Rule of Court 3.769(c)..... 9

7 Cal. Rules of Court 3.766(d) 6

8 Cal. Rules of Court 3.769(f)..... 6

9 **Other Authorities**

10 Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010),

11 available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf 15

12 4 Newberg on Class Actions (4th ed. 2002) § 11.41..... 8

1 **I. INTRODUCTION**

2 Plaintiff Vince Burklund hereby moves the Court for an order granting preliminary
3 approval to a proposed non-reversionary class action settlement to resolve wage and hour claims
4 on behalf of 3,960 individuals employed by Defendant Garden Grove Unified School District
5 (“GGUSD” or “Defendant”) as non-exempt employees in California during the period of May 5,
6 2019 through August 16, 2023. The proposed \$780,000 settlement will provide approximately
7 \$403,000 in cash payments to the class, with an average award estimated at about \$102. The
8 balance of approximately \$377,000 will cover reasonable attorney’s fees and actual litigation
9 costs, settlement administration costs, an enhancement award to the named plaintiff, and payment
10 of civil penalties to the State. The settlement is the product of Plaintiff’s pre-filing investigation,
11 formal discovery and a pre-mediation exchange of information, and arms-length negotiations
12 overseen by experienced mediator Tripper Ortman, Esq.

13 The proposed settlement is within the “range of reasonableness” for approval and
14 Plaintiff’s counsel believes the settlement is a fair result for the class given the substantial risks
15 inherent in this matter. Accordingly, Plaintiff requests the Court enter an order: (1) granting
16 preliminary approval to the proposed class action settlement; (2) conditionally certifying the
17 settlement class as defined below; (3) appointing Zachary M. Crosner, Jamie Serb, and Sepideh
18 Ardestani, and Crosner Legal, P.C. as Class Counsel; (4) appointing Plaintiff Vince Burklund as
19 the Class Representative; (5) appointing Phoenix Settlement Administrators as the Settlement
20 Administrator; (6) approving the form of notice to the class and the notice procedure; and (7)
21 scheduling a final fairness hearing.

22 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

23 Defendant GGUSD operates 68 schools in Garden Grove, California and six surrounding
24 cities - Anaheim, Cypress, Fountain Valley, Santa Ana, Stanton, and Westminster. With nearly
25 40,000 students Defendant is the third largest school district in Orange County. Plaintiff Vince
26 Burklund has been employed by GGUSD as a maintenance worker since 2015, although he has
27
28

1 been out on workers compensation/disability leave since 2021. [Declaration of Sepideh Ardestani
2 (“Ardestani Decl., ¶ 4.)]

3 Plaintiff alleges GGUSD failed to pay the class at least the applicable minimum wage for
4 all hours worked. First, he claims that he and class members were not paid for all hours worked
5 because GGUSD paid employees based on their schedule rather than actual hours worked. In this
6 regard, non-exempt employees did not punch in/out or track their time in any way, nor did they
7 clock in/out for meal periods. Instead, GGUSD simply paid the class members for 8 hours for
8 each day they worked and, in fact, Defendant actually tracked days absent and backed out 8 hours
9 of pay, rather than keeping accurate time records and paying employees accordingly. Importantly,
10 per Plaintiff, he and other class members regularly worked “off the clock” after the scheduled end
11 of a shift for up to 30 extra minutes, as supervisors required them to continue working until all
12 outstanding work was complete. None of this post-shift work was tracked or paid for, resulting in
13 the alleged underpayment of minimum wages. Plaintiff also alleges GGUSD employees typically
14 did not punch out for the meal periods as required under the Labor Code and Wage Order but
15 GGUSD nevertheless “auto deducted” 30 minutes of time regardless of whether the meal break
16 actually was taken or lasted a full 30 minutes. Plaintiff also contends meal periods essentially were
17 “on duty,” as per GGUSD policy he and other class members had to remain with their vehicles
18 and equipment at all times and accordingly were not fully relieved of all duties while on a meal
19 period. [Ardestani Decl., ¶ 5.]

20 Based on these allegations, on May 5, 2022, Plaintiff filed a class action complaint,
21 followed by an amended complaint that alleged claims for (1) unpaid minimum wages, (2)
22 liquidated damages, and (3) Unfair Competition. Plaintiff’s complaint also alleges a collective
23 action claim under the Fair Labor Standards Act, 29 U.S.C. sections 201, *et seq.*, based on
24 Defendant’s alleged violations of the FLSA for failure to pay all minimum wages. On June 7,
25 2022, Defendant removed the class action to the United States District Court for the Central
26 District of California based on federal question jurisdiction. After exhausting his administrative
27 remedies,¹ on May 17, 2022, Plaintiff commenced this action by filing a separate complaint under

28 ¹ Plaintiff’s March 10, 2022 PAGA notice letter is attached to the Ardestani Declaration as Exhibit 2.

1 PAGA seeking civil penalties for Defendant’s alleged minimum wage violations. [Ardestani
2 Decl., ¶ 6; Exh. 2.]

3 GGUSD has at all times denied Plaintiff’s allegations in both matters and maintained its
4 payroll policies and procedures comply with California and federal law, that it accurately tracked
5 hours worked and paid the class members all wages due, and that its compensation policies
6 properly compensate the class members for all hours worked. Defendant also strongly contends
7 the case cannot be maintained as any kind of class or representative action, arguing determining
8 the number of potential off the clock hours worked by each class member, and the reasons any
9 such work was performed, would result in individualized issues predominating and that a trial on a
10 representative basis would be unmanageable. [Ardestani Decl., ¶ 7.]

11 Once both cases were at issue, the Parties initiated written discovery, and began working
12 on a Belaire West notice to the putative class members. GGUSD also filed a motion seeking to
13 stay this matter pending resolution of the class/collective action in federal court. Ultimately, after
14 meet and confer discussions about pending discovery and law and motion issues, as well as the
15 merits of the case, the Parties agreed to a global mediation in both cases. The Parties also agreed
16 on a protocol for an exchange of additional documents and information before the mediation.
17 Consequently, Plaintiff’s counsel reviewed payroll records, personnel policies/handbooks,
18 personnel files, and a random of sampling paystubs and time records for about 20% of the class.
19 Plaintiff had those records analyzed by Berger Consulting Group to look for, inter alia, violation
20 rates and potential damages for the alleged off the clock work. [Ardestani Decl., ¶ 8.]

21 The Parties then engaged Tripper Ortman, Esq., a highly respected mediator with
22 substantial wage and hour and class action experience, and on May 16, 2023, participated in a full
23 day mediation with Mr. Ortman. Throughout the day, the arms-length negotiations were hard-
24 fought and adversarial as the Parties exchanged extensive information on their legal and factual
25 positions, and made numerous offers and counter-offers. By the end of the day the Parties reached
26 agreement on all major issues. They then collaboratively drafted the Class Action, Collective
27 Action, and PAGA Settlement Agreement and Class Notice (“Settlement Agreement”) setting
28 forth the full and final settlement terms now before the Court for approval, and a true and correct

1 copy of the Settlement Agreement is attached to the Ardestani Declaration as Exhibit 1.

2 Furthermore, in order to efficiently seek settlement approval before a single court, the Parties
3 stipulated to the filing of a Third Amended Complaint in this matter adding class and collective
4 claims consistent with those alleged in the federal action. Plaintiff filed his TAC on August 25,
5 2023, and it is the operative pleading for purposes of settlement. [Ardestani Decl., ¶ 9.]

6 **III. THE PROPOSED SETTLEMENT TERMS**

7 Under the settlement, GGUSD will pay \$780,000 into a common fund, the Gross Settlement
8 Amount (“GSA”). Attorney’s fees of up to \$260,000 (1/3 of the GSA), litigation costs of up to
9 \$29,000, settlement administration costs of no more than \$28,000, a service award to Plaintiff of no
10 more than \$10,000, and \$50,000 for alleged civil penalties under PAGA,² all will be paid from the
11 GSA. The remainder of around \$403,000 will be allocated pro rata among the Class Members based
12 on their total weeks worked during the Class Period. No portion of the GSA will revert to GGUSD.
13 [Ardestani Decl., ¶ 10.]

14 **A. Certification of the Settlement Class**

15 The settlement provides for conditional certification of a settlement class including all
16 individuals employed by GGUSD as a non-exempt employee in the State of California during the Class
17 Period from May 5, 2019 through August 16, 2023. The Settlement Class consists of approximately
18 3,960 individuals. [Ardestani Decl., ¶ 11.]

19 **B. The Benefit Conferred on the Settlement Class**

20 As noted, the settlement obligates GGUSD to pay \$780,000 to resolve the claims of the
21 Settlement, inclusive of attorney’s fees and costs. A minimum of approximately \$403,000 from the
22 GSA will be distributed to the Participating Class Members. This is a cash settlement that does not
23 require Participating Class Members to submit a claim form to receive their settlement share.
24 Participating Class Members will receive their settlement checks automatically via First Class U.S.
25 Mail. Twenty percent (20%) of each settlement share will be allocated to wages and the remaining
26 eighty percent (80%) will be designated as penalties and interest, which allocation is consistent with

27 ² Per PAGA, this will be allocated \$37,500 (75%) to the Labor & Workforce Development Agency, and the
28 remaining \$12,500 (25%) will go to the eligible Aggrieved Employee (as defined in the Settlement Agreement).

1 GGUSD's potential liability as discussed below. GGUSD will pay any and all applicable employer-
2 side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any
3 amounts not claimed (because a class member does not cash a settlement check) will be forwarded
4 to the State Controller's Unclaimed Property Fund. [Ardestani Decl., ¶ 12.]

5 Each participating Class Member will receive a share of the Net Settlement Amount based
6 on his or her total weeks worked for GGUSD during the Class Period while employed in a non-
7 exempt position. Thus, each individual Settlement Payment will be calculated using criteria
8 typically used in determining appropriate amounts of unpaid wages under applicable law. These
9 methods will ensure each Class Member receives a portion of the settlement funds relative to the
10 value of their potential claims. The proposed allocation provides a reasonable way to compensate
11 Class Members based on the amount of time they worked for GGUSD and the potential hours
12 worked that were lost due to off the clock work. The average gross award is estimated to be
13 approximately \$102, and the awards will range from approximately about \$1 for class members with
14 one work week to about \$171 to a class member employed for the entire class period. The average
15 PAGA award will be about \$3.65. [Ardestani Decl., ¶ 13.]

16 As discussed below, the overall settlement amount is reasonable in light of the considerable
17 risks associated with Plaintiff's claims, and the delay and risk posed by continuing to litigate such
18 disputed allegations. In counsel's judgment, the total value recovered for the class is substantial and
19 within the range of reasonableness. The Settlement is a fair and reasonable resolution of a bona fide
20 dispute.

21 **C. Settlement Administration**

22 Subject to Court approval, the Parties have agreed on Phoenix Settlement Administrators as
23 the Settlement Administrator. Phoenix is qualified and has significant experience administering
24 class action settlements, including numerous wage and hour matters. Phoenix's fees and costs will
25 not exceed \$28,000.00. [Ardestani Decl., ¶ 14; Declaration of Jodey Lawrence, ¶¶ 2-16.]

26 **D. The Class Notice**

27 The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement)
28 sets out information about this case and explains the basic settlement terms in plain language. The

1 Notice also sets forth the individualized information used to calculate Class Members' Individual
2 Settlement Payments and each Class Member's estimated settlement award. The Notice likewise
3 details the procedures for Class Members to dispute their individual information, the procedure for
4 submitting an objection to the Settlement, the procedure to request exclusion, and the fact that any
5 final judgment will bind all class members who do not opt out. Cal. Rules of Court 3.769(f) and
6 3.766(d). In sum, the Notice provides the Class Members with the information necessary to
7 evaluate the Settlement and decide to participate in, opt out of, or object, and meets all
8 requirements imposed by the California Rules of Court. Coupled with the notice procedure, the
9 Notice provides the best notice practicable. [Ardestani Decl., ¶ 15.]

10 **E. Right to Correct Information, Opt Out, or Object**

11 Class Members will have sixty (60) days to dispute the information in their Notice used to
12 calculate their settlement award, and also have 60 days to submit any objections to the settlement
13 or to request exclusion. If a Class Member disputes their individual information, the Settlement
14 Administrator will review the Class Member's records and any other information submitted, and
15 make a final determination. [Ardestani Decl., ¶ 16.]

16 **F. Release of Claims**

17 All Participating Class Members will release GGUSD from all claims alleged in the
18 operative complaint, or that could have been brought based on the factual allegations in the
19 operative complaint, including FLSA and PAGA claims, during the Class Period. The class and
20 PAGA releases are limited to the claims that were actually pleaded or could have been pleaded
21 based on the alleged facts in the operative complaint. [Ardestani Decl., ¶ 17.]

22 For the release of FLSA claims, the release language appears in Paragraph 5.3 of the
23 Settlement. Upon final approval by the Court of this settlement, the Final Settlement Class
24 Members will fully release and discharge Defendant from claims "as alleged in the Complaint or
25 that could have been asserted ... based on the facts alleged, arising from or related to" the claims
26 asserted in the operative complaint. (----.) The release of FLSA claims is limited to class members
27 who negotiate and cash their settlement checks. Lazarin v. Pro Unlimited, Inc. (N.D. Cal. July 11,
28

1 2013) No. C11-03609 HRL, 2013 WL 3541217, at *3 (cashing of settlement checks recognized as
2 a means of affirmatively opting in to the FLSA action).

3 The Parties agree that the cashing, depositing, or otherwise negotiating of Settlement
4 Checks by Settlement Class members shall be deemed an opt-in to an FLSA collective action, the
5 settlement of which includes the FLSA releases specified in Paragraph 5.3 of the Settlement
6 Agreement. Each Settlement Class member's check will include the following language, or words
7 to that effect, immediately above the endorsement signature line:

8 This check is your settlement payment in connection with the court-approved class
9 action settlement in Burklund v. Garden Grove Unified School Dist. (OCSC Case
10 No. 30-2022-01260573-CU-OE-CXC). By not opting out/excluding yourself from
11 the Settlement, you have released Garden Grove Unified School District and other
12 Releasees of claims under California law as defined in the Settlement Agreement.
By signing or cashing this check, you are consenting to join the collective action
and affirm your release of claims under the Fair Labor Standards Act against
Releasees.

13 **G. Plaintiff's Enhancement**

14 A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v.
15 Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
16 and incentive payments ranging from \$2,000 to \$25,000). He devoted time and resources to the
17 litigation, provided documents, assisted Class Counsel with investigating the claims asserted and
18 in preparing for mediation. The service payment provided to Plaintiff as the class representative is
19 typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d
20 948, 958-59 (incentive awards are “intended to compensate class representatives for work done on
21 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
22 and, sometimes, to recognize their willingness to act as a private attorney general.”).

23 Here, the Settlement Agreement provides for (a) an enhancement of up to \$10,000.00 to
24 Plaintiff. This request is reasonable given the risks he undertook on behalf of the Class Members.
25 By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement
26 possible for the absent Class Members, while shouldering the risk of being liable for Defendant's
27 litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public
28 lawsuit (discoverable even through a simple google search) for the benefit of other employees,

1 placing himself at risk of discrimination by future prospective employers. Among taking many
2 other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual
3 information and documents to counsel, attended numerous meetings/phone conferences with
4 counsel to discuss the case, and kept abreast of all significant developments. He will provide the
5 Court with a detailed declaration for the Final Approval Hearing. [Ardestani Decl., ¶ 18.]

6 **H. Attorney's Fees and Costs**

7 The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of
8 attorney's fees of up to 1/3 of the GSA, or \$260,000.00, and reimbursement of actual costs and
9 expenses of up to \$29,000.00. In advance of the Final Approval Hearing, Plaintiff's counsel will
10 submit a request for attorney's fees and actual litigation costs per the terms of the Settlement
11 Agreement and applicable law, and will provide the Court with appropriate information and
12 evidence regarding hourly rates, tasks performed, and time expended on the case. [Ardestani
13 Decl., ¶ 19.]

14 **I. PAGA Claims and Notice to the LWDA**

15 The Parties allocated \$50,000 of the GSA to payment of civil penalties under PAGA, as
16 addressed below. Per Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and the
17 approval hearing to the LWDA via its online portal, and served this motion on the LWDA.
18 [Ardestani Decl., ¶ 20; Exh. 3.]

19 **IV. ARGUMENT**

20 **A. Standard of Review for a Class Action Settlement**

21 The law favors settlement, particularly in class actions where substantial resources can be
22 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
23 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992)
24 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37
25 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
26 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
27 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
28 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures

1 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via
2 a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
3 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

4 The first step is a motion for preliminary approval, through which the parties present the
5 court with the proposed settlement and seek a determination that it is sufficiently fair and reasonable
6 to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of
7 Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the
8 “range of reasonableness” and if notice should be provided to the class regarding the settlement’s
9 proposed terms and conditions, and whether a final fairness hearing should be scheduled. Wershba,
10 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs. (1994)
11 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class
12 actions, courts apply a presumption of fairness to class action settlements when (1) the settlement
13 results from arms-length bargaining, (2) investigation and discovery are sufficient to allow counsel
14 and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the
15 percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

16 If the court grants preliminary approval, it then orders the class be given notice in an
17 appropriate manner, establishes a schedule and procedures for class members to request exclusion
18 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s fees
19 and costs is filed subsequent to preliminary approval and heard with the motion for final approval,
20 as part of the second step of the two-step approval process. Dunk, 48 Cal.App.4th at 1800; Wershba,
21 91 Cal.App.4th at 232. The proposed settlement in this matter warrants preliminary approval under
22 the liberal standard discussed above, as it is fair, reasonable and adequate under all the
23 circumstances, and represents a favorable result for the class.

24 **B. The Proposed Settlement Class Should Be Conditionally Certified**

25 The purpose of conditional class certification for purposes of settlement is to facilitate
26 provision of notice of the proposed settlement’s terms, and the date and time of the final fairness
27 hearing. In this context, courts apply lesser scrutiny than they would otherwise in the context of
28 certifying a class. Dunk, 48 Cal.App.4th at 1807, n.19; Global Minerals & Metals Corp. v.

1 Superior Court (2003) 113 Cal.App.4th 836, 839 (“[I]t is well established that trial courts should
2 use different standards to determine the propriety of a settlement class.”)

3 In the present matter, conditional certification is proper since this matter satisfies all
4 requirements for class certification under Code of Civil Procedure section 382. First, the class is
5 both sufficiently numerous, consisting of at least 3,960 individuals, and ascertainable by reference
6 to Defendant’s personnel and payroll records. [Ardestani Decl., ¶ 21.] Next, Plaintiff is an
7 adequate class representative, as his claims do not conflict with and are not antagonistic to the
8 claims of other class members. Further, his claims are typical given he is a member of the class
9 and his claims arise from the same employment practices giving rise to the claims of the other
10 class members. [Ardestani Decl., ¶ 22.] Lastly, his counsel are experienced and adequate class
11 counsel. [Ardestani Decl., ¶¶ 31-36.]

12 Next, common questions of law and fact predominate – particularly for purposes of a
13 settlement class – as the Class Members all were subject to the same payroll scheme and policies
14 that Plaintiff contends violate California labor law. Since the focus of the claims against GGUSD
15 concerns the legality of common policies applied uniformly to the entire class, common issues
16 predominate over individualized inquiries concerning liability. For instance, whether GGUSD
17 “auto-deducted” for meal periods raises a common question that will decide liability for all class
18 members one way or another. Similarly, whether GGUSD had “de facto” policies requiring “off
19 the clock” work raises another common issue, determination of which will help decide liability for
20 all Class Members one way or the other. [Ardestani Decl., ¶ 23.]

21 It is a well-settled a theory of recovery that to assert the existence of a uniform policy
22 violating California law sufficiently satisfies the requirements for class certification. Jones v.
23 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
24 consistently applied to a group of employees is in violation of the wage and hour laws are of the
25 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
26 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
27 or law that supports commonality for class certification”). Lastly, a class action is superior to
28 other means for the fair and efficient adjudication of this controversy. [Ardestani Decl., ¶ 24.]

1 **C. The Settlement is a Fair and Reasonable Settlement of a Bona Fide Dispute**

2 Lynn’s Food Stores v. Unites States (11th Cir. 1982) 679 F.2d 1350, requires a settlement
3 constitute a fair and reasonable resolution of a bona fide dispute over FLSA provisions. “If
4 settlement in... FLSA dispute reflect a reasonable compromise over issues... that are actually in
5 dispute” the court may “approve the settlement in order to promote the policy of encouraging
6 settlement of litigation.” Id. at 1354.

7 This is a FLSA class action suit brought by Plaintiff alleging Defendant failed to pay
8 Plaintiff and the putative class members for all work he and the class members allegedly
9 performed. Specifically, Plaintiff claims he and the class members worked off the clock and
10 during meal periods without being paid for those hours worked. Defendant disputes all of these
11 claims. In response to these allegations, Defendant submitted substantial evidence showing that
12 Plaintiff’s claims are without merit. Contrary to the allegations, Defendant argues it pays for all
13 hours worked and reported by employees. To the extent that any employees perform work outside
14 of their scheduled time and/or in excess of their scheduled time, Defendant uses an extra duty
15 form to report additional hours worked, and absence affidavits to show deviation in hours worked
16 from hours scheduled. Accordingly, had this matter proceeded to trial, Defendant contends it
17 would have prevailed on all of Plaintiff’s claims. As such, the settlement at issue was reached to
18 resolve claims made in a “bona fide” dispute.

19 **D. The Proposed Settlement Meets the Kullar Factors and is within the Range of**
20 **Reasonableness**

21 The proposed settlement resulted from serious, arms-length negotiations facilitated by
22 respected mediator, Tripper Ortman, Esq., who has considerable experience mediating wage and
23 hour class action cases. [Ardestani Decl., ¶ 9.] Plaintiff’s counsel Zachary M. Crosner, Jamie Serb,
24 and Sepideh Ardestani of Crosner Legal, P.C. have years of experience litigating wage and hour
25 class actions. Plaintiff’s counsel are well-qualified to evaluate the risks and benefits of further
26 litigation versus settling the matter. [Ardestani Decl., ¶¶ 31-36.]

27 Next, California law recognizes several factors bearing on the fairness, adequacy, and
28 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168

1 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2)
2 the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further
3 litigation; 4) the risk of maintaining class action status throughout trial; and 5) the experience and
4 views of counsel. Id. Here, the proposed settlement satisfies these requirements.

5 Prior to mediation, the parties engaged in formal and informal discovery to facilitate
6 settlement discussions. Thus, Plaintiff reviewed documents and information regarding GGUSD's
7 payroll practices, a random sampling of pay stubs and time records for sampling of class members,
8 applicable compensation plans, etc., and information from Defendant regarding class size and
9 breakdown, work weeks/pay periods, rates of pay, and other relevant information. Plaintiff then had
10 that information analyzed by a consulting expert to assist in determining potential violation rates
11 and other data used to formulate a damages model. Plaintiff's counsel are confident they obtained
12 sufficient information to understand the law and facts of this case and make an informed decision
13 regarding the proposed settlement. [Ardestani Decl., ¶¶ 8, 25.]

14 Using that data, Plaintiff's experts estimated GGUSD's theoretical maximum exposure
15 approximately \$32,000,000 for the minimum wage claims based on an estimated 2.4 million
16 unpaid hours worked, at a weighted average minimum wage of \$13.29/hour. [Ardestani Decl., ¶
17 26.] Plaintiff and his counsel substantially discounted the value of these claims, however, in light
18 of the multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
19 numerous defenses and vigorously defended against these claims.

20 On the minimum wage issue, Plaintiff claims that he and class members were not paid for
21 all hours worked because GGUSD's de facto policies mandated "off the clock" work after the end
22 of a shift, and he further claims Defendant failed to fully and completely relieve employees of all
23 duties during their meal periods while still "auto-deducting" 30 minutes of time for meal periods.
24 As a result, Plaintiff alleges he and the class members lost compensable hours worked. In
25 response, GGUSD argued its timekeeping and payroll practices comply with California law, that it
26 properly paid all non-exempt employees for all hours worked consistent with both state and
27 federal law, and employees attested to the accuracy of their time and pay. Per GGUSD, any off the
28 clock work the clock was against district policy and done without the District's knowledge. White

1 v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or
2 constructive knowledge of the off the clock work). GGUSD further emphasized that meal periods
3 were completely free of all duties and employer control and accordingly such time was not
4 compensable. Lastly, per GGUSD, individualized inquiries would be required to determine the
5 reasons behind any alleged off the clock work, any alleged work during meal periods, or if any
6 such time was compensable, and therefore class certification would be inappropriate and any trial
7 would be unmanageable.³ [Ardestani Decl., ¶ 27.]

8 As far as potential PAGA liability, the theoretical penalties totaled at least \$7 million
9 should Plaintiff prevail and establish the alleged minimum wage violations at issue for each pay
10 period, and collect the maximum allowable penalty. As with the class claims, Plaintiff discounted
11 the potential PAGA penalties for the multi-layered defenses proffered by Defendant on the merits,
12 such as whether GGUSD's policies accurately tracked and paid for employee hours worked,
13 whether Defendant had actual or constructive knowledge of any purported off the clock work, and
14 whether District policies resulted in alleged "on duty" meal periods. [Ardestani Decl., ¶ 28.]

15 Plaintiff further discounted the PAGA claims since the Court possesses wide discretion to
16 reduce such penalties even, if Plaintiff ultimately prevailed, should the Court find such an award
17 to be unfair, arbitrary, or excessively punitive. Labor Code § 2699(e)(2); Fleming v. Covidien
18 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by
19 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
20 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
21 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
22 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

23 Accordingly, the Parties allocated \$50,000 to PAGA penalties, which amount is reasonable
24 and in line with comparable settlements in other class actions in California. Van Kempen v.
25 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
26

27 ³ Plaintiff also accounted for GGUSD's affirmative defenses and, while his pre-mediation investigation did not
28 suggest applicability of many of them (i.e., plaintiff is not aware of any potentially applicable arbitration agreements,
or any prior settlements that might preclude his claims, etc.), he also notes absent settlement he would need to fully
investigate and evaluate those defenses with concomitant increase in time and expense. [Ardestani Decl., ¶ 27.]

1 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
2 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
3 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
4 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
5 Further, the amount of PAGA penalties should not be evaluated in a vacuum but rather in
6 connection with the total amount be paid to resolve the entire matter, and whether that amount
7 and/or any other relief secured serves PAGA's purposes such as deterring future Labor Code
8 violations. Haralson v. U.S. Aviation Servs. Corp. (N.D. Cal. 2019) 383 F.Supp.3d 959, 972 (in
9 class/PAGA settlements courts look to the interplay of the two recoveries to determine whether
10 PAGA's purposes have been served). Plaintiff submits the overall settlement, including the
11 amounts allocated to PAGA, has "a substantial deterrent effect . . . [and] encourages compliance
12 with the specific requirements of the Labor Code, which has the effect of protecting workers from
13 unlawful employment practices and working conditions." Jordan v NCI Grp., Inc. (C.D. Cal. Jan.
14 5, 2018) 2018 U.S. Dist. LEXIS 25297, at *7-8. Additionally, the LWDA has been informed of
15 the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary.
16 Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27
17 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the
18 settlement agreement to the LWDA, and the LWDA has not objected to the settlement").

19 Thus, Defendant raised significant procedural and merits defenses to Plaintiff's claims, any
20 one of which, if successful, could have derailed Plaintiff's case. Accordingly, Plaintiff faced risky
21 issues going forward with this litigation, and given the need to secure class certification, try the
22 case, and deal with post-trial appeals, it would have taken years to realize any recovery in this
23 action. Plaintiff's counsel discounted the value of the class claims consistent with the risks
24 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
25 benefit if the litigation continued. Plaintiff's counsel concluded – in light of these very real and
26 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
27 was in the best interests of the class. The overall \$780,000 recovery represents a significant
28 percentage of Defendant's potential exposure and given these risks addressed above, a total

1 recovery for the class of \$780,000 is a fair result within the range of reasonableness considering all
2 potential outcomes. [Ardestani Decl., ¶¶ 29-30.]

3 Importantly, the mere fact that a settlement does not provide the same recovery as might be
4 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
5 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
6 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
7 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
8 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
9 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
10 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
11 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
12 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
13 fundamentally fair . . . is different from the question whether the settlement is perfect in the
14 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
15 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
16 though it represented 99% discount off the maximum value of the claims). Importantly as well,
17 the proposed settlement is non-reversionary and will provide benefits to the Class Members
18 without a claims process. White v. Experian, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center,
19 Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
20 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
21 claims process may indicate lack of fairness). Plaintiff and her counsel submit the settlement is
22 within the “range of reasonableness,” and is fair and adequate for the Class.

23 ////

24 ////

25 ////

26 ////

27 ////

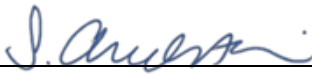
28 ////

1 **V. CONCLUSION**

2 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion,
3 conditionally certify the settlement class, grant preliminary approval to the proposed class action
4 settlement, and enter the [Proposed] Order filed herewith.
5

6 Dated: April 2, 2024

CROSNER LEGAL, PC

7
8 By: 
9 Jamie K. Serb, Esq.
10 Sepideh Ardestani, Esq.
11 Zachary M. Crosner, Esq.
12 Attorneys for Plaintiff VINCE BURKLUND
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28