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9 As an individual on behalf of himself and
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF GLENN**

12 JOSE R. LOYA MEDINA, as an individual
13 on behalf of himself and on behalf of all
others similarly situated,

14
15 Plaintiff,

16 v.

17 RUMIANO CHEESE CO., a California
18 Corporation; and DOES 1-100, inclusive,

19 Defendants.
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Case No.: 22CV02958

COMPLEX CASE

*[Assigned for all purposes to the Hon. Alicia
Ekland, Dept. 2]*

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Michael W. Jones,
Jose R. Loya Medina, and Michael Moore;
[Proposed] Order]

Date: December 20, 2023

Time: 2:30 pm

Dept. 2

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1 **I. INTRODUCTION**

2 Plaintiff Jose R. Loya Medina 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 approximately 358 individuals employed by Defendant Rumiano Cheese Co. (“RCC”
5 or “Defendant”) as non-exempt employees in California during the period of March 5, 2018
6 through October 12, 2023. The proposed \$640,000 settlement will provide an estimated \$355,000
7 in cash payments to the class, with an average award estimated at about \$990. The balance of
8 approximately \$285,000 will cover reasonable attorney’s fees and actual litigation costs,
9 settlement administration costs, payment of employer-side payroll taxes, and payment of civil
10 penalties to the state. The settlement is the product of Plaintiff’s pre-filing investigation, formal
11 discovery and a pre-mediation exchange of information, and arms-length negotiations overseen by
12 experienced mediator Todd Smith, 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 K. Serb, and Michael
18 W. Jones and Crosner Legal, P.C. as Class Counsel; (4) appointing Plaintiff Jose R. Loya Medina
19 as 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 Rumiano Cheese Co. was founded in 1919, and produces numerous different kinds of
24 cheeses, including gouda, cheddar, mozzarella, havarti, and monterey jack, as well as other dairy
25 products. Defendant operates multiple manufacturing plants including one in Crescent City,
26 California and one in Willows, California. Plaintiff Medina began working for Defendant in or
27 around January 2021 through a staffing agency named Express Employment Services before being
28 hired directly by Defendant in or around June 2021. Plaintiff worked the Crescent City factory as

1 a line worker in multiple departments, including the cheese department, butter department, and
2 protein department. In September 2021, Plaintiff was injured while working and was placed on
3 disability leave. [Declaration of Michael W. Jones (“Jones Decl.”), ¶ 4.]

4 Plaintiff alleges he and the class were not paid properly by RCC, including having to work “off
5 the clock” and that RCC underpaid them for overtime because it did not calculate the overtime
6 rate correctly. He further alleges RCC failed to maintain compliant meal and rest break policies,
7 that the company failed to provide all required breaks on a fully-compliant basis, and failed to pay
8 the required premium wages for break violations. He also contends he and the class members had
9 to use their personal phones for work purposes without any reimbursement. [Jones Decl., ¶ 5.]

10 Based on these allegations, Plaintiff filed his class action complaint against RCC on August 31,
11 2022, alleging causes of action for (1) recovery of unpaid minimum wages and liquidated
12 damages (2) recovery of unpaid overtime wages; (3) failure to provide meal periods or
13 compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof;
14 (5) failure to furnish accurate itemized wage statements; (6) failure to reimburse business
15 expenses; and (7) unfair competition. On November 1, 2022, Plaintiff filed a separate PAGA
16 representative complaint seeking civil penalties under PAGA based on the same alleged Labor
17 Code violations. [Jones Decl., ¶ 6; Exh. 2.]

18 RCC has at all times denied Plaintiff’s allegations and maintained its payroll policies and
19 procedures comply with California law, that it paid the class members all wages due, and that it
20 properly compensated the class members for all hours worked at the correct rates of pay. It further
21 argued there would be no reason for an employee to use their own phone while working.

22 Defendant also strongly contends the case cannot be maintained as any kind of class or
23 representative action, arguing determining the reasons for any off the clock work, or missed/non-
24 compliant breaks, would result individualized issues predominating and that a trial on a
25 representative basis would be unmanageable. Lastly, Defendant argued that a significant
26 percentage of putative class members signed arbitration agreements and therefore would not be
27 able to participate in any class proceedings. [Jones Decl., ¶ 7.]

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1 After Plaintiff filed his complaint, the Parties began working on formal discovery and, after
2 lengthy discovery meet and confer sessions and discussions about the merits of the case,
3 ultimately agreed to mediate both the class action and PAGA cases. The Parties also agreed on a
4 protocol for an exchange of additional documents and information before the mediation.
5 Consequently, Plaintiff's counsel reviewed personnel policies/handbooks, meal and rest break
6 policies, personnel files, and a random of sampling paystubs and time records for about 25% of
7 the class. Plaintiff had those records analyzed by Berger Consulting Group to look for, inter alia,
8 violation rates for missed, late and/or short meal breaks, potential violations, damages for alleged
9 unpaid double time, etc. [Jones Decl., ¶ 8.]
10 The Parties then engaged Todd Smith, Esq., a respected professional neutral with substantial wage
11 and hour and class action experience and, on July 14, 2023, the Parties participated in a full day
12 mediation with Mr. Smith. Throughout the day, the arms-length negotiations were hard-fought
13 and adversarial as the Parties exchanged extensive information on their legal and factual positions,
14 and made numerous offers and counter-offers. By the end of the day the Parties reached agreement
15 on all major issues. [Jones Decl., ¶ 9.] They then collaboratively drafted the Class Action and
16 PAGA Settlement Agreement ("Settlement Agreement") setting forth the full and final settlement
17 terms now before the Court for approval, and a true and correct copy of the Settlement Agreement
18 is attached to the Jones Declaration as Exhibit 1. Finally, order to fully effectuate the Parties'
19 settlement of all claims alleged in both the class and PAGA matters, prior to the preliminary
20 approval hearing Plaintiff filed a First Amended Complaint in this matter adding a claim under
21 PAGA, and the FAC will be the operative pleading for purposes of settlement.

22 **III. THE PROPOSED SETTLEMENT TERMS**

23 Under the settlement, RCC will pay \$640,000 into a common fund, the Gross Settlement
24 Amount ("GSA"). Attorney's fees of up to \$213,333.33 (1/3 of the GSA), litigation costs of up to
25 \$25,000, settlement administration costs of no more than \$15,000, all employer-side payroll taxes,
26 and a payment of \$20,000 for PAGA civil penalties (to divided 75% to the Labor & Workforce
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1 Development Agency and 25% to the Aggrieved Employees), all will be paid from the GSA.¹ The
2 remainder of around \$355,000 will be allocated pro rata among the Class Members based on their
3 total weeks worked during the Class Period. No portion of the GSA will revert to RCC. [Jones
4 Decl., ¶ 10.]

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

6 The settlement provides for conditional certification of a settlement class including all
7 individuals all current and former non-exempt employees that worked (1) either directly for RCC
8 and not ever through a staffing agency assigned to work at RCC any time during the Class Period
9 or (2) initially began performing work at any of RCC's locations via a staffing agency and then
10 became a direct employee of RCC at any location in California any time during the Class Period of
11 March 5, 2018 through October 12, 2023. The Settlement Class consists of approximately 358
12 individuals. [Jones Decl., ¶ 11.]

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

14 As noted, the settlement obligates RCC to pay \$640,000 to resolve the claims of the
15 Settlement, inclusive of attorney's fees and costs. A minimum of approximately \$355,000 from the
16 GSA will be distributed to the Participating Class Members. This is a cash settlement that does not
17 require Participating Class Members to submit a claim form to receive their settlement share.
18 Participating Class Members will receive their settlement checks automatically via First Class U.S.
19 Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty
20 percent will be allocated to penalties and interest, which allocation is consistent with RCC's
21 potential liability as discussed below. Subject to the Court's approval, any amounts not claimed
22 (because a class member does not cash his or her settlement check) will be forwarded to the
23 California State Controller's Unclaimed Property Division. [Jones Decl., ¶ 12.]

24 Each Participating Class Member will receive a share of the Net Settlement Amount based
25 on his or her total weeks worked for RCC during the Class Period while employed as a non-

26
27 ¹ Plaintiff entered into a separate settlement agreement with RCC in resolution of all claims against the
28 company, including Plaintiff's individual non-wage and hour claims related his employment and
termination thereof, as addressed in more detail below. Consequently he is not seeking a class
representative enhancement award.

1 exempt employee direct hire employee (as further defined in the Settlement Agreement). Thus, each
2 Class Member's Individual Settlement Payment will be calculated using criteria typically used in
3 determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest
4 breaks, and potential statutory penalties under applicable law. These methods are intended to ensure
5 each Class Member receives a portion of the available settlement funds corresponding to the relative
6 value of his or her potential claims. The proposed allocation provides a reasonable way to
7 compensate Class Members based on the amount of time they worked for RCC and the number of
8 instances they allegedly missed a meal break and/or rest break, were not provided compensation in
9 lieu of such missed breaks, or lost hours worked due to alleged time rounding. The average gross
10 award is estimated to be approximately \$9903. [Jones Decl., ¶ 13.]

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

15 **C. Settlement Administration**

16 Subject to the Court's approval, the Parties have agreed on Phoenix Settlement
17 Administrators as the Settlement Administrator. Phoenix is qualified and has significant experience
18 administering class action settlements, including numerous wage and hour matters. Phoenix's fees
19 and costs will not exceed \$15,000.00. If the Court approves less than the above amount, the
20 difference will remain in the Net Settlement Amount for distribution to the Participating Class
21 Members. [Jones Decl., ¶ 14; Declaration of Michael Moore, ¶¶ 2-17; Exhs. A-B.]

22 **D. The Class Notice**

23 The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement)
24 sets out information about this case and explains the basic settlement terms in plain language. The
25 Notice also sets forth the individualized information used to calculate Class Members' Individual
26 Settlement Payments and each Class Member's estimated settlement award. The Notice likewise
27 details the procedures for Class Members to dispute their individual information, the procedure for
28 submitting an objection to the Settlement, the procedure to request exclusion, and the fact that any

1 final judgment will bind all class members who do not opt out. Cal. Rules of Court 3.769(f) and
2 3.766(d). In sum, the Notice provides the Class Members with the information necessary to
3 evaluate the Settlement and decide to participate in, opt out of, or object to the proposed
4 Settlement, and meets all requirements imposed by the California Rules of Court. Coupled with
5 the notice procedure, the Notice provides the best notice practicable. [Jones Decl., ¶ 15.]

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

7 Class Members will have forty-five (45) days to dispute the information in their Notice
8 used to calculate their settlement award, and also have 45 days to submit any objections to the
9 settlement or to request exclusion. If a Class Member disputes their individual information, the
10 Settlement Administrator will review the Class Member's records and any other information
11 submitted, and make a final determination. [Jones Decl., ¶ 16.]

12 **F. Release of Claims**

13 All Participating Class Members will release RCC from all claims alleged in the operative
14 complaint, or that could have been brought based on the factual allegations in the operative
15 complaint, including PAGA claims, during the Class Period. The release is limited to the claims
16 that were actually The release is limited to the claims that were actually alleged, or could have
17 been alleged, in the Operative Complaint reasonably arising out of the same set of operative facts
18 alleged in the Operative Complaint, which arose during the Class Period.. [Jones Decl., ¶ 17.]

19 **G. Attorney's Fees and Costs**

20 The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of
21 attorney's fees of up to 1/3 of the GSA, or \$213,333.33, and reimbursement of actual costs and
22 expenses of up to \$20,000.00. In advance of the Final Approval Hearing, Plaintiff's counsel will
23 submit a separate motion for attorney's fees and actual litigation costs per the terms of the
24 Settlement Agreement and applicable law, and will provide the Court with appropriate
25 information and evidence regarding hourly rates, tasks performed, and time expended on the case.
26 [Jones Decl., ¶ 18.]

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1 **H. PAGA Claims and Notice to the LWDA**

2 The Parties allocated \$20,000 of the GSA to payment of civil penalties under PAGA, as
3 addressed in more detail below. As required by Labor Code section 2699(1)(2), Plaintiff gave notice
4 of the settlement and the approval hearing to the LWDA via its online portal. [Jones Decl., ¶ 19;
5 Exh. 4.]

6 **IV. ARGUMENT**

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

8 The law favors settlement, particularly in class actions where substantial resources can be
9 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
10 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992)
11 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37
12 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
13 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
14 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
15 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures
16 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via
17 a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
18 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

19 The first step is a motion for preliminary approval, through which the parties present the
20 court with the proposed settlement and seek a determination that it is sufficiently fair and reasonable
21 to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of
22 Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the
23 “range of reasonableness” and if notice should be provided to the class regarding the settlement’s
24 proposed terms and conditions, and whether a final fairness hearing should be scheduled. Wershba,
25 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs. (1994)
26 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class
27 actions, courts generally apply a presumption of fairness to class action settlements when (1) the
28 settlement results from arms-length bargaining, (2) investigation and discovery are sufficient to

1 allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and
2 (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at
3 245.

4 If the court grants preliminary approval, it then orders the class be given notice in an
5 appropriate manner, establishes a schedule and procedures for class members to request exclusion
6 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney's fees
7 and costs is filed subsequent to preliminary approval and heard with the motion for final approval,
8 as part of the second step of the two-step approval process. Dunk, 48 Cal.App.4th at 1800; Wershba,
9 91 Cal.App.4th at 232. The proposed settlement in this matter warrants preliminary approval under
10 the liberal standard discussed above, as it is fair, reasonable and adequate under all the
11 circumstances, and represents a favorable result for the class.

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

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

19 In the present matter, conditional certification is proper since this matter satisfies all
20 requirements for class certification under Code of Civil Procedure section 382. First, the class is
21 both sufficiently numerous, consisting of approximately 358 individuals, and ascertainable by
22 reference to Defendant's personnel and payroll records. [Jones Decl., ¶ 20.] Next, Plaintiff is an
23 adequate class representative, as his claims do not conflict with and are not antagonistic to the
24 claims of other class members. In this regard, the settlement of his individual claims is not an
25 obstacle to his ability to serve as class representative for several reasons. First, his independent
26 claim in no way impacted negotiation of the final class settlement which, as noted, was achieved
27 via negotiations facilitated by a professional neutral and which negotiations took into account
28 Plaintiff's individual claims – in other words, the settlement amount represents a professional

1 neutral's independent evaluation of the value of the case. Further, Plaintiff is not seeking an
2 enhancement award in recognition of the fact he is receiving additional monies for his individual
3 non-wage and hour claims. Thus, Plaintiff has in no way "sold out" the class members for his own
4 personal benefit but instead has simply received fair value for his separate claims in addition to
5 securing a positive result for the absent class members. For these reasons, Plaintiff contends he is
6 an adequate class representative. Further, his claims are typical given he is a member of the class
7 and his claims arise from the same employment practices and course of conduct giving rise to the
8 claims of the other class members. [Jones Decl., ¶¶ 21-22; Declaration of Jose R. Loya Medina
9 Decl., ¶¶ 2-9.] Lastly, his counsel is experienced and adequate class counsel. [Jones Decl., ¶¶
10 37-42.]

11 Next, common questions of law and fact predominate – particularly for purposes of a
12 settlement class – as the Class Members all were subject to the same payroll scheme and policies
13 that Plaintiff contends violates California labor law. Since the focus of the claims against RCC
14 concerns the legality of common policies applied uniformly to the entire class, common issues
15 predominate over individualized inquiries concerning liability. For instance, RCC's calculation of
16 overtime rates and payment of overtime either complies with California law or it does not.
17 Regardless of that determination, it will decide liability for all class members one way or another.
18 [Jones Decl., ¶ 23.]

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

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

3 The proposed settlement resulted from serious, arms-length negotiations facilitated by
4 respected mediator, Todd Smith, Esq., who has considerable experience mediating wage and hour
5 class action cases. [Jones Decl., ¶ 9.] Plaintiff's counsel Zachary M. Crosner, Jamie K. Serb, and
6 Michael Jones of Crosner Legal, P.C. have years of experience litigating wage and hour class
7 actions. Plaintiff's counsel is well-qualified to evaluate the risks and benefits of pursuing further
8 litigation or settling the matter. [Jones Decl., ¶¶ 37-42.]

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

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

24 Next, the proposed settlement falls within the range of reasonableness warranting
25 preliminary approval. The proposed settlement involves a significant sum that, when distributed,
26 will confer direct monetary benefits on the class members. Each class member will be entitled to a
27 monetary payment without having to file a claim and each payment will be relative to the value of
28 his or her potential claims. Through the information exchanged and analysis undertaken, Plaintiff

1 weighed the risks of continued litigation against the benefits of the proposed settlement and
2 determined settlement to be the most reasonable option.

3 Using that data, Plaintiff ran various calculations and estimated RCC's likely maximum
4 exposure on the class claims at approximately \$9,282,000, including about \$161,000 on the
5 unpaid wage claims, about \$2,273,000 on the meal period claims, approximately \$4,929,000 on
6 the rest break claims, about \$294,000 for expense reimbursement, about \$1,104,000 for wage
7 statement violations, and approximately \$521,000 in waiting time penalties. [Jones Decl., ¶¶ 26-
8 27.] Plaintiff's counsel substantially discounted the value of these claims, however, in light of the
9 multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
10 numerous defenses and vigorously defended against these claims.

11 On the unpaid wage claims, Plaintiff alleged RCC failed to pay overtime based on the
12 employees' "regular rate of pay" as required under California law. "Regular rate of pay, which can
13 change from pay period to pay period, includes adjustments to the straight time rate, reflecting,
14 among other things, shift differentials and the per-hour value of any non-hourly compensation the
15 employee has earned." Alvarado v. Dart Container Corp., (2018) 4 Cal. 5th 542, 553. Plaintiff
16 alleges Defendant regularly paid employees non-discretionary bonuses and, per Plaintiff's
17 allegations, it did not factor these bonuses/incentives when calculating Plaintiff's or any of the
18 other employees' regular rate of pay for purposes of paying his overtime wages. Instead, his, and
19 all other employees', overtime rates are exactly 1.5x their base hourly rate. On the other hand,
20 RCC argued it accurately tracks and pays for all hours worked, and that its compensation policies
21 are legal and fully comply with California law. RCC further argued it never engaged in any time
22 rounding in the first instance. [Jones Decl., ¶ 28.]

23 On the meal break claim, Plaintiff alleges he and other employees were often pressured to
24 work through their meal breaks due to the heavy workload involved in keeping production going
25 on the line. Notably, those working in the butter department never received their lawful meal
26 breaks on time, or at all, due to understaffing and Defendant's failure to provide relief workers.
27 Plaintiff's review of the time records produced further suggests numerous "de facto" violations
28 and Plaintiff contends around 48% of all shifts have at least one unique meal period violation,

1 particularly with respect to the failure to provide second meal periods on shifts over 10 hours.
2 [Jones Decl., ¶ 29.]

3 In response, RCC argued its break policies are fully compliant with California law, that it
4 provided class members with the opportunity to take all required breaks, and that many class
5 members waived their second meal periods. Defendant further maintained that, in light of its
6 compliant policies, whether a class member missed a meal period, received a late meal period, or
7 missed a rest break would have been aberrational and against company policy. Thus, per RCC,
8 these issues are not amenable to class or representative treatment since their resolution would
9 require individualized inquiries as to why a break was missed or non-compliant. RCC further
10 argued that in many instances it paid the required one hour of premium pay for documented
11 violations. [Jones Decl., ¶ 30.]

12 For rest breaks, Plaintiff again argued that there were numerous “de facto” violations
13 where class members didn’t receive a break, or didn’t receive a compliant break, due to the press
14 of business and understaffing. As with meal breaks, Defendant argued the applicable rest break
15 policies complied with California law, and that it authorized and permitted employees to take all
16 required breaks. Defendant further contended that, in light of the fact that it is not required to
17 maintain a record of rest periods, any evidence of failure to authorize rest periods and/or
18 discouragement from taking rest periods would be purely anecdotal and individual issues would
19 predominate on liability. This arguably would once again make class certification and a trial
20 unmanageable since the number of instances an employee missed a rest break would have to be
21 tested on a case by case basis to determine compliance. [Jones Decl., ¶ 31.]

22 For Plaintiff’s expense reimbursement claim, he argued Defendant failed to reimburse
23 Plaintiff and the other employees for expenses incurred in using their personal mobile phones and
24 data for business purposes. Of note, Plaintiff and the other employees were frequently contacted
25 by text message and/or phone call with questions and requests regarding their availability for
26 shifts. When employees must use their personal cell phones for work, this statute required an
27 employer to reimburse them for such use. Cochran v. Schwan’s Home Services, Inc. (2014) 228
28 Cal.App.4th 1137, 1144. In response, RCC argued there would be no need for an employee use a

1 phone to perform his or her work duties, and thus any such use would have been unnecessary and
2 purely for personal convenience, and therefore not reimbursable. [Jones Decl., ¶ 32.]

3 Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage
4 statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to
5 properly record and pay for all hours worked, and will rise or fall along with that primary claim, in
6 addition to being subject to “good faith” and other defenses available to Defendant. E.g., Amaral
7 v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully
8 fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the
9 underlying claim for failing to pay living wages). Accordingly, Plaintiff discounted the derivative
10 claims significantly in light of these multiple potential defenses. [Jones Decl., ¶ 33.]

11 As far as potential PAGA liability, the theoretical penalties totaled over \$5.8 million
12 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
13 at issue for every single eligible pay period. [Jones Decl., ¶ 34.] As with the class claims, Plaintiff
14 discounted the potential PAGA penalties for the multi-layered defenses proffered by Defendant on
15 the merits, and further discounted these claims since the Court possesses wide discretion to reduce
16 such penalties even if Plaintiff ultimately prevailed. Lab. Code § 2899(e)(2); Fleming v. Covidien
17 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by
18 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
19 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
20 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
21 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

22 Accordingly, the Parties allocated \$20,000 to PAGA penalties, which amount is reasonable
23 and in line with comparable settlements in other class actions in California. Van Kempen v.
24 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
25 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
26 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
27 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
28 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).

1 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
2 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
3 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
4 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
5 not objected to the settlement").

6 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
7 successful, could have decimated Plaintiff's case. Accordingly, Plaintiff faced risky issues going
8 forward with this litigation, and given the need to secure class certification, try the case, and deal
9 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's
10 counsel discounted the value of the class claims consistent with the risks discussed above, and
11 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
12 continued. Plaintiff's counsel concluded – in light of these very real and substantial risks –
13 settlement on the proposed terms and without prolonged and costly litigation was in the best
14 interests of the class. The overall \$640,000 recovery represents a significant percentage of
15 Defendant's potential exposure, and given these risks discussed above a total recovery for the
16 class of \$640,000, with an average award of almost \$1,000 per class member, is a fair result within
17 the range of reasonableness considering all potential outcomes. [Jones Decl., ¶¶ 35-36.]

18 Importantly, the mere fact that a settlement does not provide the same recovery as might be
19 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
20 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed
21 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
22 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
23 settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven
24 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that
25 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
26 itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane
27 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is
28 fundamentally fair . . . is different from the question whether the settlement is perfect in the

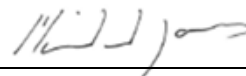
1 estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal.
2 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
3 though it represented 99% discount off the maximum value of the claims). Importantly as well,
4 the proposed settlement is non-reversionary and will provide benefits to the Class Members
5 without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing
6 Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
7 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
8 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
9 within the “range of reasonableness,” and is fair and adequate for the Class.

10 **V. CONCLUSION**

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

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15 Dated: November 21, 2023

CROSNER LEGAL, P.C.

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