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

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

[Filed Concurrently with Memorandum of Points & Authorities; Declarations of Sepideh Ardestani and Jodey Lawrence; [Proposed] Order]

Date: June 20, 2024
Time: 2:00 p.m.
Dept.: CX-104

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I. INTRODUCTION

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

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

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant GGUSD operates 68 schools in Garden Grove, California and six surrounding cities - Anaheim, Cypress, Fountain Valley, Santa Ana, Stanton, and Westminster. With nearly 40,000 students Defendant is the third largest school district in Orange County. Plaintiff Vince Burkland has been employed by GGUSD as a maintenance worker since 2015, although he has been out on workers compensation/disability leave since 2021. [Declaration of Sepideh Ardestani ("Ardestani Decl., ¶ 4.]

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

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

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

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

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

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

The Parties then engaged Tripper Ortman, Esq., a highly respected mediator with substantial wage and hour and class action experience, and on May 16, 2023, participated in a full day mediation with Mr. Ortman. Throughout the day, the arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive information on their legal and factual positions, and made numerous offers and counter-offers. By the end of the day the Parties reached agreement on all major issues. They then collaboratively drafted the Class Action, Collective Action, and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") setting forth the full and final settlement terms now before the Court for approval, and a true and correct copy of the Settlement Agreement is attached to the Ardestani Declaration as Exhibit 1. Furthermore, in order to efficiently seek settlement approval before a single court, the Parties stipulated to the filing of a Third Amended Complaint in this matter adding class and collective claims consistent with those alleged in the federal action. Plaintiff filed his TAC on August 25, 2023, and it is the operative pleading for purposes of settlement. [Ardestani Decl., ¶ 9.]

III. THE PROPOSED SETTLEMENT TERMS

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

A. Certification of the Settlement Class

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

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates GGUSD to pay $780,000 to resolve the claims of the Settlement, inclusive of attorney's fees and costs. A minimum of approximately $403,000 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Eighty percent of each settlement share will be allocated to wages and the remaining twenty percent will be allocated to liquidated damages and interest, which allocation is consistent with

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

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

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

As discussed below, the overall settlement amount is reasonable in light of the considerable risks associated with Plaintiff's claims, and the delay and risk posed by continuing to litigate such disputed allegations. In counsel's judgment, the total value recovered for the class is substantial and within the range of reasonableness.

C. <u>Settlement Administration</u>

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

D. <u>The Class Notice</u>

The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language. The Notice also sets forth the individualized information used to calculate Class Members' Individual

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

E. <u>Right to Correct Information, Opt Out, or Object</u>

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

F. <u>Release of Claims</u>

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

G. <u>Plaintiff's Enhancement</u>

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

Here, the Settlement Agreement provides for (a) an enhancement of up to $10,000.00 to Plaintiff. This request is reasonable given the risks she undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing herself at risk of discrimination by future prospective employers. Among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. He will provide the Court with a detailed declaration for the Final Approval Hearing. [Ardestani Decl., ¶ 18.]

H. <u>Attorney's Fees and Costs</u>

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

I. <u>PAGA Claims and Notice to the LWDA</u>

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

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IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via a two-step process to determine, under all the circumstances, if the proposed settlement is fair, reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

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

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

B. The Proposed Settlement Class Should Be Conditionally Certified

The purpose of conditional class certification for purposes of settlement is to facilitate provision of notice of the proposed settlement's terms, and the date and time of the final fairness hearing. In this context, courts apply lesser scrutiny than they would otherwise in the context of certifying a class. Dunk, 48 Cal.App.4th at 1807, n.19; Global Minerals & Metals Corp. v. Superior Court (2003) 113 Cal.App.4th 836, 839 ("[I]t is well established that trial courts should use different standards to determine the propriety of a settlement class.")

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

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

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

C. The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness

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

Next, California law recognizes several factors bearing on the fairness, adequacy, and reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2) the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further litigation; 4) the risk of maintaining class action status throughout trial; and 5) the experience and views of counsel. Id. Here, the proposed settlement satisfies these requirements.

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

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

On the minimum wage issue, Plaintiff claims that he and class members were not paid for all hours worked because GGUSD's de facto policies mandated "off the clock" work after the end of a shift, and he further claims Defendant failed to fully and completely relieve employees of all duties during their meal periods while still "auto-deducting" 30 minutes of time for meal periods. As a result, Plaintiff alleges he and the class members lost compensable hours worked. In response, GGUSD argued is timekeeping and payroll practices comply with California law, that it properly paid all non-exempt employees for all hours worked consistent with both state and federal law, and employees attested to the accuracy of their time and pay. Per GGUSD, any off the clock work the clock was against district policy and done without the District's knowledge. <u>White v. Starbucks Corp.</u> (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). GGUSD further emphasized that meal periods were completely free of all duties and employer control and accordingly such time was not compensable. Lastly, per GGUSD, individualized inquiries would be required to determine the reasons behind any alleged off the clock work, any alleged work during meal periods, or if any such time was compensable, and therefore class certification would be inappropriate and any trial would be unmanageable.[3] [Ardestani Decl., ¶ 27.]

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

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

Accordingly, the Parties allocated $50,000 to PAGA penalties, which amount is reasonable and in line with comparable settlements in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Further, the amount of PAGA penalties should not be evaluated in a vacuum but rather in

[3] Plaintiff also accounted for GGUSD's affirmative defenses and, while his pre-mediation investigation did not 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.]

connection with the total amount be paid to resolve the entire matter, and whether that amount and/or any other relief secured serves PAGA's purposes such as deterring future Labor Code violations. Haralson v. U.S. Aviation Servs. Corp. (N.D. Cal. 2019) 383 F.Supp.3d 959, 972 (in class/PAGA settlements courts look to the interplay of the two recoveries to determine whether PAGA's purposes have been served). Plaintiff submits the overall settlement, including the amounts allocated to PAGA, has "a substantial deterrent effect . . . [and] encourages compliance with the specific requirements of the Labor Code, which has the effect of protecting workers from unlawful employment practices and working conditions." Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at *7-8. Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement").

Thus, Defendant raised significant procedural and merits defenses to Plaintiff's claims, any one of which, if successful, could have derailed Plaintiff's case. Accordingly, Plaintiff faced risky issues going forward with this litigation, and given the need to secure class certification, try the case, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff's counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $780,000 recovery represents a significant percentage of Defendant's potential exposure and given these risks addressed above, a total recovery for the class of $780,000 is a fair result within the range of reasonableness considering all potential outcomes. [Ardestani Decl., ¶¶ 29-30.]

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

V. CONCLUSION

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

Dated: March 12, 2024

CROSNER LEGAL, PC

By: S. Ardestani

Jamie K. Serb, Esq.
Sepideh Ardestani, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff VINCE BURKLUND