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9 As an individual on behalf of himself and
on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN JOAQUIN**

12 DOUGLAS BALL, as an individual on
13 behalf of himself and on behalf of all others
similarly situated,

14
15 Plaintiff,

16 v.

17 KRUGER FOODS, INC., a California
18 corporation; and DOES 1-100, inclusive,

19 Defendants.
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Case No.: STK-CV-UOE-2022-0008581

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

Date: July 16, 18, 23, 30, 31, 2024
Time: 9:00 a.m.
Dept.: 11B

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE 1

III. THE PROPOSED SETTLEMENT TERMS..... 4

 A. Certification of the Settlement Class..... 4

 B. The Benefit Conferred on the Settlement Class 4

 C. Settlement Administration..... 5

 D. The Class Notice 6

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

 F. Release of Claims 6

 G. Plaintiff’s Enhancement 7

 H. Attorney’s Fees and Costs..... 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 9

 C. The Proposed Settlement Meets the Kullar Factors and is within the Range of 10

 Reasonableness..... 10

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.....	13
<u>Ardestani v. Farmers Ins. Exch.</u> (2013) 221 Cal.App.4th 986.....	9
<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>Cochran v. Schwan’s Home Services, Inc.</u> (2014) 228 Cal.App.4th 1137.....	13
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	8, 9
<u>Fleming v. Covidien</u> (C.D. Cal. 2011) 2011 U.S.	13
<u>Global Minerals & Metals Corp. v. Superior Court</u> (2003) 113 Cal.App.4th 836.....	9
<u>Jennings v. Open Door Mktg. Inc.</u> (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	14
<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	15
<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>Slavkov v. First Water Heater Partners I</u> (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	14

1	<u>In re Taco Bell Wage and Hour Actions</u>	
2	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	13
3	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
4	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	13
5	<u>Wershba v. Apple Computer</u>	
6	(2001) 91 Cal.App.4th 224.....	8, 14
7	<u>White v. Experian Information Solutions, Inc.</u>	
8	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	15
9	<u>Williams v. Superior Court</u>	
10	(2013) 221 Cal.App.4th 1353.....	10
11		
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25
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27
28

Statutes

Code of Civil Procedure section 382..... 9

Lab. Code § 2899(e)(2) 13

Labor Code sections 13

Labor Code § 203 13

Labor Code § 226 13

Labor Code section 2699(l)(2) 7

Cal. Rule of Court. 3.769 8

Cal. Rule of Court 3.769(c) 8

Cal. Rules of Court 3.769(f) and 3.766(d) 6

Other Authorities

Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010),
available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf 15

Newberg on Class Actions (4th ed. 2002) § 11.41 7

1 **I. INTRODUCTION**

2 Plaintiff Douglas Ball hereby moves the Court for an order granting preliminary approval
3 to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf
4 of approximately 168 individuals employed by Defendant Kruger Foods, Inc. (“Kruger” or
5 “Defendant”), including all current and former non-exempt employees that worked either directly
6 or via a staffing agency for Defendant at any location in California during the Class Period of
7 April 10, 2021 to December 14, 2023. The proposed \$300,000 settlement will provide at least
8 \$129,500 in cash payments to the class, with an average award estimated at about \$770. The
9 balance of approximately \$170,500 will cover reasonable attorney’s fees and actual litigation
10 costs, a modest service award to Plaintiff, settlement administration costs, and payment of civil
11 penalties to the state. The settlement is the product of Plaintiff’s pre-filing investigation,
12 discovery, a pre-mediation exchange of information, and arms-length negotiations overseen by
13 experienced mediator Brandon McKelvey, Esq.

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

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

24 Defendant Kruger is based in Stockton, and has been producing and canning various
25 condiments such as pickles, relish, peppers, mayonnaise, and sauerkraut, since 1930. Plaintiff
26 worked for Defendant as a non-exempt maintenance technician from December 2021 to January
27 2022. His duties included providing proper maintenance to all manufacturing and facility
28 equipment and materials; performing preventative maintenance on equipment as required by the

1 operator manual, responding to equipment breakdown, and providing training/guidance to
2 machine operators. Plaintiff worked under a purported Alternative Workweek Schedule (“AWS”)
3 where he worked 4 days per week, 10 hours a day, without having to be paid daily overtime.
4 [Declaration of Sepideh Ardestani (“Ardestani Decl.”), ¶ 4.]

5 On September 26, 2022, Plaintiff filed a class action complaint on behalf of himself and
6 other similarly situated individuals employed by Kruger as non-exempt employees. Plaintiff’s
7 class action complaint alleges claims for (1) unpaid minimum wages, (2) unpaid overtime wages,
8 (3) unpaid premium wages for denied meal and rest periods, (4) failure to issue accurately
9 itemized wage statements, (5) failure to timely pay wages upon separation of employment, (6)
10 failure to reimburse business expenses, and (7) unfair competition. On September 21, 2022,
11 Plaintiff filed his notice of claims under PAGA, and on November 30, 2022 (after exhausting
12 administrative remedies) he filed a PAGA-only representative complaint seeking civil penalties
13 under to PAGA based on the same alleged Labor Code violations. [Ardestani Decl., ¶ 5; Exh. 2.]

14 Plaintiff alleges a number of wage and hour violations by Defendant. First, he argued that
15 Kruger’s AWS was illegal and that Defendant failed to follow the strict requirements under
16 California law for implementing an AWS. He further argued that, even if the AWS is enforceable,
17 Kruger did not pay him and the class members properly under the terms of the AWS. On the meal
18 and rest break claims, Plaintiff alleges numerous “de facto” violations where employee meal
19 periods and rest periods were missed completely, were untimely, and/or were short. For rest
20 breaks, Plaintiff contends employees frequently were contacted by phone or text (on their personal
21 phones) while on break, and that Kruger otherwise failed to fully relieve employees of all
22 employer control for breaks. Plaintiff also alleges employees did not receive any reimbursement
23 for having to use their own phones for work purposes, such as receiving texts and calls from
24 supervisors. [Ardestani Decl., ¶ 6.]

25 Kruger has at all times denied Plaintiff’s allegations and maintained it properly instituted
26 and an AWS for its employees, that its payroll policies and procedures comply with California law
27 and that it properly compensated the class members for all hours worked at the correct rates of
28 pay. It further argued its meal and rest break policies are fully compliant and that it provided class

1 members with all required breaks, and paid appropriate premium wages for documented
2 violations. Likewise, Kruger contended there would be no reason for an employee to use their
3 own phone while working and accordingly it owes no reimbursement. Defendant also strongly
4 contends the case cannot be maintained as any kind of class or representative action, arguing
5 determining the reasons for missed/non-compliant breaks or personal cell phone use would result
6 individualized issues predominating and that a trial on a representative basis would be
7 unmanageable. [Ardestani Decl., ¶ 7.]

8 After filing his complaints, Plaintiff initiated written discovery and, after lengthy discovery
9 meet and confer sessions and discussions about the merits of the case, the Parties ultimately
10 agreed to mediate. The Parties also agreed on a protocol for an exchange of additional documents
11 and information before the mediation. Consequently, Plaintiff's counsel reviewed personnel
12 policies/handbooks, meal and rest break policies, personnel files, and a random of sampling
13 paystubs and time records from the putative class. Plaintiff had those records analyzed by Berger
14 Consulting Group to look for, inter alia, violation rates for missed, late and/or short meal breaks,
15 overtime pay lost due to failure to implement the AWS, and to help formulate a damages model.
16 [Ardestani Decl., ¶ 8.]

17 The Parties then engaged Brandon McKelvey, Esq., a respected professional neutral with
18 substantial wage and hour and class action experience and, in September 2023, the Parties
19 participated in a full day mediation with Mr. McKelvey. Throughout the day, the arms-length
20 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
21 their legal and factual positions, and made numerous offers and counter-offers, but were unable to
22 find a resolution by the end of the day. Nevertheless, with the mediator's assistance, the Parties
23 continued to negotiate and ultimately reached agreement on all major issues a few months later.
24 [Ardestani Decl., ¶ 9.] They then collaboratively drafted the Class Action and PAGA Settlement
25 Agreement ("Settlement Agreement") now before the Court for approval, and a true and correct
26 copy of the Settlement Agreement is attached to the Ardestani Declaration as Exhibit 1. Finally, in
27
28

1 order to effectuate a global settlement of all claims, Plaintiff filed a First Amended Complaint in
2 this matter adding the claims alleged under PAGA, and the PAGA only matter will be dismissed.

3 **III. THE PROPOSED SETTLEMENT TERMS**

4 Under the settlement, Kruger will pay \$300,000 into a common fund, the Gross Settlement
5 Amount (“GSA”). Attorney’s fees of up to \$100,000.00 (1/3 of the GSA), litigation costs of up to
6 \$25,000, a service award to Plaintiff of no more than \$2,500.00, settlement administration costs of
7 no more than \$8,000, and \$30,000 for PAGA civil penalties (to be divided 75% to the Labor &
8 Workforce Development Agency and 25% to the Aggrieved Employees), all will be paid from the
9 GSA. The remainder of around \$129,500 will be allocated pro rata among the Class Members based
10 on their total weeks worked during the Class Period. No portion of the GSA will revert to Kruger.
11 [Ardestani Decl., ¶ 10.]

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

13 The settlement provides for conditional certification of a settlement class including all
14 current and former non-exempt employees that worked either directly or via a staffing agency for
15 Defendant Kruger at any location in California during the Class Period of April 10, 2021 to
16 December 14, 2023.¹ The Settlement Class consists of approximately 168 individuals. [Ardestani
17 Decl., ¶ 11.]

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

19 As noted, the settlement obligates Kruger to pay \$300,000 to resolve the claims of the
20 Settlement, inclusive of attorney’s fees and costs. Approximately \$129,500 from the GSA will be
21 distributed to the Participating Class Members. This is a cash settlement that does not require
22 Participating Class Members to submit a claim form to receive their settlement share. Participating
23 Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty
24 percent of each settlement share will be allocated to wages and the remaining eighty percent will be
25 allocated to penalties and interest, which allocation is consistent with Kruger’s potential liability as

26 _____
27 ¹ Defendant settled a prior class action and representative action styled *Dorsey v. Kruger Foods, Inc.*,
28 San Joaquin County Superior Court case no. STK-CV-UOE-2020-0002099, with a release period of
February 10, 2016 through April 9, 2021. Accordingly, the proposed class period in this matter starts
on April 10, 2021.

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

5 Each Participating Class Member will receive a share of the Net Settlement Amount based
6 on his or her total weeks worked for Kruger during the Class Period while employed in a non-exempt
7 service position. Thus, each Class Member's Individual Settlement Payment will be calculated using
8 criteria typically used in determining appropriate amounts of unpaid overtime wages, unpaid
9 premium wages for missed meal and rest breaks, and potential statutory penalties under applicable
10 law. These methods are intended to ensure each Class Member receives a portion of the available
11 settlement funds corresponding to the relative value of his or her potential claims. The proposed
12 allocation provides a reasonable way to compensate Class Members based on the amount of time
13 they worked for Kruger and the number of instances they allegedly were not paid overtime due to
14 the improper AWS, missed a meal break and/or rest break, were not provided compensation in lieu
15 of such missed breaks, etc. The average gross award is estimated at approximately \$770. [Ardestani
16 Decl., ¶ 13.]

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

21 **C. Settlement Administration**

22 Subject to the Court's approval, the Parties have agreed on Apex Class Action, LLC as the
23 Settlement Administrator. Apex is qualified and has significant experience administering class
24 action settlements, including numerous wage and hour matters. Apex's fees and costs will not
25 exceed \$8,000.00. If the Court approves less than the above amount, the difference will remain in
26 the Net Settlement Amount for distribution to the Participating Class Members. [Ardestani Decl.,
27 ¶ 14; Declaration of Sean Hartranft, ¶¶ 2-7; Exhs. A-B.]

28 /////

1 **D. The Class Notice**

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

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

14 Class Members will have 45 days to dispute the information in their Notice used to
15 calculate their settlement award, and also have 45 days to submit any objections to the settlement
16 or to request exclusion. If a Class Member disputes their individual information, the Settlement
17 Administrator will review the Class Member's records and any other information submitted, and
18 make a determination. [Ardestani Decl., ¶ 16.]

19 **F. Release of Claims**

20 All Participating Class Members will release Kruger and the Released Parties² from all
21 claims alleged in the operative complaint, or that could have been brought based on the factual
22 allegations in the operative complaint, including PAGA claims, during the Class Period. The

23 _____
24 ² "Released Parties" means: (i) Defendant Kruger Foods, Inc.; (ii) each of Defendant's respective
25 past, present and future parents, subsidiaries, and affiliates including, without limitation, any
26 corporation, limited liability company, partnership, trust, foundation, and non-profit entity which
27 controls, is controlled by, or is under common control with Kruger Foods, Inc.; (iii) the past,
28 present and future shareholders, directors, officers, agents, employees, attorneys, insurers,
members, partners, managers, contractors, agents, consultants, representatives, administrators,
fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the
foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing,
including, but not limited to, temporary agencies.

1 release is limited to the claims that were actually pleaded or could have been pleaded based on the
2 alleged facts in the operative complaint. [Ardestani Decl., ¶ 17.]

3 **G. Plaintiff's Enhancement**

4 At final approval, Defendant will not oppose a request for an enhancement award to
5 Plaintiff of not more than \$7,500.00 in recognition of his time spent on this matter, the risks he
6 undertook on behalf of the class, and the benefit conferred to the class. Plaintiff's has submitted
7 his declaration summarizing his efforts in this matter and time expended. [Ardestani Decl., ¶ 18.]

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

9 The terms of the Parties' settlement allow Plaintiff's counsel to apply for an award of
10 attorney's fees of up to 1/3 of the GSA, or \$100,000.00, and reimbursement of actual costs and
11 expenses of up to \$25,000.00. Plaintiff likewise may request an enhancement award of no more
12 than \$2,500.00 each. In advance of the Final Approval Hearing, Plaintiff's counsel will submit a
13 request for attorney's fees and actual litigation costs per the terms of the Settlement Agreement
14 and applicable law, and provide the Court with appropriate information and evidence regarding
15 hourly rates, tasks performed, and time expended on the case. Plaintiff Ball has submitted his
16 declaration herewith. [Ardestani Decl., ¶ 19.]

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

18 The Parties allocated \$30,000 to payment of civil penalties under PAGA, as addressed in
19 more detail below, and Plaintiff submits that amount is fair, reasonable and adequate, and consistent
20 with PAGA's underlying purposes. As required by Labor Code section 2699(1)(2), Plaintiff gave
21 notice of the settlement and the approval hearing to the LWDA via its online portal, and further
22 served the LWDA with the motion. [Ardestani Decl., ¶ 20; Exh. 3.]

23 **IV. ARGUMENT**

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

25 The law favors settlement, particularly in class actions where substantial resources can be
26 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
27 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992)
28 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37

1 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
2 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
3 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
4 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures
5 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via
6 a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
7 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

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

20 If the court grants preliminary approval, it then orders the class be given notice in an
21 appropriate manner, establishes a schedule and procedures for class members to request exclusion
22 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s fees
23 and costs is filed subsequent to preliminary approval and heard with the motion for final approval,
24 as part of the second step of the two-step approval process. Dunk, 48 Cal.App.4th at 1800; Wershba,
25 91 Cal.App.4th at 232. The proposed settlement in this matter warrants preliminary approval under
26 the liberal standard discussed above, as it is fair, reasonable and adequate under all the
27 circumstances, and represents a favorable result for the class.

28 ////

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

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

8 In the present matter, conditional certification is proper since this matter satisfies all
9 requirements for class certification under Code of Civil Procedure section 382. First, the class is
10 both sufficiently numerous, consisting of approximately 168 individuals, and ascertainable by
11 reference to Defendant’s personnel and payroll records. [Ardestani Decl., ¶ 21.] Next, Plaintiff is
12 an adequate class representative, as his claims do not conflict with and are not antagonistic to the
13 claims of other class members. For these reasons, Plaintiff contends he is an adequate class
14 representative. Further, his claims are typical given he is a member of the class and his respective
15 claims arise from the same employment practices and course of conduct giving rise to the claims
16 of the other class members. [Ardestani Decl., ¶ 22.] Lastly, his counsel are experienced and
17 adequate class counsel. [Ardestani Decl., ¶¶ 36-41.]

18 Next, common questions of law and fact predominate – particularly for purposes of a
19 settlement class – as the Class Members all were subject to the same payroll scheme and policies
20 that Plaintiff contends violate California labor law. Since the focus of the claims against Kruger
21 concerns the legality of common policies applied uniformly to the entire class, common issues
22 predominate over individualized inquiries concerning liability. For instance, Kruger’s alleged
23 AWS schedules are valid and compliant under California law or they are not and, regardless of
24 that determination, it will decide help liability for all class members one way or another.
25 [Ardestani Decl., ¶ 23.]

26 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
27 violating California law is sufficient to satisfy the requirements for class certification. Ardestani v.
28 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy

consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact or law that supports commonality for class certification”). Lastly, a class action is superior to other means for the fair and efficient adjudication of this controversy. [Ardestani Decl., ¶ 24.]

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator, Brandon McKelvey, Esq., who has considerable experience mediating wage and hour class action cases. [Ardestani Decl., ¶ 9.] Plaintiff’s counsel Zachary M. Crosner, Jamie K. Serb, and Sepideh Ardestani of Crosner Legal, P.C., all have years of experience litigating wage and hour class actions. Plaintiff’s counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Ardestani Decl., ¶¶ 36-41.]

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

Prior to mediation, the parties engaged in formal and informal discovery to facilitate settlement discussions. Thus, Plaintiff reviewed documents and information regarding Kruger’s payroll practices, a random sampling of pay stubs and time records for sampling of class members, applicable compensation plans, documents related to implementing the AWS, etc., and information from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other relevant information. Plaintiff then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. Plaintiff’s counsel are confident they obtained sufficient information to understand the law and facts

1 of this case and make an informed decision regarding the proposed settlement and whether it is fair
2 and reasonable. [Ardestani Decl., ¶¶ 8, 25.]

3 Next, the proposed settlement falls within the range of reasonableness warranting
4 preliminary approval. The proposed settlement involves a significant sum that, when distributed,
5 will confer direct monetary benefits on the class members. Each class member will be entitled to a
6 monetary payment without having to file a claim and each payment will be relative to the value of
7 his or her potential claims. Through the information exchanged and analysis undertaken, Plaintiff
8 weighed the risks of continued litigation against the benefits of the proposed settlement and
9 determined settlement to be the most reasonable option.

10 Using that data, Plaintiff ran various calculations and estimated Kruger's likely maximum
11 exposure on the class claims at approximately \$3,470,000, including about \$526,600 on the
12 unpaid wage claims, about \$833,350 on the meal period claims, approximately \$1,203,225 on the
13 rest break claims, about \$74,000 for expense reimbursement, about \$436,600 for wage statement
14 violations, and approximately \$395,760 in waiting time penalties. [Ardestani Decl., ¶¶ 26-27.]
15 Plaintiff and his counsel substantially discounted the value of these claims, however, in light of
16 the multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
17 numerous defenses and vigorously defended against these claims.

18 On the unpaid wage claims, Plaintiff alleges Defendant's 4/10 AWS schedule was not
19 implemented under the strict procedures required by California law to use an AWS and therefore
20 was invalid. In particular, Plaintiff alleges the required employee secret ballot was done
21 improperly, that employees did not receive proper notice regarding the AWS, and that it was not
22 properly registered with the State. Thus, per Plaintiff, Kruger failed to properly pay for daily
23 overtime earned when employees worked over 8 hours in a shift. Plaintiff also claims that, even if
24 the AWS is valid, Kruger did not correctly pay employees under the AWS because it failed to pay
25 required premium wages when an employee worked less than 10 hours in a day. In response,
26 Kruger argued its AWS was fully and properly implanted and that the company followed all legal
27 requirements for using an AWS, and it provided relevant documentation regarding the procedures
28 it followed. Kruger further emphasized it paid employees correctly under the terms of the valid

1 AWS, and that its payroll procedures otherwise fully compensated all class members at the correct
2 rates. [Ardestani Decl., ¶ 28.]

3 On the meal break claims, Plaintiff primarily contends there are numerous “de facto”
4 violations for missed, late, and short meal periods. Per Plaintiff, his expert’s review of the time
5 records produced suggested a violation rate of around 70% for missed and non-compliant meal
6 periods, including missed second lunches on 10+ hour shifts. In response, Kruger argued its break
7 policies are fully compliant with California law, that it provided class members with the
8 opportunity to take all required breaks, and that many class members waived second meal periods.
9 Defendant further maintained that, in light of its compliant policies, whether a class member
10 missed a meal period, received a late meal period, or missed a rest break would have been
11 aberrational and against company policy. Thus, per Kruger, these issues are not amenable to class
12 or representative treatment since their resolution would require individualized inquiries as to why
13 a break was missed or non-compliant. Further, Defendant emphasized it paid thousands in
14 premium wages for documented violations. [Ardestani Decl., ¶ 29.]

15 For rest breaks, Plaintiff again argued that there were numerous “de facto” violations
16 where class members didn’t receive a break (especially third breaks), or didn’t receive a compliant
17 break/had their breaks interrupted by supervisors. As with meal breaks, Defendant argued the
18 applicable rest break policies complied with California law, and that it authorized and permitted
19 employees to take all required breaks. Defendant further contended that, in light of the fact that it
20 is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods
21 and/or discouragement from taking rest periods would be purely anecdotal and individual issues
22 would predominate on liability. This arguably would once again make class certification and a
23 trial unmanageable since the number of instances an employee missed a rest break, or had a break
24 interrupted, would have to be tested on a case by case basis to determine compliance. [Ardestani
25 Decl., ¶ 30.]

26 For Plaintiff’s expense reimbursement claim, he argued Defendant’s supervisors would
27 routinely contact both Plaintiff and other employees during meal and rest breaks by sending them
28 work-related questions and demands to their personal cellphones, and that Defendant never paid any

1 reimbursement. When employees must use their personal cell phones for work, this statute required
2 an employer to reimburse them for such use. Cochran v. Schwan's Home Services, Inc. (2014)
3 228 Cal.App.4th 1137, 1144. In response, Kruger argued there would be no need for an employee
4 use a phone to perform his or her work duties, and that supervisors thus any such use would have
5 been unnecessary and purely for personal convenience, and therefore not reimbursable. [Ardestani
6 Decl., ¶ 31.]

7 Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage
8 statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to
9 properly record and pay for all hours worked, and will rise or fall along with that primary claim, in
10 addition to being subject to “good faith” and other defenses available to Defendant. E.g., Amaral
11 v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully
12 fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the
13 underlying claim for failing to pay living wages). Accordingly, Plaintiff discounted the derivative
14 claims significantly in light of these multiple potential defenses. [Ardestani Decl., ¶ 32.]

15 As far as potential PAGA liability, the theoretical penalties totaled over \$2.2 million
16 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
17 at issue for every single eligible pay period. [Ardestani Decl., ¶ 33.] As with the class claims,
18 Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by
19 Defendant on the merits, and further discounted these claims since the Court possesses wide
20 discretion to reduce such penalties even if Plaintiff ultimately prevailed. Lab. Code § 2899(e)(2);
21 Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the
22 potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30
23 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just \$5 per pay period, a
24 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions
25 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

26 Accordingly, the Parties allocated \$30,000 to PAGA penalties, which amount is reasonable
27 and in line with comparable settlements in other class actions in California. Van Kempen v.
28 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final

1 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
2 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
3 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
4 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
5 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
6 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
7 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
8 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
9 not objected to the settlement").

10 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
11 successful, could have decimated Plaintiff's case. Accordingly, Plaintiff faced risky issues going
12 forward with this litigation, and given the need to secure class certification, try the case, and deal
13 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff
14 and counsel discounted the value of the class claims consistent with the risks discussed above, and
15 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
16 continued. Plaintiff and counsel concluded – in light of these very real and substantial risks –
17 settlement on the proposed terms and without prolonged and costly litigation was in the best
18 interests of the class. The overall \$300,000 recovery represents a significant percentage of
19 Defendant's potential exposure, and given these risks discussed above a total recovery for the
20 class of \$300,000, with an average award of some \$770 per class member, is a fair result within
21 the range of reasonableness considering all potential outcomes. [Ardestani Decl., ¶¶ 34-35.]

22 Importantly, the mere fact that a settlement does not provide the same recovery as might be
23 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
24 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed
25 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
26 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
27 settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven
28 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that

1 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
2 itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane
3 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is
4 fundamentally fair . . . is different from the question whether the settlement is perfect in the
5 estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal.
6 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
7 though it represented 99% discount off the maximum value of the claims). Importantly as well,
8 the proposed settlement is non-reversionary and will provide benefits to the Class Members
9 without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing
10 Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
11 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
12 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
13 within the "range of reasonableness," and is fair and adequate for the Class.

14 **V. CONCLUSION**

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

18
19 Dated: May 17, 2024

CROSNER LEGAL, PC

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