

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Fax: (619) 595-3000

MAJARIAN LAW GROUP, APC

Sahag Majarian (SBN 146621)

sahagii@aol.com

Garen Majarian (SBN 334104)

garen@majarianlawgroup.com

18250 Ventura Blvd.

Tarzana, CA 91356

Telephone: (818) 609-0807/ Fax: (818) 609-0892

Attorneys for Anthony Morris, on behalf of himself
and all others similarly situated and aggrieved

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTHONY MORRIS, on behalf of himself
and all others similarly situated and
aggrieved,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY, an Indiana
Corporation; LINCOLN NATIONAL
CORPORATION, an Indiana Corporation;
and DOES 1 Through 10, Inclusive,

Defendants.

Case No. 22STCV20426

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Lawrence P. Riff

Department SS7

CLASS AND REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE AND SETTING OF FINAL
FAIRNESS HEARING DATE**

Date: August 9, 2023

Time: 10:00 a.m.

Dept: SS 7

Judge: Lawrence P. Riff

Complaint filed: June 22, 2022

Trial date: Not set

TABLE OF CONTENTS

PAGE(S)

I.	INTRODUCTION AND BACKGROUND.....	1
II.	THE PARTIES.....	1
	A. Defendants.....	1
	B. Plaintiff and the Putative Classes.....	2
III.	PRE-MEDIATION LITIGATION AND INFORMAL DISCOVERY	2
IV.	MEDIATION	3
V.	SUMMARY OF PROPOSED SETTLEMENT.....	4
	A. Settlement Terms.	4
	B. Notice of Class Action Settlement and Administration.	5
	C. The Released Claims.....	5
VI.	ARGUMENT	5
	A. Class Action Settlements Are Subject to Court Review and Approval.	5
	B. The Settlement is Fair, Adequate, and Reasonable.....	6
	1. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations	6
	2. Investigation, Informal Discovery, and Stage of the Proceedings Support Settlement.....	6
	3. Counsel are Experienced in Similar Litigation	7
	C. The Settlement is a Reasonable Compromise of Claims.	8
	1. Unpaid Wages—Labor Code §§ 510, 1194	9
	2. Sick Pay—Labor Code § 246.....	10
	3. Meal Periods—Labor Code §§ 226.7, 512.....	10
	4. Rest Periods— Labor Code § 226.7.....	11
	5. Reimburse Business-Related Expenses—Labor Code § 2802.....	11
	6. Derivative Claim: Wage Statements— Labor Code § 226	12
	7. Derivative Claim: Waiting Time Penalties —Labor Code § 203	13
	8. PAGA Penalties— Labor Code §§ 2698, et seq.	14
VII.	CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE ...	16
	A. The Proposed Settlement Class Is Ascertainable and Numerous.....	16
	B. The Proposed Settlement Class Comprises a Community of Interest.....	16
VIII.	CONCLUSION	17

TABLE OF AUTHORITIES

PAGE(S)

Cases

<i>Alcala v. Meyer Logistics, Inc.</i> (C.D. Cal. June 17, 2019) 2019 LEXIS 166879	15
<i>Bernstein v. Virgin America, Inc.</i> (9th Cir. Feb. 23, 2021) 2021 WL 867583	14
<i>Brinker Rest. Corp. v. Superior Court</i> (2012) 53 Cal. 4th 1004	10, 11
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal. App. 5th 504	15
<i>Ceja-Corona v. CVS Pharm., Inc.</i> (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118.....	16
<i>Donohue v. AMN Servs., LLC</i> (2021) 11 Cal. 5th 58	11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	6, 8, 16
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	7
<i>Fisher Bros. v. Cambridge Lee Industries, Inc.</i> (E.D. Pa. 1985) 630 F.Supp. 482	7
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	17
<i>Hill v. Walmart Inc.</i> (N.D. Cal. January 14, 2021) 2021 U.S. Dist. LEXIS 20950	14
<i>In re M.L. Stern Overtime Litig.</i> (S.D. Cal. Apr. 13, 2009) 2009 LEXIS 31650.....	15
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal. App. 4th 706	6
<i>In re Omnivision Technologies, Inc.</i> 559 F. Supp. 2d 1036 (N.D. Cal. 2007)	8
<i>Jamison v. Butcher & Sherrerd</i> (E.D. Pa. 1975) 68 F.R.D. 479	5
<i>Kaanaana v. Barrett Bus. Servs., Inc.</i> (2018) 29 Cal. App. 5th 778	9
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal. App. 4th 116	8
<i>Magadia v. Wal-Mart Assocs.</i> (2019) 384 F. Supp. 3d 1058	14, 15

1	<i>Magadia v. Wal-Mart Assocs.</i>	
2	(9th Cir., November 19, 2020) 999 F.3d 668.....	14
3	<i>McGhee v. Bank of Am.</i>	
4	(1976) 60 Cal. App. 3d 442	17
5	<i>Mejia v. Walgreen Co.</i>	
6	(E.D. Cal. Mar. 24, 2021) 2020 U.S. Dist. LEXIS 220685	14
7	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
8	(2010) 186 Cal. App. 4th 399	7, 8
9	<i>Pedroza v. PetSmart, Inc.</i>	
10	(C.D. Cal. June 14, 2012) 2012 U.S. Dist. LEXIS 189530	13
11	<i>Rose v. City of Hayward</i>	
12	(1981) 126 Cal. App. 3d 926	16
13	<i>Rudolph v. Herc Rentals, Inc. (</i>	
14	C.D. Cal. Aug. 21, 2021) 2021 WL 5994514	10
15	<i>Sav-On Drug Stores v. Super. Ct.</i>	
16	(2004) 34 Cal. 4th 319	16
17	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
18	(2012) 203 Cal. App. 4th 1112	15
19	<i>Vieyara-Flores v. Sika Corp.</i>	
20	(C.D. Cal. 2019) 2019 U.S. Dist. LEXIS 98081	14
21	<i>Wershba v. Apple Computer, Inc.</i>	
22	(2001) 91 Cal. App. 4th 224	16, 17
23	<i>Wesson v. Staples the Office Superstore, LLC</i>	
24	(2021) 68 Cal.App.5th 746	15
25	<u>Regulations</u>	
26	29 C.F.R. § 778.210	9, 10
27	29 C.F.R. § 778.211(a).....	9, 10
28	Cal. Code Regs., tit. 8, § 11040, subd. 2(K)	9
29	<u>Statutes</u>	
30	<u>California Labor Code</u>	
31	Section 203	13, 14
32	Section 203(b)	13
33	Section 226(a)(1).....	12
34	Section 226(a)(5).....	12
35	Section 226(a)(9).....	12
36	Section 226(e)	13
37	Section 226.7	i, 2, 10, 11
38	Section 246	10

1	Section 246(l)(1)(2).....	10
2	Section 512.....	2, 10
3	Sections 201-202.....	13
4	Sections 2699, <i>et seq.</i>	3
5	Section 2699(f)(2)	14
6	Section 2802.....	2, 11

California Rules of Court

7	Rule 3.769(g)	5
---	---------------------	---

I. INTRODUCTION AND BACKGROUND

This motion seeks preliminary approval of a pre-certification wage and hour class and Private Attorneys General Act (“PAGA”) Settlement of \$500,000 by Plaintiff Anthony Morris (“Plaintiff”), individually and on behalf of the approximately 231-member Class employed in California by Defendants The Lincoln National Life Insurance Company and Lincoln National Corporation (“Defendants”) as exempt and non-exempt employees, at any time during the period from June 22, 2018 through May 17, 2023 (the “Class Period”). Declaration of Marta Manus (“Manus Decl.”), ¶ 9, Ex. 1 – Class Action and PAGA Settlement Agreement (“Agreement” or “SA”), ¶ 1.14.

Plaintiff contends that during the Class Period, Defendants failed to: pay the putative Class wages for all time worked or subject to Defendants’ control; to pay correctly-calculated overtime wages and sick pay; to provide compliant meal periods and rest periods or pay premium wages in lieu of non-compliant breaks; provide accurate itemized wage statements showing the correct employer name, rates of pay, and total hours worked; and timely pay all final wages owed. Plaintiff also contends Defendants failed to reimburse business expenses, including home office expenses such as high-speed internet, wi-fi, cell phone, office supplies, desk, and work chair expenses, for members of the Class who worked from home pursuant to Defendants’ policy or practice requiring them to do so. Manus Decl., ¶ 10.

II. THE PARTIES

A. Defendants.

Defendant Lincoln National Corporation (“LNC”) is an Indiana Corporation headquartered in Radnor, Pennsylvania. LNC, through its subsidiaries, operates multiple insurance and retirement businesses in the United States, including in California. Defendant Lincoln National Life Insurance Company (“LNCIC”) is an Indiana Corporation headquartered in Fort Wayne, Indiana with operations in California. LNLIC is a subsidiary of LNC. Lincoln National Life Insurance Co. is the entity listed as the employer on Plaintiff’s wage statements. Manus Decl., ¶ 11.

///

B. Plaintiff and the Putative Classes.

Plaintiff Anthony Morris worked for LNL from approximately February 19, 2019 through February 2022. From February 19, 2019 through July 5, 2020, Plaintiff worked in the exempt salaried position of “Specialist, Field Operations Sales.” Beginning July 6, 2020, Plaintiff worked in the non-exempt salaried position of “Sr. Administrator, GP Sales Support” until February 4, 2022. Manus Decl., ¶ 12; Declaration of Anthony Morris (“Morris Decl.”), ¶ 3.

The proposed Class¹ consists of two classes of employees. Class I includes all exempt and non-exempt employees in California who were required to work from home during the Class Period. Class II is limited to non-exempt employees in California during the Class Period. Manus Decl., ¶ 13; SA, ¶¶ 1.6-1.7, 1.14. There are approximately 231 Class Members who worked 27,662 Workweeks during the Class Period. Manus Decl., ¶ 14; SA, ¶ 4.1. Of the 231 Class Members, 231 are members of Class I (who worked 27,662 workweeks) and approximately 69 are also members of Class II (who worked 4,176 workweeks). Manus Decl., ¶ 15; SA, ¶ 8. A subgroup of the Class, Aggrieved Employees, were employed some time during the April 29, 2021 through May 17, 2023 (“PAGA Period”). There are approximately 179 Aggrieved Employees that worked 5,124 PAGA Pay Periods through the date of mediation. Manus Decl., ¶ 16; SA, ¶¶ 1.4, 1.37, 1.38, 4.1.

III. PRE-MEDIATION LITIGATION AND INFORMAL DISCOVERY

On June 22, 2022, Plaintiff filed a class action complaint in the Los Angeles County Superior Court alleging Defendants’ failed to (1) reimburse business expenses (Labor Code §§ 2800, 2802, 2804); (2) pay minimum, regular, and overtime wages (Labor Code §§ 510, 1194; applicable IWC Wage Order, §§ 3, 4); (3) provide meal periods (Labor Code §§ 226.7, 512; applicable IWC Wage Order, § 11); (4) provide rest periods (Labor Code § 226.7; applicable IWC Wage Order, § 12); (5) provide accurate itemized wage statements (Labor Code § 226); (6) provide sick pay (Labor Code § 246); and (7) timely pay wages due upon separation of employment (Labor Code §§ 201, 202, 203). Based on these allegations, Plaintiff alleged unfair business practices in violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-

¹ “Class” means Class I and Class II, collectively. SA, ¶ 1.5.

1 17208). Manus Decl., ¶ 17; SA, ¶ 2. On July 27, 2022, Plaintiff filed a First Amended Complaint
2 (“FAC”)² also seeking PAGA civil penalties³ pursuant to Labor Code sections 2699, *et seq.*, based
3 on Plaintiff’s causes of action. *Id.*

4 In early September 2022, the Parties agreed to mediate and scheduled mediation with Lou
5 Marlin, Esq. for February 16, 2023. Manus Decl., ¶ 20. On March 8, 2023, Plaintiff filed a Second
6 Amended Complaint (“SAC”)⁴ to allege the factual allegations, claims, and legal theories at issue
7 discussed during mediation, including alleged remote expense issues not expressly referenced in
8 the operative complaint. *Id.*, ¶ 22.

9 **IV. MEDIATION**

10 To prepare for mediation, Plaintiff requested, and Defendants produced key data for the
11 period from that included: (1) total number of Class Members; (2) number of formerly employed
12 Class Members; (3) number of Class Member Pay Periods; (4) number of Class Member Work
13 Weeks; and (5) average hourly rate of pay; and for the PAGA Penalties: (1) total number of
14 aggrieved employees (“Aggrieved Employees”); (2) number of formerly employed Aggrieved
15 Employees; (3) number of PAGA Period Pay Periods; (4) number of PAGA Pay Periods. In
16 addition, Defendants produced excel spreadsheet data containing a 20% random sample of Class
17 Member time and payroll records and exemplar wage statements (through Pay Period ending June
18 19, 2022). Defendants further produced excel spreadsheet data containing reimbursement details,
19 and stipend details. Manus Decl., ¶ 24.

20 After receipt of the data and information, Plaintiff’s Counsel retained the services of a
21 damages’ consultant to review the information and data to assess violation rates for short, late, or
22 missed meal periods, unpaid or underpaid expense reimbursements for expenses, the incidence
23 of underpaid overtime wages due to off-the-clock work and failure to use the Class Members’

24 _____
25 ² Due to a stay on the pleadings, Defendants did not respond to the FAC. At the initial status conference
26 held September 9, 2022, upon being advised of the Parties’ agreement to mediate, the Court continued
27 the stay on the pleadings until the post-mediation status conference. Manus Dec., ¶ 19.

28 ³ Plaintiff served notice on the Labor and Workforce Development Agency (“LWDA”) and on Defendants
on April 29, 2022. Manus Dec., ¶ 18, Ex. 2; SA, ¶ 2.1. Through the present, the LWDA has not
communicated any intention to investigate the charges alleged. *Id.*

⁴ The Parties stipulated to allow Plaintiff to file the SAC, and that Defendants’ answer would be due 30
days after service of the SAC. Defendants answered the SAC on April 7, 2023. Manus Dec., ¶ 23.

1 regular rate of pay, the incidence of underpaid sick Pay due to failure to use the Class Members'
2 regular rate of pay, and derivative claims for wage statements penalties, waiting time penalties,
3 PAGA civil penalties, and to extrapolate the damages to the Class. Manus Decl., ¶ 25.

4 On February 16, 2023, the Parties attended mediation with Lou Marlin, Esq., an
5 experienced and respected wage and hour mediator. The Parties engaged in a day of serious,
6 informed and lengthy arms'-length negotiations, which resulted in a settlement in principle and a
7 memorandum of understanding. Manus Decl., ¶ 20.

8 **V. SUMMARY OF PROPOSED SETTLEMENT**

9 **A. Settlement Terms.**

10 The Parties have agreed the Action may be settled for the Gross Settlement Amount of
11 \$500,000 ("GSA") which, subject to Court approval, includes: (a) attorneys' fees of \$166,650
12 (one-third of the GSA) to compensate Class Counsel for work performed and remaining to be
13 performed in securing final Court approval; (b) Class Counsel's litigation expenses of up to
14 \$12,000; (c) a Service Payment to Plaintiff Anthony Morris of \$7,500 in consideration of his
15 initiation and prosecution of the action, service as Class Representative, work performed, and
16 risks undertaken for the payment of costs in the event the case was unsuccessful, and benefits
17 conferred on absent Class Members; (d) PAGA Payment of \$25,000 of which \$18,750 (75% of
18 \$25,000) will be paid to the LWDA, and \$6,250 (25% of \$25,000) will be distributed to PAGA
19 Members); and (e) Administration expenses to CPT Group of up to \$9,000⁵. Manus Decl., ¶ 26;
20 SA, ¶ 3. In addition to the GSA, Defendants will pay the Employer Tax Obligations. Manus Decl.,
21 ¶ 26; SA, ¶¶ 3.1, 4.3.

22 Based on anticipated Court-approved deductions for attorneys' fees, litigation costs,
23 Service Payment, PAGA Payment, and administration expenses, the Net Settlement Amount
24 estimated at \$279,850 will be distributed to Participating Class Members based on number of
25 Class Period Workweeks worked at any time during Class Period without the need to return a
26 claim form. Manus Decl., ¶ 27; SA, ¶¶ 1.26, 1.31, 1.39. With an estimated 27,662 Workweeks
27

28 ⁵ See Declaration of Julie Green, on behalf of CPT Group, Inc. ("CPT Decl.") regarding its qualifications to act as the neutral administrator of the Settlement.

1 worked during the Class Period (SA, ¶ 4.1), a Participating Class Member will receive an
2 estimated \$10.12 for each Workweek worked during the Class Period. No part of the GSA may
3 revert to Defendants under any circumstances. Manus Decl., ¶ 28; SA ¶¶ 3.1, 4.1.

4 **B. Notice of Class Action Settlement and Administration.**

5 Following preliminary approval, CPT will mail the approved Notice of Class Action
6 Settlement (“Class Notice”) to each Class Member. CPT Decl., ¶ 8; Manus Decl., ¶ 29; SA, ¶¶
7 1.13, 7.4 – Ex. A. The Notice advises the Class: (1) of the right to participate in the Settlement
8 and to receive an Individual Settlement Payment without a claim form; (2) how to object or opt
9 out of the Settlement; (3) how to dispute the information on which Individual Settlement
10 Payments are calculated; (4) of the Released Claims; and (5) of the date, time and place to appear
11 for the Final Approval hearing. Manus Decl., ¶ 29.

12 CPT will endeavor to locate Class Members to allow participation in the Settlement and
13 receipt of settlement checks, by means which include a National Change of Address database
14 search prior to the initial mailing of the Class Notice, and thereafter, skip tracing undelivered
15 Class Notices. CPT Decl., ¶ 8; Manus Decl., ¶ 30; SA, ¶¶ 4.4.1, 4.4.2. All checks not cashed by
16 the 180th day, will be cancelled, and sums represented by the uncashed checks will be sent to the
17 California Controller, Unclaimed Property Division for further handling on behalf of Class
18 Members whose checks were voided. Manus Decl., ¶ 31; SA, ¶¶ 4.4.1, 4.4.3.

19 **C. The Released Claims.**

20 In exchange for a Settlement Payment, all Class Members who have not timely requested
21 exclusion will release the “Released Claims” arising from the claims alleged in the operative
22 complaint. Manus Decl., ¶ 32; SA, ¶¶ 1.43, 1.44, 5.

23 **VI. ARGUMENT**

24 **A. Class Action Settlements Are Subject to Court Review and Approval.**

25 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
26 settlement.” California Rules of Court, Rule 3.769(g). Court’s should disapprove settlements
27 “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd* (1975) 68 F.R.D. 479,
28 481. At preliminary approval, the Court “limits its inquiry to the extent necessary to reach a

1 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
2 between, the negotiating parties.” *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723
3 (citation omitted).

4 **B. The Settlement is Fair, Adequate, and Reasonable.**

5 A Court must find a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford*
6 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The trial court considers all relevant factors, such
7 as: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
8 litigation, the risk of maintaining class action status through trial, the amount offered in
9 settlement, the extent of discovery completed and the stage of the proceedings, the experience
10 and views of counsel, the presence of a governmental participant, and the reaction of the class
11 members to the proposed settlement.” *Id.* The Court’s primary function is to determine the
12 Settlement is not the product of fraud, overreaching, or collusion, and, taken as a whole, is fair,
13 adequate, and reasonable. *Id.*

14 A proposed class action settlement is presumed fair where: (1) the parties reached
15 agreement after extensive arms’-length negotiations; (2) investigation and discovery were
16 sufficient to allow counsel and the Court to act intelligently; (3) counsel is experienced in similar
17 litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at p. 1802.

18 **1. The Settlement Is the Result of Serious, Informed, Non-Collusive**
19 **Negotiations**

20 The Parties attended a full day of mediation with Lou Marlin, an experienced wage and
21 hour class action mediator that resulted in a settlement in principle by the end of the day.
22 Thereafter, the Parties continued their arms’-length, negotiations by phone and email to create
23 the detailed written Settlement Agreement before the Court for approval. Counsel aggressively
24 pursued their respective positions at all times. Manus Decl., ¶¶ 20, 21.

25 **2. Investigation, Informal Discovery, and Stage of the Proceedings**
26 **Support Settlement**

27 Plaintiff investigated the merits of Plaintiff’s claims and potential defenses before
28 initiating this Action. Following agreement to proceed to mediation, Defendants produced their
written policies in effect during the Class Period, corresponding timekeeping and payroll records
(excel spreadsheets) and the other essential data referenced above to allow violation rates to be

1 identified and damages tabulated and extrapolated to the Class. Proof of the claims asserted by
2 Plaintiff on behalf of the Class would be based largely on an analysis of time and pay records
3 produced by Defendants.

4 The investigation, discovery, and informal exchange provided the Parties with a clear
5 understanding of the strengths and weaknesses of their respective positions before negotiations.
6 *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 410
7 (settlement approved where “considerable information from which to assess the strength of the
8 class claims” and risks and expense of litigation).

9 3. Counsel are Experienced in Similar Litigation

10 Plaintiff’s Counsel have significant experience litigating wage and hour employment class
11 actions. Manus Decl., ¶¶ 2-8, 33. This allowed Counsel to evaluate settlement of the Class claims
12 compared to the risks of further litigation, including trial, appeals and collection. *Id.*, ¶ 33.
13 Defense counsel with Ogletree, Deakins, Nash, Smoak & Stewart, P.C. are also highly skilled
14 and sophisticated lawyers, with extensive class action experience. They defended their clients
15 vigorously and aggressively through all phases of the case, including mediation and subsequent
16 negotiations. *Id.*, ¶ 34.

17 Plaintiff’s Counsel believes the Settlement achieved in this Action is fair and reasonable
18 and in the best interest of the Class in light of the monetary recovery by the Class, complexities
19 and difficulties of this litigation, the state of the law, the potential the case may not have been
20 certified, an adverse summary judgment or decertification ruling, the lengthy process of
21 establishing specific damages, and various possible delays and uncertainty regarding the outcome
22 of appeals. Each of these factors was carefully considered before reaching agreement. Manus
23 Decl., ¶ 35.

24 Experienced counsel, operating at arms’-length, weighed the case strengths and examined
25 all issues and risks of litigation and endorse the Settlement. The view of attorneys actively
26 conducting the litigation “is entitled to significant weight” in deciding whether to approve the
27 settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F. Supp. 482, 488;
28 *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir.

1 1981). “The recommendations of plaintiffs’ counsel should be given a presumption of
2 reasonableness.” *In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 559 F. Supp. 2d 1036,
3 10432 .

4 The Settlement satisfies the first three requirements of *Dunk*. The fourth, percentage of
5 objectors, remains unknown until after notice is given to the Class, and they have had an
6 opportunity to respond.

7 **C. The Settlement is a Reasonable Compromise of Claims.**

8 “[T]o ensure that the recovery represents a reasonable compromise, given the magnitude
9 and apparent merit of the claims being released, discounted by the risks and expenses of
10 attempting to establish and collect on those claims by pursuing the litigation,” information is
11 presented to the Court, to review in its role as a fiduciary for absent class members. *Kullar v. Foot*
12 *Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.

13 A reasonable compromise of class claims considers actual risks of certification,
14 decertification, dispositive motions, and trial, not merely a prediction of Defendant’s maximum
15 exposure. An explicit statement of maximum class recovery on all claims is not required, only a
16 record which allows “an understanding of the amount that is in controversy and the realistic range
17 of outcomes of the litigation.” *Kullar*, 168 Cal. App. 4th at p. 120.

18 “*Kullar* is clear that the most important factor ‘is the strength of the case for plaintiffs on
19 the merits, balanced against the amount offered in settlement.’” *Munoz*, 186 Cal. App. 4th at p.
20 409 (internal punctuation omitted). *Munoz* had “no doubt that the trial court had ‘an understanding
21 of the amount ... in controversy,’” based on number of class members, payroll data, variances in
22 class member experiences, and a companion action alleging damages less than twice the *Munoz*
23 settlement. *Id.*, at p. 406. This was “an adequate basis from which to garner a reasonably adequate
24 understanding of the amount that is in controversy within the meaning of *Kullar*.” *Id.*, at p. 410.

25 Plaintiff’s counsel relied on similar types of data and documents as in *Kullar* and *Munoz*,
26 including time, pay, and employment records. Plaintiff’s counsel and their consultant reviewed
27 and analyzed time and pay records to assess liability and to calculate Class-wide damages before
28 attending mediation. Manus Decl., ¶ 36. Based on the damage assessments made for each claim

as discussed below, and the realistic ranges of recovery, the \$500,000 Gross Settlement Amount is fair and reasonable given that it represents approximately 48% of the \$1,044,123.00 estimated damages on the primary claims alleged (exclusive of PAGA Penalties).⁶ Manus Decl., ¶ 37.

1. Unpaid Wages—Labor Code §§ 510, 1194

Employers must provide at least minimum wages for all hours employees work or are subject to their employer's control. Labor Code § 1194; *see also Kaanaana v. Barrett Bus. Servs., Inc.* (2018) 29 Cal. App. 5th 778, 804 (citing Cal. Code Regs., tit. 8, § 11040, subd. 2(K).)

Plaintiff contended that until at least January 2023, Defendants uniformly paid wages based on scheduled shift time as opposed to actual hours worked resulting in a failure to pay for all hours worked as required by California law. Manus Decl., ¶ 38. Plaintiff's expert conservatively estimated three (3) minutes of unpaid time per shift for a maximum exposure of \$40,430.00. *Id.* Defendant disputed Plaintiff's theory, and contended that Plaintiff and the putative class were able to record all hours worked. *Id.*

Plaintiff also contended that Defendants paid non-discretionary bonuses⁷ in the same pay periods that overtime wages were earned, but that Defendants did not factor these non-discretionary bonuses into Class Members' regular rates of pay for the purpose of calculating and paying their overtime wages. Rather, Defendants paid overtime wages at exactly 1-1/2 times the Class Members' base hourly rates of pay, regardless of whether they received a bonus in the same pay period; thus, underpaying overtime wages during these pay periods. Plaintiff's damages' consultant used Class Member pay records to calculate and extrapolate to the Class, the amount of underpaid overtime wages at \$2,053.00. Manus Decl., ¶ 39. Defendants contend that there was no requirement to adjust the regular rate for certain discretionary bonuses or bonuses calculated as a percentage of total earnings (29 C.F.R. §§ 778.210, 778.211(a)), all overtime worked was properly paid, that no evidence exists of a policy or practice of underpaying overtime, and further

⁶ Plaintiff's realistic recovery as discussed below is estimated at \$1,044,123.00 based on the following: \$40,430.00 (unpaid wages); \$2,053.00 (underpaid overtime wages); \$125,812.00 (failure to pay sick pay); \$229,024.00 (meal period premiums); \$229,024.00 (rest period premiums); \$147,720.00 (business expense reimbursement); \$101,400.00 derivative wage statement penalties); \$168,660.00 (derivative waiting time penalties). The GSA is 48% of \$ 1,044,123.00.

⁷ For instance, "Gift/Awards" and "Annual income plan bonuses."

1 that this claim is not amenable to class treatment. *Id.*

2 **2. Sick Pay—Labor Code § 246**

3 California employers may calculate sick pay wages in the same manner as overtime
4 wages, using the “regular rate,” or “look back” 90 days, dividing the employee’s “total wages,
5 not including overtime premium pay, by total hours worked in full pay periods of the prior 90
6 days.” Labor Code § 246(1)(1)(2). Defendants used the “regular rate” option. Manus Decl., ¶ 40.

7 Plaintiff contended that Defendants failed to calculate the correct regular rate of pay in
8 accordance with Labor Code section 246 for purposes of calculating and paying sick pay/PTO
9 by failing to included various additional compensation paid such as non-discretionary bonuses,
10 sales incentives, and annual plan bonuses in the calculation to determine the correct regular rate
11 of pay. Plaintiff’s consultant calculated the amount of underpaid sick pay/PTO Defendants would
12 have paid if all potentially includible additional amounts of compensation were added to calculate
13 the regular rate, and if total compensation were divided only by regular hours, rather than all
14 hours worked, then subtracted the amount actually paid, to determine exposure. Manus Decl., ¶
15 41.

16 Plaintiff determined Defendants’ maximum exposure for underpaid sick pay/PTO wages
17 was \$251,624. Defendants strongly argued, some pay codes included were for discretionary
18 bonuses, or other amounts not required to be included in the regular rate of pay. *See* 29 C.F.R.
19 §§ 778.210, 778.211(a). Defendants also argued that there is no private right of action to recover
20 sick pay/PTO wages, and no obligation to pay PTO at the regular rate of pay. *Rudolph v. Herc*
21 *Rentals, Inc.* (C.D. Cal. Aug. 21, 2021) 2021 WL 5994514, at *3. Therefore, Plaintiff believed
22 the realistic exposure was 50% of the maximum exposure, or no more than \$125,812. Manus
23 Decl., ¶ 42.

24 **3. Meal Periods—Labor Code §§ 226.7, 512**

25 Employers must provide a first uninterrupted 30-minute meal period before the end of the
26 fifth hour of work and a second such meal period before the end of the tenth hour of work. Labor
27 Code § 512; *see also Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1005.
28 Otherwise, the employer owes one hour of pay to the employee at their regular rate of pay. Labor

Code § 226.7. If records show a missed, late, short, or interrupted meal period there is a presumption of liability, which the employer may rebut. *Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 77.

Plaintiff contended that due to the demands to meet daily quotas, employees frequently had to forego meal periods or were interrupted during meal periods. There were no records of any meal premiums paid, and therefore Plaintiff's expert conservatively estimated two missed meal periods per workweek, yielding an exposure of \$229,024.00. Defendants assert their meal break policies and practices were compliant with California law, and that they did not prevent employees from taking off-duty meal periods. Defendants further contended that this claim is not amenable to class treatment. Plaintiff estimated probability of success at certification at 75%, resulting in a discounted realistic exposure of **\$57,256.00**. Manus Decl., ¶ 43.

4. Rest Periods— Labor Code § 226.7

Employers must authorize and permit a first uninterrupted 10-minute rest break after three and one-half (3.5) hours worked, a second such rest break after six (6) hours worked, and a third such rest break after ten (10) hours worked. Labor Code § 226.7; *see also Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1029. Otherwise, the employer owes one hour of pay to the employee at their regular rate of pay. Labor Code § 226.7.

Plaintiff contended that due to the demands to meet daily quotas, employees frequently had to forego rest periods or were interrupted during rest periods. There were no records of any rest periods premiums paid, and therefore Plaintiff's expert conservatively estimated two missed rest periods per workweek, yielding an exposure of \$229,024.00. Manus Decl., ¶ 44. Defendants contend their policies and practices were compliant with California law, and further that this claim is not amenable to class treatment. Plaintiff estimated probability of success at certification at 75%, resulting in a discounted realistic exposure of **\$57,256.00**. *Id.*

5. Reimburse Business-Related Expenses—Labor Code § 2802

An employer must reimburse an employee's reasonable business-related expenses. Labor Code § 2802. Plaintiff alleges Defendants failed to adequately reimburse Class I Members for business-related expenses, including home office expenses such as high-speed internet, wi-fi, cell

1 phone, office supplies, desk, and work chair expenses. Manus Decl., ¶ 45.

2 In approximately March 2020, in light of the COVID-19 pandemic, Defendants shut down
3 their offices for approximately a year including the Glendale, California office at which Plaintiff
4 worked, requiring Plaintiff and Class I members to work from home. At some point after the
5 COVID-19 pandemic, Defendants permanently closed its Glendale office. Plaintiff worked from
6 home beginning in March 2020 through the end of his employment in February 2022. Defendants'
7 written policy requires employees to have an internet connection of at least 10Mbps
8 download/1Mbps upload. Plaintiff contends he was required to upgrade his internet speed to meet
9 this requirement and incurred an additional monthly charge for doing so. Morrison Decl., ¶¶ 3, 5;
10 Manus Decl., ¶ 46.

11 Plaintiff contended that Defendants failed to reimburse employees who worked from
12 home reasonably incurred business expenses incurred in the discharge of their duties for
13 Defendants, including expenses such as high-speed internet, office supplies, cell phone usage,
14 and office furniture. Defendants contended that their expense reimbursement policies were
15 compliant with California law, and that they reimbursed employees in different ways, including
16 reimbursing some employees based on expenses submitted and others for business expenses by
17 paying a \$40 per month stipend. Defendants further contended that this claim is not amenable to
18 class certification. Defendants provided a spreadsheet which showed reimbursement stipends
19 paid to 21 employees beginning in March 2020, as well as other expenses paid based on receipts
20 submitted. Plaintiff's expert calculated the unpaid business expenses using \$40 per month
21 beginning in March 2020 for the additional employees which Plaintiff alleged were not paid a
22 reimbursement stipend, which resulting in a total of allegedly unpaid business expenses of
23 \$147,720.00. Manus Decl., ¶ 47. Given the risks involved in certifying such a claim, Plaintiff
24 estimated probability of certification at 50%, resulting in a discounted realistic exposure of
25 **\$73,860.00. *Id.***

26 **6. Derivative Claim: Wage Statements— Labor Code § 226**

27 Employers must provide their employees with accurate itemized wage statements
28 showing, among other things, gross and net wages earned. Labor Code §§ 226(a)(1), (5), and (9).

Otherwise, each Class Member is entitled to recover \$50 for the first violation and \$100 for each subsequent violation, with a maximum aggregate penalty of \$4,000. Labor Code § 226(e). Plaintiff alleges his wage statements were non-compliant because they failed to show all wages earned due to unrecorded and unpaid time due to rounding, regular rate miscalculation for the payment of overtime and sick wages, and failure to pay meal and rest break premiums. To recover on this derivative claim, Plaintiff must prevail on the underlying claims and to show any violation was knowing, intentional, or willful. *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) 2012 U.S. Dist. LEXIS 189530 *20.

Plaintiff multiplied 1,045, the number of pay periods worked by the 62 employees in Class II in the applicable one-year statute of limitations using the initial violation rate of \$50 and subsequent violation rate of \$100 provided by Labor Code § 226(e), yielding a maximum exposure of \$101,400. Assuming Plaintiff prevailed on the underlying claims, Plaintiff estimated probability of certification at 50%, resulting in a discounted realistic exposure of **\$50,700.00**. Manus Decl., ¶ 48.

7. Derivative Claim: Waiting Time Penalties —Labor Code § 203

If an employer willfully fails to timely pay all wages to separate employees, the wages continue at the same rate for up to 30 days. Former employees are entitled to waiting time penalties. The statute of limitations is three years. Labor Code § 203(b). A failure to pay wages is “willful” when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203. Final wages must be paid to an involuntarily terminated employee at the time of termination, or within 72 hours to an employee voluntarily terminating. Labor Code §§ 201-202. For the 29 formerly employed Class Members in Class II (in the period three years from filing), penalties of \$168,660.00 (8 hours/day x \$24.23 (average hourly rate) x 30 days x 29 former EEs) were calculated. Manus Decl., ¶ 49.

Plaintiff’s claim for unpaid wages supports this derivative claim. To recover waiting time penalties, Plaintiff must prove wages owed were willfully not paid. Subject to Defendants’ “good faith” defense, a Court could find Defendants had a good faith belief they were paying all wages

1 due which would preclude imposition of waiting time penalties under Section 203. *Hill v.*
2 *Walmart Inc.* (N.D. Cal. January 14, 2021) 2021 U.S. Dist. LEXIS 20950, *17. Plaintiff's realistic
3 exposure was discounted by 50% for purposes of Settlement, reducing the realistic exposure to
4 **\$84,330.00**. Manus Decl., ¶ 50.

5 **8. PAGA Penalties— Labor Code §§ 2698, et seq.**

6 Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code
7 for which there is no corresponding civil penalty. The civil penalty is \$100 for the initial violation
8 and \$200 for each subsequent violation for each underpaid employee in addition to “an amount
9 sufficient to recover underpaid wages.” Labor Code § 2699(f)(2). Plaintiff seeks PAGA penalties
10 for all violations of the Labor Code, of which 75% would be paid to the state and 25% to the
11 Aggrieved Employee. “Thus, in wage and hour class action cases that settle, [] very little of the
12 total settlement is paid to PAGA penalties in order to maximize payments to class members.”
13 *Magadia v. Wal-Mart Assocs.* (2019) 384 F. Supp. 3d 1058, 1101 disapproved on other grounds,
14 *Magadia v. Wal-Mart Assocs.* (9th Cir., November 19, 2020) 999 F.3d 668; see also *Mejia v.*
15 *Walgreen Co.* (E.D. Cal. Mar. 24, 2021) 2020 U.S. Dist. LEXIS 220685, *26 (citations omitted)
16 (noting “[C]ourts frequently approve settlements in wage and hour class action and PAGA actions
17 that minimize the total amount of the settlement that is paid to PAGA penalties in order to
18 maximize payments to class members.”).

19 During the PAGA Period, 179 allegedly aggrieved employees worked a total of 5,124 Pay
20 Periods. Manus Decl., ¶ 16. Of this number, approximately 62 non-exempt Class II Class
21 Members worked a total of 1,114 Pay Periods during the PAGA Period. For the 1,114 PAGA Pay
22 Periods worked by non-exempt Class Members in the PAGA Period, and using the initial
23 violation rates⁸, maximum PAGA penalties were assessed for eight alleged violations of the Labor
24 Code including for: (1) alleged failure to pay all wages, PAGA penalties of \$111,400 (1,114 Pay
25 Periods x \$100) (2) failure to pay accurate overtime wages, PAGA penalties calculated for 72
26

27 ⁸ Initial violation rates were used because “courts have held that employers are not subject to heightened
28 penalties for subsequent violations unless and until a court or commissioner notifies the employer that it
is in violation of the Labor Code.” *Vieyara-Flores v. Sika Corp.* (C.D. Cal. 2019) 2019 U.S. Dist. LEXIS
98081, *13; *Bernstein v. Virgin America, Inc.* (9th Cir. Feb. 23, 2021) 2021 WL 867583, at *11-12.

1 Pay Periods impacted by underpaid overtime, penalties equal to \$7,200 (72 x \$100); (3) failure
2 to provide meal periods, PAGA penalties of \$111,400 (1,114 Pay Periods x \$100); (4) failure to
3 provide rest periods, PAGA penalties of \$111,400 (1,114 Pay Periods x \$100); (5) failure to pay
4 waiting time penalties, PAGA penalties of \$2,200 for 22 former employees in PAGA Period; (6)
5 failure to pay all sick pay wages for 32 employees impacted by underpaid sick pay, PAGA
6 penalties of \$17,800; (7) failure to maintain accurate records, PAGA penalties of \$31,000; and
7 (8) failure to provide accurate itemized wage statements, PAGA penalties of \$111,400. Manus
8 Decl., ¶ 51.

9 Using initial violation rates for 4,658 Pay Periods of the 5,124 PAGA Pay Periods in
10 which Class Members (which includes Class I (exempt) and Class II (non-exempt)) were
11 allegedly not reimbursed for business expenses, Plaintiff's expert calculated PAGA penalties at
12 \$465,800 (\$100 x 4,658). Manus Decl., ¶ 52. Thus, the total PAGA penalties equal \$969,600. *Id.*

13 A court has authority to reduce PAGA penalties, as long as not to "zero." *Thurman v.*
14 *Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135. *See Carrington v.*
15 *Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 (Plaintiff requested "nearly \$70 million in
16 penalties;" trial court's \$150,000 award upheld on appeal). Plaintiff believed reasonable exposure
17 was no more than 50% of maximum exposure, or \$484,800 based on factors considered in
18 determining reasonable exposure for Class claims, the discretionary nature of PAGA penalties,
19 and Court ability to reduce penalties to nearly zero, and that "courts have inherent authority to
20 ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike a claim
21 that cannot be rendered manageable." *Wesson v. Staples the Office Superstore, LLC* (2021) 68
22 Cal.App.5th 746 (unpublished).

23 The \$25,000 PAGA Payment representing 5% of the \$500,000 settlement amount, is well
24 within the range approved by California courts. *See Alcala v. Meyer Logistics, Inc.* (C.D. Cal.
25 June 17, 2019) 2019 LEXIS 166879, *26 (PAGA penalties 1.25% of settlement reasonable as
26 "within the zero to two percent range for PAGA claims approved by courts."); *In re M.L. Stern*
27 *Overtime Litig.* (S.D. Cal. Apr. 13, 2009) 2009 LEXIS 31650, *1 (PAGA penalties 2% of
28 settlement reasonable); *Magadia*, 384 F. Supp. 3d at p. 1101, citing, among others, *Ceja-Corona*

1 v. *CVS Pharm., Inc.* (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118 (\$10,000
2 PAGA penalties in \$900,000 settlement, or 1.1% of settlement, reasonable, recommendation
3 adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015). The LWDA was served with
4 this preliminary approval motion on the same day it was filed with Court. Manus Decl., ¶ 57, Ex.
5 3.

6 **VII. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

7 Before granting class certification for settlement, the Court must find the proposed Class
8 satisfies the requirements of Code of Civil Procedure section 382. *Wershba v. Apple Computer,*
9 *Inc.* (2001) 91 Cal. App. 4th 224, 237-38 237. The parties must show the existence of “an
10 ascertainable class and a well-defined community of interest among class members.” *Sav-On*
11 *Drug Stores v. Super. Ct.* (2004) 34 Cal. 4th 319, 326. The “community of interest” element
12 embodies three factors: (1) predominant common questions of law or fact; and, (2) a class
13 representative with claims typical of the class; (3) who can adequately represent the class. *Id.* The
14 court must also determine a class action proceeding is the superior means for fair and efficient
15 adjudication of the litigation. *Id.*; *Dunk*, 48 Cal. App. 4th at p. 1806. For settlement purposes,
16 each of these prerequisites must be met. *See Wershba*, 91 Cal. App. 4th at pp. 237-38.

17 **A. The Proposed Settlement Class Is Ascertainable and Numerous**

18 Defendants can easily identify Class Members through their records. Manus Decl., ¶ 53.
19 The Class is numerous with 231 members. *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926,
20 934. Joinder of these individuals would be impracticable and a Class-wide proceeding is
21 preferable and superior. Manus Decl., ¶ 53.

22 **B. The Proposed Settlement Class Comprises a Community of Interest**

23 A community of interest exists where (1) legal or factual questions common to the Class
24 predominate over questions affecting individual Class Members; (2) claims of the Class
25 Representatives are typical of the claims or defenses of the Class; and (3) the Class
26 Representatives are able to adequately and fairly protect the interests of the class. *Sav-On Drug*
27 *Stores*, 34 Cal. 4th at p. 326; *Wershba*, 91 Cal. App. 4th at p. 238. The proposed Class satisfies
28 these three factors. First, Class Members were subject to the same alleged policies which Plaintiff

1 has alleged caused damages to him and the Class, including whether they were paid for all time
2 under Defendants' control, properly paid overtime and sick wages by including non-discretionary
3 bonuses when calculating their regular rate of pay, and whether they are owed premiums for
4 missed, short or late meal periods or rest breaks, and whether Defendants properly reimbursed
5 business-related expenses. Where the same alleged policies form the basis for the claims of all
6 Class Members, a plaintiff's claims are common for settlement purposes. *See Hanlon v. Chrysler*
7 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1022. Manus Decl., ¶ 54.

8 Second, Plaintiff's claims are typical of the claims of Class Members. Plaintiff and all
9 Class Members assert the same legal theories and the same types of damages. Manus Decl., ¶ 55.

10 Third, Plaintiff can adequately protect the interests of the Class. Manus Decl., ¶ 55. *See*
11 *Wershba*, 91 Cal. App. 4th at p. 238. His counsel has no conflicts of interest, has vigorously
12 prosecuted this action on behalf of Plaintiff and the Class, and has significant experience litigating
13 employment wage and hour class actions. Plaintiff and the Class have co-extensive claims, the
14 terms of the Settlement apply to all Class Members equally, and no conflict exists between them.
15 Manus Decl., ¶¶ 55- 56; *McGhee v. Bank of Am.* (1976) 60 Cal. App. 3d 442, 450.

16 **VIII. CONCLUSION**

17 Plaintiff Anthony Morris requests the Settlement be preliminarily approved, the Notice of
18 Class Action Settlement be approved and ordered disseminated to the Class, that CPT Group be
19 appointed Administrator, that Cohelan Khoury & Singer and Majarian Law Group be appointed
20 Class Counsel, that Plaintiff be appointed the Class Representative, and that a Final Approval
21 Hearing date be set.

22 COHELAN KHOURY & SINGER
23 MAJARIAN LAW GROUP, APC

24 Dated: May 31, 2023

25 By: 

Isam C. Khoury

Michael D. Singer

Marta Manus

Rosemary C. Khoury

27 Attorneys for Plaintiff Anthony Morris, on behalf
28 of himself and all others similarly situated and
aggrieved