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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

VALERIA BOLANOS, as an individual on behalf of herself and on behalf of all others similarly situated, Plaintiff, vs. NEWPORT FAB, LLC, a Delaware Limited Liability Corporation; TOWER SEMICONDUCTOR NEWPORT BEACH, INC., a Delaware Corporation; JAZZ SEMICONDUCTOR TRUSTED FOUNDRY, INC., a Delaware Corporation; TOWER SEMICONDUCTOR USA, INC., a California Corporation; JAZZ SEMICONDUCTOR, INC., an unknown entity; and DOES 1 to 100, inclusive, Defendants.	Case No.: 30-2022-01280696-CU-OE-CXC Assigned for all purposes to: Hon. Lon Hurwitz Dept. CX103 **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 Jones, John G. Yslas, Valeria Bolanos, Fanny Thorng, and Sean Hartranft; [Proposed] Order] Date: September 20, 2024 Time: 9:00 a.m. Dept.: CX-103

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I. INTRODUCTION

Plaintiffs Valeria Bolanos and Fanny Thorng hereby move the Court for an order granting preliminary approval to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of approximately 1,195 individuals employed by Defendant Newport Fab, LLC ("Newport Fab" or "Defendant") as non-exempt employees during the period of March 21, 2018 to April 13, 2024. The proposed $3,900,000.00 settlement will provide at least $2,435,000.00 in cash payments to the settlement class, with an average award of about $2,037.00. The balance of approximately $1,465,000.00 will cover modest enhancement awards to Plaintiffs, reasonable attorney's fees and actual litigation costs, settlement administration costs, and payment of civil penalties to the state and allegedly aggrieved employees. The settlement is the product of Plaintiffs' pre- and post-filing investigation, a pre-mediation exchange of information, and arms-length and adversarial negotiations overseen by experienced and well-regarded mediator Todd Smith, Esq.

As demonstrated below, the settlement is within the "range of reasonableness" for preliminary approval. Plaintiffs' counsel believes the settlement is a significant result for the class given the substantial risks inherent in this matter. Accordingly, Plaintiffs request the Court enter an order: (1) granting preliminary approval to the proposed class action settlement; (2) conditionally certifying the settlement class as defined below; (3) appointing Zachary M. Crosner, Jamie K. Serb, and Michael Jones, and Crosner Legal, PC, and John G. Yslas, Jeffrey C. Bils, Aram Boyadjian, and Andrew Sandoval, and Wilshire Law Firm, PLC, as Class Counsel; (4) appointing plaintiffs Valeria Bolanos and Fanny Thorng as the Class Representatives; (5) appointing Phoenix Settlement Administrators as the Settlement Administrator; (6) approving the form of notice to the class and the procedure for providing such notice; and (7) scheduling a final fairness hearing.

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Newport Fab, LLC (dba Jazz Semiconductor) is located in Newport Beach, and manufactures electrical equipment and components. It has been doing business for over 20 years and is a subsidiary of an Israel-based company called Tower Semiconductor, which is the leading foundry of "high value analog semiconductor solutions." Plaintiff Fanny Thorng was hired by Defendant as a "Fab Operator Assistant" with an hourly rate of $13.65 on May 22, 2017. She was promoted on August 20, 2018 to a "Photo/Fab Operator Assistant." Her scheduled shifts were Sunday – Monday and every other Saturday from 5:30 p.m. to 5:36 a.m. She was terminated on February 10, 2022. Plaintiff Valeria Bolanos was hired by Defendant on July 7, 2020 as an Operator Assistant and subsequently promoted to a "Photo/Fab Operator" on December 7, 2020. Bolanos also worked a night shift from 5:30 p.m. to 5:30 a.m. Sometime in 2021 she was injured and went on medical leave. Plaintiffs and the majority of the class members are unionized employees and operated under various Collective Bargaining Agreements applicable to different time periods and positions. [Declaration of Michael Jones ("Jones Decl."), ¶ 4.]

On September 15, 2022, Plaintiff Bolanos commenced this Action by filing a Complaint alleging causes of action against Newport Fab for (1) Recovery of Unpaid Minimum Wages and Liquidated Damages; (2) Recovery of Unpaid Overtime Wages; (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof; (4) Failure to Provide Rest Periods or Compensation in Lieu Thereof; (5) Failure to Furnish Accurate Itemized Wage Statements; (6) Failure to Timely Pay All Wages Due Upon Separation of Employment; (7) Failure to Reimburse Business Expenses; and (8) Unfair Competition.[1] After providing notice to the Labor & Workforce Development Agency (LWDA") and exhausting administrative remedies, Plaintiff Bolanos filed a separate PAGA action on or about October 8, 2022, seeking PAGA civil penalties based on the same alleged Labor Code violations. [Jones Decl., ¶ 5.]

On October 19, 2023, Plaintiffs filed a First Amended Complaint in the Action alleging both the class and PAGA claims. On or about February 14, 2024, the Court consolidated the Bolanos class action and the separately filed PAGA action into Case No. 30-2022-01280696.

[1]On September 9, 2022, Plaintiff Thorng filed a class action lawsuit against Defendant (Orange County Superior Court Case No. 30-2022-01279796), alleging various Labor Code violations. The Parties subsequently stipulated to dismiss this Thorng action without prejudice and add Plaintiff Thorng as a named plaintiff in the Bolanos action. [Jones Decl., ¶ 5.]

The First Amended Complaint is the operative complaint in the Action, and all defendants other than Newport Fab have been dismissed. [Jones Decl., ¶ 6.]

Plaintiffs allege Defendant committed multiple Labor Code violations. First, they claim Newport Fab failed to pay all minimum and overtime wages due to a time rounding policy that systematically deprived employees of all wages, and failing to pay for "off the clock" work such as donning and doffing protective gear, going through security checkpoints, etc. Plaintiffs next contend Defendant failed to provide meal breaks prior to the end of the 5th hour of work and rounding meal break time punches such that employees did not receive a full 30-minute break, and by failing to provide second lunch breaks on shifts exceeding 10 hours of work. Plaintiffs further allege Defendant failed to provide rest breaks by, inter alia, prohibiting employees from leaving the premises while on break. Lastly, Plaintiffs allege they regularly used their personal phones for work purposes without reimbursement. [Jones Decl., ¶ 7.]

Newport Fab has at all times denied Plaintiffs' allegations and maintained its break and payroll policies and procedures comply with California law, that it provided its employees with required meal and rest breaks, that it properly and accurately tracked employee time and paid Plaintiffs and all other employees all wages due at the correct hourly and overtime rates. Defendant also argues that there would be no need for employees to use their own phones for work purposes. Newport Fab strongly contends the case cannot be maintained as any kind of class or representative action, arguing that to the extent class members missed meal breaks, that such breaks were non-compliant, or that any unpaid "off the clock" work occurred, it was intermittent and infrequent and evidence of such violations would be purely anecdotal, and therefore individualized issues predominate and trial would be unmanageable. [Jones Decl., ¶ 8.]

Once the FAC was on file, the Parties initiated discovery and engaged in substantial meet and confer discussions regarding discovery, potential law and motion, and other case management issues. Following these discussions, the Parties ultimately agreed to attempt early mediation, and thereafter engaged in substantial informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. Consequently, Plaintiffs' counsel reviewed payroll records, personnel policies/handbooks, meal break policies, personnel files, and paystubs and time records produced by Newport Fab for about 75% of the class. Defendant also provided documents and information reflecting the estimated total amount of workweeks and pay periods they worked, number of class members, and average hourly pay rates, among other relevant data. Plaintiffs had this data reviewed an analyzed by Berger Consulting Group to, inter alia, determine potential violation rates and help formulate a damages model. [Jones Decl., ¶ 9.]

The Parties then engaged Todd Smith, Esq., a highly respected mediator with extensive wage and hour class action experience and, in October 2023, participated in a mediation with Mr. Smith. The arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive information on their legal and factual positions, and made numerous offers and counter-offers. Ultimately, the Parties reached agreement on all major issues to resolve the matter on both a class and PAGA basis. The Parties thereafter collaboratively drafted the Settlement Agreement setting forth the full and final settlement terms. [Jones Decl., ¶ 10.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Newport Fab will pay $3,900,000.00 into a common fund, the Gross Settlement Amount ("GSA"). Reasonable attorney's fees of up to one-third of the GSA, or $1,300,000.00, actual litigation costs of up to $30,000.00, modest enhancement awards of up to $10,000.00 for each plaintiff, settlement administration costs of no more than $15,000.00, and $100,000.00 for alleged civil penalties under PAGA,[2] all will be paid from the GSA. The remainder of approximately $2,435,000.00 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to Newport Fab. [Jones Decl., ¶ 11.]

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[2] Consistent with PAGA, $75,000 of that amount will go the LWDA for the State's share of the civil penalties, and the remaining $25,000 will be distributed pro rata to the Aggrieved Employees.

A. **Certification of the Settlement Class**

The settlement provides for conditional certification of a settlement class including all persons who worked for Newport Fab as an hourly-paid or non-exempt employee at any time during the Class Period, which runs from March 21, 2018 to April 13, 2024. The Settlement Class consisted of approximately 1,195 individuals. [Jones Decl., ¶ 12.]

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

As noted, the settlement obligates Newport Fab to pay $3,900,000.00 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $2,435,000.00 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses, penalties and interest. Newport Fab will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the California State Controller's Unclaimed Property Fund. [Jones Decl., ¶ 13.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her position held and total weeks worked for Newport Fab during the Class Period while employed as a non-exempt employee. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid wages, unpaid premium wages for missed meal breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Newport Fab, and the number of instances they missed a break, were not provided compensation in lieu of such missed breaks, or lost wages due to underpaid overtime. The average award across the board will be approximately $2,037.00. There are approximately 897 Aggrieved Employees also eligible to receive a share of the PAGA civil penalties, and their average PAGA award will be about $28.00. [Jones Decl., ¶ 14.]

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

C. Settlement Administration

Subject to the Court's approval, the Parties have agreed on Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Phoenix's fees will not exceed $15,000.00 and are currently estimated at $12,500.00. If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Jones Decl., ¶ 15; Declaration of Michael Moore, ¶¶ 2-17; Exhs. A-B.]

D. The Class Notice

The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language. The Notice also sets forth the individualized information used to calculate Class Members' Individual Settlement Payments and each Class Member's estimated settlement award. The Notice likewise details the procedures for Class Members to dispute their individual information, the procedure for submitting an objection to the Settlement, and the procedure to request exclusion. In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement, provides fair opportunity to participate in, opt out of, or object to the proposed Settlement, and otherwise complies with California Rules of Court 3.769(f) and 3.766(d). Coupled with the notice procedure, the proposed Notice provides the Class with the best notice practicable. [Jones Decl., ¶ 16.]

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

Class Members will have sixty (60) days to dispute the information in their Notice used to calculate their settlement award, and also have sixty (60) days to submit any objections to the settlement or to request exclusion. In the event a Class Member disputes their individual information, the Settlement Administrator will review the Class Member's records as well as any additional information submitted, and make a final determination. [Jones Decl., ¶ 17.]

F. Release of Claims

All Participating Class Members will be deemed to release Newport Fab from all claims alleged in the operative complaint, or that could have been brought based on the allegations in the operative complaint from March 21, 2018 to April 13, 2024, including PAGA claims for the period August 23, 2021 through April 13. 2024, . The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. [Jones Decl., ¶ 18.]

G. Attorney's Fees and Costs, and Plaintiff's Enhancement Award

The settlement provides that Defendant will not oppose a request for reasonable attorney's fees not to exceed one-third of the Gross Settlement Amount, or $1,300,000.00, nor will it oppose a request for reimbursement of actual litigation costs and expenses of up to $30,000.00. Defendant also will not oppose a request for an enhancement award to Plaintiffs of not more than $10,000.00 each in recognition of their time spent on this matter, the risks each undertook on behalf of the class, and the benefit conferred to the class. Plaintiffs' counsel will provide the Court with appropriate summaries and evidence of their efforts and time records in anticipation of the Final Approval Hearing, and Plaintiffs have submitted their declarations herewith. If the Court approves less than the above amounts, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Jones Decl., ¶ 19; Declaration of John Yslas ("Yslas Decl."), ¶¶ 16-25.]

H. PAGA Claims and Notice to the LWDA

The Parties allocated $100,000.00 to payment of civil penalties under PAGA for such claims against Newport Fab, as addressed in more detail below, and which amount Plaintiffs submit is fair, reasonable and adequate and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiffs gave notice of the settlement and preliminary approval hearing to the LWDA via its online portal, and further served the LWDA with this motion. [Jones Decl., ¶ 20; Exh. 3.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

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

If the court grants preliminary approval, it then orders the class be given notice in an appropriate manner, establishes a schedule and procedures for class members to request exclusion or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney's fees and costs, and any enhancement for the class representative(s), is filed subsequent to preliminary approval and heard with the motion for final approval, as part of the second step of the two-step approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

The proposed settlement in this matter warrants preliminary approval under the liberal standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and represents a favorable result for the class.

B. The Proposed Settlement Class Should Be Conditionally Certified

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

In the present matter, conditional certification is proper since Plaintiffs contend, and Defendant does not dispute for purposes of this settlement, that this matter satisfies all requirements for class certification under Code of Civil Procedure section 382. First, Plaintiffs contend that the class is both sufficiently numerous, consisting of approximately 1,195 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Jones Decl., ¶ 21.] Next, Plaintiffs contend that they are adequate class representatives, as their claims do not conflict with and are not antagonistic to the claims of other class members. Further, Plaintiffs contend that their claims are typical given each is a member of the class and their respective claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [Jones Decl., ¶ 22; Declaration of Valeria Bolanos, ¶¶ 2-9; Declaration of Fanny Thorng, ¶¶ 2-13.] Lastly, Plaintiffs' counsel are experienced and adequate class counsel. [Jones Decl., ¶¶ 39-44; Yslas Decl., ¶¶ 26-36.]

Next, Plaintiffs contend that common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members were all subject to the same meal and rest break policies, the same rounding policy that allegedly shorted them on hours worked, etc. Since the focus of the claims against Newport Fab concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. Newport Fab's time rounding policy is company-wide policy applied equally and consistently to all class members, and this policy is either compliant with California law or it is not. Regardless of that determination, it will decide liability for all class members one way or another. Similarly, whether Newport Fab's break policies resulted in non-compliant meal periods presents another common issue. [Jones Decl., ¶ 23]

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

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator Todd Smith, Esq., who has extensive experience mediating wage and hour class actions. [Jones Decl., ¶ 10.] Plaintiff's counsel Zachary Crosner, Jamie Serb and Michael Jones, and Crosner Legal, PC, and John Yslas, Jeffrey Bils, Aram Boyadjian, and Andrew

Sandoval and Wilshire Law Firm, PLC, all have years of litigation experience, including litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Jones Decl., ¶¶ 39-44; Yslas Decl., ¶¶ 26-36.]

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; 5) the experience and views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated below, the proposed settlement satisfies these requirements.

Prior to mediation, the parties engaged in extensive informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding Newport Fab's payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information was then analyzed by a consulting expert to look for meal and rest break violation rates, time lost due to rounding, time spent working off the clock due to donning/doffing, security checks, etc., and other issues relevant to liability and damages. Plaintiffs' counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Jones Decl., ¶¶ 9, 25; Yslas Decl., ¶¶ 7-8.]

Using that data, Plaintiffs ran various calculations and estimated Newport Fab's likely maximum exposure on the class claims at approximately $33.18 million, including about $58,500 on the rounding claim, $2.372 million on the off the clock/unpaid wage claims, approximately $10.022 million on the meal period claims, about $13.163 million on the rest period claims, approximately $895,000 on the expense reimbursement claim, around $3.712 million on the wage statement claims, and $2.957 million on the waiting time penalty claims.

[Jones Decl., ¶¶ 26-27.] Plaintiffs and their counsel substantially discounted the value of these claims, however, in light of Defendant's multi-layered defenses on both class certification and on the merits, and the multiple and considerable risks posed by proceeding with the litigation.

The unpaid wage claims focus primarily on Newport Fab's alleged failure to pay Class Members at least minimum wages and/ or overtime wages for all of their hours worked. Per Defendant's CBAs, employees had to be at their workstation at the beginning of their shift, meaning they typically clocked in a few minutes early in order to be at their station on time. Per Plaintiffs, this policy, when coupled with Defendant's rounding policy, resulted in employees losing a few minutes of time per shift even though Defendant's time keeping system captured every minute on the clock. Delmer Camp v. Home Depot USA, Inc. (2022) 84 Cal. App. 5th 638, 660 (employer should pay for exact amount of time worked during a shift if employer captures that time). Second, Plaintiffs' allege a policy requiring them to go through a lengthy donning/doffing process with required protective equipment, and also undergoing a security checkpoint process when entering and leaving the work facility. *E.g.*, Frlekin v. Apple Inc. (2020) 8 Cal. 5th 1038 (finding time undergoing mandatory bag checks compensable). Per Plaintiffs, Defendant required employees to go through the donning and doffing process and security checkpoint *before* clocking in at the beginning of their shifts, and *after* clocking out at the end of their shifts, which could take several minutes each shift. [Jones Decl., ¶ 28.]

In response, Defendant contends that its payroll policies are fully compliant, that it properly tracked and paid for all hours worked at the appropriate hourly wage. Defendant also emphasized time rounding is permissible under California law so long it has an overall neutral effect on employee time and compensation. See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal.App.4th 889. Additionally, Defendant contends that any donning/doffing was done on the clock and compensated for and, to the extent it was not on the clock, it was done against company policy and without the company's knowledge. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Defendant likewise contends that the issue would not be certifiable since it would require individualized inquiries whether any compensable "off the clock" work occurred, whether for donning/doffing, security checks, or otherwise, and why it was or was not documented and paid for. [Jones Decl., ¶ 29.]

On the meal and rest break claims, Plaintiffs contend that Newport Fab's written policies are not fully compliant, and Plaintiffs' review of the time and payroll records provided suggested these deficiencies in the written policies affected employee breaks. For example, Plaintiffs' analysis showed a 76.4% violation rate for "de facto" meal period violations, primarily for late meal periods starting after the fifth hour of work. Indeed, per Plaintiffs, many lunches weren't even scheduled to start until well after the fifth hour, in violation of the Labor Code. Plaintiffs also contend that Defendant's rounding policy resulted in shortened meal breaks. Donohue v. Amn Servs. (2021) 11 Cal. 5th 58, 68 (even small intrusion into meal period time results in a violation). Lastly, Plaintiffs emphasized they did not receive second meal periods on shifts greater than 10 hours, and that any waivers of second breaks were invalid and unenforceable. Saechao v. Landry's Inc. (N.D. Cal., Mar. 15, 2016, No. C 15-00815 WHA) 2016 WL 1029479, at *4 ("Whether or not California law permits an employer to utilize prospective meal-break waivers remains an open question which can plainly be resolved on a class-wide basis."). [Jones Decl., ¶ 30.]

Plaintiffs also contend that employees were consistently required to work in excess of four hours (or major fraction thereof) without receiving lawful rest periods. Plaintiffs argued they did not receive a net ten minute break after accounting for walking from their work station to the break room and back, and further that rest periods were interrupted and/or cut short by management and other employees requiring assistance. [Jones Decl., ¶ 31.]

In response, Newport Fab contends that its written break policies and related CBA provisions are fully compliant, that it provided employees with the opportunity to receive all required breaks, and that class members validly waived their second meal periods. Defendant further maintained that, in light of its compliant policies and related CBA provisions, whether a class member missed a meal period, received a late meal period, or missed a rest break would have been aberrational and against company policy. Thus, per Newport Fab, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. [Jones Decl., ¶ 32.]

On the expense reimbursement claim, Plaintiffs allege that throughout their employment, they and the class members were required to use their personal cell phones in order to communicate with supervisors and other employees during work hours. The aggrieved employees would not have been able to successfully accomplish their duties without incurring these business expenses. However, Defendant did not reimburse Plaintiffs and the class members for this expense. Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."). On the other hand, Defendant contends that there would be no conceivable need for employees to use their phones for work and that any use of employee phones was purely for personal convenience and therefore not reimbursable. [Jones Decl., ¶ 33.]

The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to take into account the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses. [Jones Decl., ¶ 34.]

Finally, Defendant contends that the applicable CBA's controlled and exempted it from liability for meal breaks and overtime under Labor Code sections 510 and 512, and further that the CBA's required arbitration of employment disputes. Plaintiff's countered by noting that such exemptions apply only if the CBA provides for a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate, and further noting that in many instances the base hourly wage for class members was less than the required threshold. Thus, per Plaintiffs, the CBAs were inapplicable and did not exempt Newport Fab from potential liability or otherwise impact Plaintiffs' claims in any way. [Jones Decl., ¶ 35.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling around $18 million in civil penalties should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code sections at issue for each and every pay period. [Jones Decl., ¶ 36.] As with the class claims, Plaintiffs discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $100,000 to PAGA penalties, and Plaintiffs submit this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

The settlement obviates the significant risk that this Court may find any kind of class or representative resolution unachievable or deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued litigation would be lengthy and expensive as the parties pursued merits discovery, motion to certify the class, a probable motion to decertify, as well as trial and possible appeals, and would further and substantially delay any recovery by the class with no assurance of recovering significantly more than the proposed settlement. While Plaintiffs are confident in the merits of these claims, legitimate controversies exist regarding each one of them. Plaintiffs also recognize that proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Jones Decl., ¶¶ 28-37.]

Plaintiffs and their counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class, and the overall $3,900,000.00 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $3,900,000.00, which will result in average award of over $2,000.00 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Jones Decl., ¶ 38; Yslas Decl., ¶ 15.]

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

V. CONCLUSION

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

Dated: June 12, 2024,

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