

1 JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
2 SEPIDEH ARDESTANI, ESQ. (SBN 274259)
sepideh@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fax: (310) 510-6429
7

8 Attorneys for Plaintiff MARIA DIAZ
9 As an individual on behalf of herself and
on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF KERN**

12 MARIA DIAZ, as an individual on behalf
13 of herself and on behalf of all others
similarly situated,

14
15 Plaintiff,

16 v.

17 CENTRAL VALLEY EGGS, LLC, a
18 Delaware Limited Liability Company; and
DOES 1-100, inclusive,

19
20 Defendants.
21
22
23
24
25
26
27
28

Case No.: BCV-22-102510

Assigned for All Purposes to:
Hon. Barnard C. Barmann, Jr.
Division H

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Sepideh Ardestani,
Maria Diaz, and Eric Springer; [Proposed]
Order]

Date: February 20, 2024
Time: 8:30 a.m.
Div.: H

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	INTRODUCTION	1
III.	PROPOSED SETTLEMENT TERMS	3
A.	Certification of the Settlement Class	4
B.	The Benefit Conferred on the Settlement Class	4
C.	Settlement Administration.....	5
D.	The Class Notice	5
E.	Right to Correct Information, Opt Out, or Object	5
F.	Release of Claims	6
G.	Plaintiff's Enhancement	6
H.	Attorney's Fees and Costs	7
I.	PAGA Claims and Notice to the LWDA.....	7
IV.	ARGUMENT	7
A.	Standard of Review for a Class Action Settlement.....	7
B.	The Proposed Settlement Class Should Be Conditionally Certified	8
C.	The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness.....	9
V.	CONCLUSION.....	15

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135.....	14
<u>Amaral v. Cintas Corp. No. 2</u> (2008) 163 Cal.App.4th 1157.....	12
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504.....	13
<u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	7
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	7, 8
<u>Fleming v. Covidien</u> (C.D. Cal. 2011) 2011 U.S.	12
<u>Global Minerals & Metals Corp. v. Superior Court</u> (2003) 113 Cal.App.4th 836.....	8
<u>Jennings v. Open Door Mktg. Inc.</u> (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	13
<u>Jones v. Farmers Ins. Exch.</u> (2013) 221 Cal.App.4th 986.....	9
<u>Kullar v. Foot Locker Retail, Inc.</u> (2008) 168 Cal.App.4th 116.....	10
<u>Lane v. Facebook, Inc.</u> (9th Cir. 2012) 696 F.3d 811	14
<u>North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs.</u> (1994) 27 Cal.App.4th 1085.....	8
<u>Potter v. Pacific Coast Lumber Co.</u> (1951) 37 Cal.2d 592.....	7
<u>Rodriguez v. W Publ’g Corp.</u> (9th Cir. 2009) 563 F.3d 948.....	6
<u>Slavkov v. First Water Heater Partners I</u> (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	13

1	<u>Staton v. Boeing</u>	
2	(9th Cir. 2003) 327 F.3d 938.....	6
3	<u>In re Taco Bell Wage and Hour Actions</u>	
4	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	13
5	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
6	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	13
7	<u>Wershba v. Apple Computer</u>	
8	(2001) 91 Cal.App.4th 224.....	7, 8, 14
9	<u>White v. Experian Information Solutions, Inc.</u>	
10	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	14
11	<u>Williams v. Superior Court</u>	
12	(2013) 221 Cal.App.4th 1353.....	9

1	Statutes	
2	Cal. Rule of Court. 3.769	7
3	Cal. Rule of Court 3.769(c)	8
4	Cal. Rules of Court 3.769(f) and 3.766(d)	5
5	Code of Civil Procedure section 382	8
6	Labor Code § 203	12
7	Labor Code sections 203 and 226	12
8	Labor Code § 2699(e)(2)	12
9	Labor Code section 2699(l)(2)	7
10		
11	Other Authorities	
12	Federal Judicial Center, <u>Managing Class Action Litigation: A Pocket Guide for</u>	
13	<u>Judges</u> (3d ed. 2010), available at	
14	<u>www.fjc.gov/sites/default/files/2012/ClassGd3.pdf</u>	14
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff Maria Diaz hereby moves the Court for an order granting preliminary approval to
3 a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of
4 1045 individuals employed by Defendant Central Valley Eggs, LLC (“CVE” or “Defendant”) as
5 non-exempt employees in California during the period of October 8, 2021 through August 30,
6 2023. The proposed \$125,000 settlement will provide approximately \$38,533.34 in cash
7 payments to the class. The balance of approximately \$86,466.66 will cover reasonable attorney’s
8 fees and actual litigation costs, settlement administration costs, an enhancement award to the
9 named plaintiff, and payment of civil penalties to the State. The settlement is the product of
10 Plaintiff’s pre-filing investigation, formal discovery and a pre-mediation exchange of information,
11 and arms-length negotiations overseen by experienced mediator Scott Radovich, Esq.

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

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

22 Defendant CVE operates a cage free egg farm in Wasco, California. Plaintiff Maria Diaz
23 was been employed by CVE as a non-exempt food plant sanitation crew member. Her duties
24 included cleaning the processing facility on a daily basis, as well as disassembling/reassembling,
25 cleaning, and sanitizing all production equipment within the processing plant. She typically
26 worked Monday through Friday 9:00 pm to 5:30 a.m. but at times she was required to work 1-2
27 hours past her scheduled shift end time. Plaintiff contends she was wrongfully terminated in
28

1 December 2021 after she missed work for medical reasons. [Declaration of Sepideh Ardestani
2 (“Ardestani Decl.”), ¶ 4.]

3 Plaintiff alleges CVE failed to pay all wages by both not paying all overtime and also by
4 miscalculating the amount of overtime due by not properly calculating the regular rate of pay. She
5 also alleges CVE did not provide all required meal and rest breaks, and further did not pay the
6 required premium pay for documented violations. Plaintiff also contends she regularly used her
7 personal cellular phone to communicate regarding shifts, and needing to arrive early or stay late,
8 but Defendant never received reimbursement. [Ardestani Decl., ¶ 5.]

9 Based on these allegations, on September 26, 2022, Plaintiff filed a class action complaint,
10 alleging claims for (1) unpaid minimum wages, (2) unpaid overtime wages, (3) unpaid premium
11 wages for late, short or denied meal and rest periods, (4) failure to furnish accurately itemized
12 wage statements, (5) failure to pay all wages due upon separation of employment, (6) failure to
13 reimburse business expense, and (7) unfair competition. Plaintiff then filed a separate PAGA-only
14 complaint on December 2, 2022 after exhausting her administrative remedies. [Ardestani Decl., ¶
15 6; Exh. 2.]

16 CVE has at all times denied Plaintiff’s allegations in both matters and maintained its
17 payroll policies and procedures comply with California law, that it paid the class members all
18 wages due, and that its compensation policies properly compensate the class members for all hours
19 worked. Defendant also strongly contends the case cannot be maintained as any kind of class or
20 representative action, arguing determining the number of potential off the clock hours worked by
21 each class member would result individualized issues predominating and that a trial on a
22 representative basis would be unmanageable. Defendant also noted it settled a prior wage and hour
23 class action with a release period of April 6, 2016 through October 7, 2021, and also settled a
24 earlier PAGA case with a release period of November 2, 2019 through June 28, 2021. Due to the
25 previously settled cases, the Class Period for this matter is from October 8, 2021 through the
26 August 30, 2023 and the PAGA Period runs from September 28, 2021 through the present.
27 Finally, Defendant emphasized that, following these earlier settlements, a substantial majority of
28 the class members signed arbitration agreements with valid class action waivers and accordingly

1 the size of any putative class and the corresponding potential exposure would be severely limited.
2 [Ardestani Decl., ¶ 8.]

3 Once both cases were at issue, the Parties propounded and responded to initial written
4 discovery, and after meet and confer discussions about pending discovery and law and motion
5 issues, as well as the merits of the case, the Parties agreed to a mediation. The Parties also agreed
6 on a protocol for an exchange of additional documents and information before the mediation.
7 Consequently, Plaintiff's counsel reviewed payroll records, personnel policies/handbooks,
8 personnel files, and a random of sampling paystubs and time records for about 10% of the class.
9 Plaintiff had those records analyzed by Berger Consulting Group to look for, inter alia, violation
10 rates, potential damages for the alleged unpaid overtime, etc. [Ardestani Decl., ¶ 8.]

11 The Parties then engaged Scott Radovich, Esq., a highly respected mediator with
12 substantial wage and hour and class action experience, and on August 15, 2023, participated in a
13 full day mediation with Mr. Radovich. Throughout the day, the arms-length negotiations were
14 hard-fought and adversarial as the Parties exchanged extensive information on their legal and
15 factual positions, and made numerous offers and counter-offers. By the end of the day the Parties
16 reached agreement on all major issues. They then collaboratively drafted the Class Action and
17 PAGA Settlement Agreement and Class Notice ("Settlement Agreement") setting forth the full
18 and final settlement terms now before the Court for approval, and a true and correct copy of the
19 Settlement Agreement is attached to the Ardestani Declaration as Exhibit 1. Additionally, in order
20 to fully effectuate a settlement of both the class and PAGA matters, Plaintiff filed a first amended
21 complaint in this case adding claims under PAGA, and the PAGA only matter has been dismissed.
22 [Ardestani Decl., ¶ 9.]

23 **III. THE PROPOSED SETTLEMENT TERMS**

24 Under the settlement, CVE will pay \$125,000 into a common fund, the Gross Settlement
25 Amount ("GSA"). Attorney's fees of up to \$41,666.66 (1/3 of the GSA), litigation costs of up to
26 \$15,000, settlement administration costs of no more than \$14,800, a service award to Plaintiff of no
27
28

1 more than \$5,000, and \$10,000 for alleged civil penalties under PAGA,¹ all will be paid from the
2 GSA. The remainder of around \$38,533.34 will be allocated pro rata among the Class Members
3 based on their total weeks worked during the Class Period. No portion of the GSA will revert to
4 CVE. [Ardestani Decl., ¶ 10.]

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

6 The settlement provides for conditional certification of a settlement class including all non-
7 exempt employees of CVE employed in California at any time between October 8, 2021 and August
8 30, 2023. The Settlement Class consists of approximately 1045 individuals. [Ardestani Decl., ¶ 11.]

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

10 As noted, the settlement obligates CVE to pay \$125,000 to resolve the claims of the
11 Settlement Class, inclusive of attorney's fees and costs. A minimum of approximately \$38,533.34
12 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that
13 does not require Participating Class Members to submit a claim form to receive their settlement
14 share. Participating Class Members will receive their settlement checks automatically via First
15 Class U.S. Mail. Ten percent of each settlement share will be allocated to wages and the remaining
16 ninety percent will be allocated to expense reimbursement, penalties, and interest, which allocation
17 is consistent with CVE's potential liability as discussed below. CVE will pay any and all applicable
18 employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval,
19 any amounts not claimed (because a class member does not cash a settlement check) will be
20 forwarded to the State Controller's Unclaimed Property Fund. [Ardestani Decl., ¶ 12.]

21 Each participating Class Member will receive a share of the Net Settlement Amount based
22 on his or her total weeks worked for CVE during the Class Period while employed in a non-exempt
23 position. Thus, each individual Settlement Payment will be calculated using criteria typically used
24 in determining appropriate amounts of unpaid wages under applicable law. These methods will
25 ensure each Class Member receives a portion of the settlement funds relative to the value of their
26 potential claims. The proposed allocation provides a reasonable way to compensate Class Members

27 ¹ Per PAGA, this will be allocated \$7,500 (75%) to the Labor & Workforce Development Agency, and the
28 remaining \$2,500 (25%) will go to the eligible Aggrieved Employee (as defined in the Settlement
Agreement).

1 based on the amount of time they worked for CVE and the potential overtime lost, unreimbursed
2 expenses, etc. The average gross award is estimated to be approximately \$40. [Ardestani Decl., ¶
3 13.]

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

8 **C. Settlement Administration**

9 Subject to Court approval, the Parties have agreed on Simpluris, Inc. as the Settlement
10 Administrator. Simpluris is qualified and has significant experience administering class action
11 settlements, including numerous wage and hour matters. Simpluris's fees and costs will not exceed
12 \$14,800.00. [Ardestani Decl., ¶ 14; Declaration of Eric Springer, ¶¶ 5-13, Exhs. A-C.]

13 **D. The Class Notice**

14 The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement)
15 sets out information about this case and explains the basic settlement terms in plain language. The
16 Notice also sets forth the individualized information used to calculate Class Members' Individual
17 Settlement Payments and each Class Member's estimated settlement award. The Notice likewise
18 details the procedures for Class Members to dispute their individual information, the procedure for
19 submitting an objection to the Settlement, the procedure to request exclusion, and the fact that any
20 final judgment will bind all class members who do not opt out. Cal. Rules of Court 3.769(f) and
21 3.766(d). In sum, the Notice provides the Class Members with the information necessary to
22 evaluate the Settlement and decide to participate in, opt out of, or object, and meets all
23 requirements imposed by the California Rules of Court. Coupled with the notice procedure, the
24 Notice provides the best notice practicable. [Ardestani Decl., ¶ 15.]

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

26 Class Members will have 45 days to dispute the information in their Notice used to
27 calculate their settlement award, and also have 45 days to submit any objections to the settlement
28 or to request exclusion. If a Class Member disputes their individual information, the Settlement

1 Administrator will review the Class Member's records and any other information submitted, and
2 make a final determination. [Ardestani Decl., ¶ 16.]

3 **F. Release of Claims**

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

9 **G. Plaintiff's Enhancement**

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

19 Here, the Settlement Agreement provides for (a) an enhancement of up to \$5,000.00 to
20 Plaintiff. This request is reasonable given the risks she undertook on behalf of the Class Members.
21 By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement
22 possible for the absent Class Members, while shouldering the risk of being liable for Defendant's
23 litigation costs. Plaintiff also exposed herself to unwanted notoriety related to filing a public
24 lawsuit (discoverable even through a simple google search) for the benefit of other employees,
25 placing herself at risk of discrimination by future prospective employers. Among taking many
26 other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual
27 information and documents to counsel, attended numerous meetings/phone conferences with
28 counsel to discuss the case, and kept abreast of all significant developments, as set forth in her

1 declaration filed herewith. [Ardestani Decl., ¶ 18.]

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

3 The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of
4 attorney's fees of up to 1/3 of the GSA, or \$41,666.66, and reimbursement of actual costs and
5 expenses of up to \$15,000.00. In advance of the Final Approval Hearing, Plaintiff's counsel will
6 submit a request for attorney's fees and actual litigation costs per the terms of the Settlement
7 Agreement and applicable law, and will provide the Court with appropriate information and
8 evidence regarding hourly rates, tasks performed, and time expended on the case. [Ardestani
9 Decl., ¶ 19.]

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

11 The Parties allocated \$10,000 of the GSA to payment of civil penalties under PAGA, as
12 addressed below. Per Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and the
13 approval hearing to the LWDA via its online portal. [Ardestani Decl., ¶ 20; Exh. 3.]

14 **IV. ARGUMENT**

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

16 The law favors settlement, particularly in class actions where substantial resources can be
17 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
18 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992)
19 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37
20 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
21 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
22 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
23 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures
24 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via
25 a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
26 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

27 The first step is a motion for preliminary approval, through which the parties present the
28 court with the proposed settlement and seek a determination that it is sufficiently fair and reasonable

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

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

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

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

26 In the present matter, conditional certification is proper since this matter satisfies all
27 requirements for class certification under Code of Civil Procedure section 382. First, the class is
28 both sufficiently numerous, consisting of at least 1045 individuals, and ascertainable by reference

1 to Defendant’s personnel and payroll records. [Ardestani Decl., ¶ 21.] Next, Plaintiff is an
2 adequate class representative, as her claims do not conflict with and are not antagonistic to the
3 claims of other class members. Further, her claims are typical given she is a member of the class
4 and her claims arise from the same employment practices giving rise to the claims of the other
5 class members. [Ardestani Decl., ¶ 22.] Lastly, her counsel are experienced and adequate class
6 counsel. [Ardestani Decl., ¶¶ 31-36.]

7 Next, common questions of law and fact predominate – particularly for purposes of a
8 settlement class – as the Class Members all were subject to the same payroll scheme and policies
9 that Plaintiff contends violate California labor law. Since the focus of the claims against CVE
10 concerns the legality of common policies applied uniformly to the entire class, common issues
11 predominate over individualized inquiries concerning liability. For instance, whether CVE
12 correctly calculated and paid for overtime pay will decide liability for all class members one way
13 or another. Similarly, whether CVE required use of personal phones for work purposes without
14 proper reimbursement presents another common question. [Ardestani Decl., ¶ 23.]

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

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

25 The proposed settlement resulted from serious, arms-length negotiations facilitated by
26 respected mediator, Scott Radovich, Esq., who has considerable experience mediating wage and
27 hour class action cases. [Ardestani Decl., ¶ 9.] Plaintiff’s counsel Zachary M. Crosner, Jamie Serb,
28 and Sepideh Ardestani of Crosner Legal, P.C. have years of experience litigating wage and hour

1 class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of further
2 litigation versus settling the matter. [Ardestani Decl., ¶¶ 31-36.]

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

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

18 Using that data, Plaintiff's experts estimated CVE's likely maximum exposure
19 approximately \$7,500,000. Plaintiff and his counsel substantially discounted the value of these
20 claims, however, in light of the potentially applicable arbitration agreements as well as the
21 multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
22 numerous defenses on both the merits and to class certification, and vigorously defended against
23 these claims. [Ardestani Decl., ¶ 26.]

24 On the unpaid overtime claims, Plaintiff's review of the time and payroll records suggested
25 Defendant did not always pay daily overtime (i.e., hours over 8 in one day) at the overtime rate
26 but instead only paid at the base rate of pay. Plaintiff further contends that same review shows
27 CVE failed to properly calculate the correct overtime rate for pay periods where class members
28 both worked overtime and received non-discretionary pay such as a bonus.

1 Based on a 10% sampling provided to Plaintiff's expert, 1,022.1 overtime hours were paid at the
2 base hourly rate rather than the required premium rate, resulting in \$10,338 in unpaid overtime
3 wages). On the regular rate issue, Plaintiff's experts calculated the miscalculation resulted in an
4 underpayment of \$14,108 in wages is owed to the class for the failure to include bonuses and shift
5 differentials into the regular rate of pay when calculating the overtime rate, meal period premium
6 rate, and sick pay. [Ardestani Decl., ¶ 27.]

7 On the meal period claim, alleged primarily "de facto" violations where CVE's records
8 showed that meal periods were not taken, were late, or were cut short. Based on Plaintiff's
9 expert's analysis, of the 80,985 shifts entitled to a meal period, about 14.6% of those shifts
10 reflected a unique meal violation. In response, Defendant will argued its written policies were
11 fully compliant, that it provided employees with the opportunity to take all required meal periods
12 on a fully compliant basis, and that it paid meal period premiums for document violations. It also
13 argued the issue is not suitable for class certification because determining whether a class member
14 missed a meal period for legitimate business reasons or due to some other reason, such as personal
15 choice, would mean individualized inquiries would predominate. Based on Plaintiff's expert's
16 analysis, even after accounting for meal premiums that were paid, CVE still owed the class at least
17 \$201,607 in meal period premiums. [Ardestani Decl., ¶ 27.]

18 Plaintiffs' theory of Defendant's rest period liability is primarily de facto – that class
19 members missed rest breaks due to work constraints and didn't receive the mandated premium
20 wage. On the other hand, as with meal breaks, Defendants argued the written policies complied
21 with California law and authorized and permitted employees to take all required rest breaks.
22 Defendants further contended that, since they are not required to maintain a record of rest periods,
23 any evidence of a failure to authorize rest periods and/or discouragement from taking rest periods
24 would be purely anecdotal and since individual issues would predominate and class certification
25 would be impossible. Defendant also may contend that it is only liable if Plaintiff can prove, on a
26 shift-by-shift basis, employees actually did not take a rest break. This arguably would make a
27 proof of damages more difficult since the number of instances a Class Member was denied a rest
28 period specifically due to the absence of a compliant policy, as opposed to some other reason, is

1 impossible to reliably quantify since employers are not required to maintain records of rest
2 periods. Thus, it is entirely possible a jury or the Court could decline to award any amounts for
3 missed or non-compliant rest periods. Here, assuming a 100% violation rate, the potential
4 exposure is about \$1,625,474. [Ardestani Decl., ¶ 27.]

5 For the expense reimbursement claims, Plaintiff argues CVE requires Class Members to use
6 their personal cell phones to communicate with supervisors and coworkers without reimbursement.
7 In response, CVE contends there was no need to use a personal cell phone in the performance of
8 Class Member job duties, and if anyone did so it was purely for personal convenience and not a job
9 requirement. Without accounting for any potential defenses, Plaintiff estimates she and the Class
10 Members are entitled to \$20 per month for unreimbursed cellular phone usage, Defendant's
11 exposure is around \$107,452 in expense reimbursement. [Ardestani Decl., ¶ 46.]

12 The claims for penalties under Labor Code sections 203 and 226 are derivative of the
13 underlying claims, and accordingly are subject to the same risks and uncertainties as the primary
14 meal and rest break violations and unpaid wage violations, plus additional risks posed by the need
15 to take into account the discretionary nature of such awards and the "good faith" and other
16 defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157,
17 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class
18 prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely
19 are derivative of the unpaid wage claim, they also are subject to additional defenses and
20 accordingly Plaintiff likewise applied a significant risk discount. Assuming a 100% violation rate,
21 the exposure is about \$1,691,100 in wage statement penalties and, based on 745 separated
22 employees, the exposure for waiting time penalties is about \$3,913,998 [Ardestani Decl., ¶ 26.]

23 As far as potential PAGA liability, the theoretical penalties totaled at least \$6 million
24 should Plaintiff prevail and establish the alleged minimum wage violations at issue for each pay
25 period. [Ardestani Decl., ¶ 28.] As with the class claims, Plaintiff discounted the potential PAGA
26 penalties for the multi-layered defenses proffered by Defendant on the merits, and further
27 discounted these claims since the Court possesses wide discretion to reduce such penalties even if
28 Plaintiff ultimately prevailed. Labor Code § 2699(e)(2); Fleming v. Covidien (C.D. Cal. 2011)

1 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by over 82% after a
2 bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial
3 court awarded penalties of just \$5 per pay period, a 90% reduction, which decision was upheld on
4 appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis
5 48557 (PAGA penalties denied after trial).

6 Accordingly, the Parties allocated \$10,000 to PAGA penalties, which amount is reasonable
7 and in line with comparable settlements in other class actions in California. Van Kempen v.
8 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
9 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
10 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
11 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
12 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).

13 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
14 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
15 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
16 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
17 not objected to the settlement").

18 Thus, Defendant raised significant procedural and merits defenses to Plaintiff's claims, any
19 one of which, if successful, could have derailed Plaintiff's case. Accordingly, Plaintiff faced risky
20 issues going forward with this litigation, and given the need to secure class certification, overcome
21 the arbitration agreements, try the case, and deal with post-trial appeals, it would have taken years
22 to realize any recovery in this action. Plaintiff's counsel discounted the value of the class claims
23 consistent with the risks discussed above, and carefully weighed the likelihood of the class
24 receiving substantially greater benefit if the litigation continued. Plaintiff's counsel concluded –
25 in light of these very real and substantial risks – settlement on the proposed terms and without
26 prolonged and costly litigation was in the best interests of the class. The overall \$125,000
27 recovery represents a significant percentage of Defendant's potential exposure and given these
28

1 risks addressed above, a total recovery for the class of \$125,000 is a fair result within the range of
2 reasonableness considering all potential outcomes. [Ardestani Decl., ¶¶ 29-30.]

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **V. CONCLUSION**

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

5

6

7 Dated: January 9, 2024

CROSNER LEGAL, PC

8

9

By: J. Ardestani

10

Jamie K. Serb, Esq.

11

Sepideh Ardestani, Esq.

12

Zachary M. Crosner, Esq.

13

Attorneys for Plaintiff,

14

MARIA DIAZ

15

16

17

18

19

20

21

22

23

24

25

26

27

28