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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**

13 AUSTIN EASLEY, as an individual on
14 behalf of himself and on behalf of all others
15 similarly situated,

16 Plaintiff,

17 vs.

18 PARADISE DYNASTY LLC, a Delaware
19 limited liability company; PARADISE
20 GROUP HOLDINGS USA INC., a
21 Delaware corporation; PARADISE RAMEN
22 LLC, a Delaware limited liability company;
23 DPPA GROUP INC, a California
24 corporation; and DOES 1-100, inclusive,

25 Defendants.

Case No.: 30-2022-01291762-CU-OE-CXC

Assigned for All Purposes to:
Hon. Lon F. Hurwitz
Dept. CX-103

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

**[Filed Concurrently with Notice of Motion
and Motion; Declarations of Jamie K. Serb
and Eric Springer; [Proposed] Order]**

Date: May 24, 2024
Time: 1:30 p.m.
Dept.: CX-103

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1 **I. INTRODUCTION**

2 Plaintiff Austin Easley 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 350 individuals employed by Defendants Paradise Dynasty LLC, Paradise
5 Group Holdings USA Inc., and DPPA Group Inc. (collectively “Paradise” or “Defendant”) as non-
6 exempt employees in California during the period of July 12, 2021 through July 2, 2023. The
7 proposed \$300,000 settlement will provide at least \$143,000 in cash payments to the class, with an
8 average award estimated at about \$408. The balance of approximately \$157,000 will cover
9 reasonable attorney’s fees and actual litigation costs, a modest service award to Plaintiff,
10 settlement administration costs, and payment of civil penalties to the state. The settlement is the
11 product of Plaintiff’s pre-filing investigation and discovery, a pre-mediation exchange of
12 information, and arms-length negotiations overseen by experienced mediator Steve Cerveris, Esq.

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

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

23 Defendant Paradise operates a Chinese restaurant named Paradise Dynasty located in
24 South Coast Plaza in Costa Mesa, California, which first opened in 2021. Paradise Dynasty is the
25 first restaurant location in the United States operated by the parent conglomerate “Paradise
26 Group,” which originated in Singapore and operates a number of restaurants throughout Southeast
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1 Asia.¹ Plaintiff Easley worked for Defendant as a server and bartender from approximately
2 November 2021 to June 2022. [Declaration of Jamie K. Serb (“Serb Decl.”), ¶ 4.]

3 Plaintiff alleges he and the class were not paid properly by Paradise, including having to
4 work through meal periods and having their time adjusted retroactively to avoid overtime. He
5 further alleges Paradise failed to maintain compliant meal and rest break policies, that the
6 company failed to provide all required breaks on a fully-compliant basis, and failed to pay the
7 required premium wages for break violations. He also contends he and the class members had to
8 use their personal phones for work purposes without any reimbursement. [Serb Decl., ¶ 5.]

9 Based on these allegations, Plaintiff filed his class action complaint against Paradise on
10 November 15, 2022, alleging causes of action for (1) recovery of unpaid minimum wages and
11 liquidated damages (2) recovery of unpaid overtime wages; (3) failure to provide meal periods or
12 compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof;
13 (5) failure to furnish accurate itemized wage statements; (6) failure to reimburse business
14 expenses; and (7) unfair competition. After notice to the LWDA, on March 28, 2023 Plaintiff filed
15 a First Amended Complaint alleging a claim under PAGA seeking civil penalties based on the
16 same alleged Labor Code violations. [Serb Decl., ¶ 6; Exh. 2.]

17 Paradise has at all times denied Plaintiff’s allegations and maintained its payroll policies
18 and procedures comply with California law, that it paid the class members all wages due, and that
19 it properly compensated the class members for all hours worked at the correct rates of pay. It
20 further argued its meal and rest break policies are fully compliant and that it provided class
21 members with all required breaks. Likewise, Paradise contended there would be no reason for an
22 employee to use their own phone while working and accordingly it owes no reimbursement.
23 Defendant also strongly contends the case cannot be maintained as any kind of class or
24 representative action, arguing determining the reasons for any off the clock work, missed/non-

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28 ¹ Defendant Paradise Ramen LLC operates a separate restaurant that is not involved in this matter. Plaintiff dismissed
this entity on ____, 2024.

1 compliant breaks, or personal cell phone use would result individualized issues predominating and
2 that a trial on a representative basis would be unmanageable. [Serb Decl., ¶ 7.]

3 After Plaintiff filed his initial complaint, the Parties began working on formal discovery
4 and, after lengthy discovery meet and confer sessions and discussions about the merits of the case,
5 ultimately agreed to mediate. The Parties also agreed on a protocol for an exchange of additional
6 documents and information before the mediation. Consequently, Plaintiff's counsel reviewed
7 personnel policies/handbooks, meal and rest break policies, personnel files, and a random of
8 sampling paystubs and time records for about 25% of the class. Plaintiff had those records
9 analyzed by Berger Consulting Group to look for, inter alia, violation rates for missed, late and/or
10 short meal breaks, potential violations, etc. [Serb Decl., ¶ 8.]

11 The Parties then engaged Steve Cerveris, Esq., a respected professional neutral with
12 substantial wage and hour and class action experience and, on May 3, 2023, the Parties
13 participated in a full day mediation with Mr. Cerveris. Throughout the day, the arms-length
14 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
15 their legal and factual positions, and made numerous offers and counter-offers. By the end of the
16 day the Parties reached agreement on all major issues. [Serb Decl., ¶ 9.] They then collaboratively
17 drafted the Amended Settlement Agreement and Stipulation to Resolve Class Action and PAGA
18 Claims ("Settlement Agreement") setting forth the full and final settlement terms now before the
19 Court for approval, and a true and correct copy of the Settlement Agreement is attached to the
20 Serb Declaration as Exhibit 1.

21 **III. THE PROPOSED SETTLEMENT TERMS**

22 Under the settlement, Paradise will pay \$300,000 into a common fund, the Gross Settlement
23 Amount ("GSA"). Attorney's fees of up to \$100,000.00 (33.33% of the GSA), litigation costs of up
24 to \$17,000, a service award to Plaintiff of no more than \$10,000.00, settlement administration costs
25 of no more than \$10,000, and a payment of \$20,000 for PAGA civil penalties (to divided 75% to
26 the Labor & Workforce Development Agency and 25% to the Aggrieved Employees), all will be
27 paid from the GSA. The remainder of around \$143,000 will be allocated pro rata among the Class
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1 Members based on their total weeks worked during the Class Period. No portion of the GSA will
2 revert to Paradise. [Serb Decl., ¶ 10.]

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

4 The settlement provides for conditional certification of a settlement class including all non-
5 exempt, hourly-paid employees of Defendant Paradise Dynasty LLC employed in California at any
6 time during the Class Period of July 12, 2021, through July 2, 2023. The Settlement Class consists
7 of approximately 350 individuals. [Serb Decl., ¶ 11.]

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

9 As noted, the settlement obligates Paradise to pay \$300,000 to resolve the claims of the
10 Settlement, inclusive of attorney's fees and costs. A minimum of approximately \$143,000 from the
11 GSA will be distributed to the Participating Class Members. This is a cash settlement that does not
12 require Participating Class Members to submit a claim form to receive their settlement share.
13 Participating Class Members will receive their settlement checks automatically via First Class U.S.
14 Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty
15 percent will be allocated to expenses, penalties and interest, which allocation is consistent with
16 Paradise's potential liability as discussed below. Paradise will pay any and all applicable employer-
17 side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any
18 amounts not claimed (because a class member does not cash his or her settlement check) will be
19 forwarded to the California State Controller's Unclaimed Property Division. [Serb Decl., ¶ 12.]

20 Each Participating Class Member will receive a share of the Net Settlement Amount based
21 on his or her total weeks worked for Paradise during the Class Period while employed in a non-
22 exempt service position. Thus, each Class Member's Individual Settlement Payment will be
23 calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid
24 premium wages for missed meal and rest breaks, and potential statutory penalties under applicable
25 law. These methods are intended to ensure each Class Member receives a portion of the available
26 settlement funds corresponding to the relative value of his or her potential claims. The proposed
27 allocation provides a reasonable way to compensate Class Members based on the amount of time
28 they worked for Paradise and the number of instances they allegedly missed a meal break and/or

1 rest break, were not provided compensation in lieu of such missed breaks, or lost hours worked due
2 to time rounding. The average gross award is estimated at approximately \$408. [Serb Decl., ¶ 13.]

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

7 **C. Settlement Administration**

8 Subject to the Court's approval, the Parties have agreed on Simpluris, Inc. as the Settlement
9 Administrator. Simpluris is qualified and has significant experience administering class action
10 settlements, including numerous wage and hour matters. Simpluris's fees and costs will not exceed
11 \$10,000.00. If the Court approves less than the above amount, the difference will remain in the Net
12 Settlement Amount for distribution to the Participating Class Members. [Serb Decl., ¶ 14;
13 Declaration of Eric Springer, ¶¶ 2-13; Exhs. A-C.]

14 **D. The Class Notice**

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

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

27 Class Members will have sixty days to dispute the information in their Notice used to
28 calculate their settlement award, and also have 45 days to submit any objections to the settlement

1 or to request exclusion. If a Class Member disputes their individual information, the Settlement
2 Administrator will review the Class Member's records and any other information submitted, and
3 make a final determination. [Serb Decl., ¶ 16.]

4 **F. Release of Claims**

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

10 **G. Attorney's Fees and Costs and Plaintiff's Enhancement**

11 The terms of the Parties' settlement allow Plaintiff's counsel to apply for an award of
12 attorney's fees of up to 33.33% of the GSA, or \$100,000.00, and reimbursement of actual costs
13 and expenses of up to \$17,000.00. Plaintiff likewise may request an enhancement award of no
14 more than \$10,900.00. In advance of the Final Approval Hearing, Plaintiff's counsel will submit a
15 request for attorney's fees and actual litigation costs per the terms of the Settlement Agreement
16 and applicable law, and both Plaintiff and counsel will provide the Court with appropriate
17 information and evidence regarding hourly rates, tasks performed, and time expended on the case.
18 [Serb Decl., ¶ 18.]

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

20 The Parties allocated \$20,000 to payment of civil penalties under PAGA, as addressed in
21 more detail below. As required by Labor Code section 2699(1)(2), Plaintiff gave notice of the
22 settlement and the approval hearing to the LWDA via its online portal. [Serb Decl., ¶ 19; 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 whether a final fairness hearing should be scheduled. Wershba,
14 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs. (1994)
15 27 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 class action settlements when (1) the
17 settlement results from arms-length bargaining, (2) investigation and discovery are sufficient to
18 allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and
19 (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at
20 245.

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

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 358 individuals, and ascertainable by
11 reference to Defendant’s personnel and payroll records. [Serb Decl., ¶ 20.] Next, Plaintiff is an
12 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 claims
15 arise from the same employment practices and course of conduct giving rise to the claims of the
16 other class members. [Serb Decl., ¶ 21.] Lastly, his counsel is experienced and adequate class
17 counsel. [Serb Decl., ¶¶ 35-40.]

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 violates California labor law. Since the focus of the claims against Paradise
21 concerns the legality of common policies applied uniformly to the entire class, common issues
22 predominate over individualized inquiries concerning liability. For instance, Paradise’s meal and
23 rest break policies either comply with California law or they do not and, regardless of that
24 determination, it will decide help liability for all class members one way or another. [Serb Decl.,
25 ¶ 22.]

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. Jones 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. [Serb Decl., ¶ 23.]

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, Steve Cerveris, Esq., who has considerable experience mediating wage and hour class action cases. [Serb Decl., ¶ 9.] Plaintiff’s counsel Zachary M. Crosner, Jamie K. Serb, and Michael Jones of Crosner Legal, P.C. 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. [Serb Decl., ¶¶ 35-40.]

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 Paradise’s payroll practices, a random sampling of pay stubs and time records for sampling of class members, applicable compensation plans, 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 of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Serb Decl., ¶¶ 8, 24.]

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

8 Using that data, Plaintiff ran various calculations and estimated Paradise's likely
9 maximum exposure on the class claims at approximately \$2,460,500, including about \$154,500 on
10 the unpaid wage claims, about \$347,600 on the meal period claims, approximately \$761,400 on
11 the rest break claims, about \$57,300 for expense reimbursement, about \$488,200,000 for wage
12 statement violations, and approximately \$651,500 in waiting time penalties. [Serb Decl., ¶¶ 25-
13 26.] Plaintiff's counsel substantially discounted the value of these claims, however, in light of the
14 multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
15 numerous defenses and vigorously defended against these claims.

16 On the unpaid wage claims, Plaintiff alleged Paradise required employees to clock
17 out for meal periods but continue working due to understaffing and the press of business in the
18 busy restaurant. He further alleges management would retroactively adjust employee time
19 punches by, inter alia, pushing time into the following day or work week in order to avoid having
20 to pay daily or weekly overtime. On the other hand, Paradise argued it accurately tracks and pays
21 for all hours worked, that its compensation policies are legal and fully comply with California law,
22 and that any adjustments to employee time simply corrected documented errors. Paradise likewise
23 argued that class certification on this issue would be impossible since determining if any employee
24 worked through a meal period would require individualized proof. [Serb Decl., ¶ 27.]

25 On the meal break claim, Plaintiff contends Paradise's written policies were not fully
26 compliant, and inter alia failed to fully apprise employees of their right to a meal period before the
27 end of the fifth hour of work, and further restricting employees from leaving the premises while on
28 a lunch break. Also, as noted, Plaintiff alleges he and other employees were often pressured to

1 work through their meal breaks due to understaffing and a heavy workload involved in keeping the
2 restaurant functioning. Plaintiff's review of the time records produced further suggests numerous
3 "de facto" violations and Plaintiff contends around 43.7% of all shifts have at least one unique
4 meal period violation, and particularly with respect to the failure to provide second meal periods
5 on shifts over 10 hours. [Serb Decl., ¶ 28.]

6 In response, Paradise argued its break policies are fully compliant with California law, that
7 it provided class members with the opportunity to take all required breaks, and that many class
8 members waived their second meal periods. Defendant further maintained that, in light of its
9 compliant policies, whether a class member missed a meal period, received a late meal period, or
10 missed a rest break would have been aberrational and against company policy. Thus, per Paradise,
11 these issues are not amenable to class or representative treatment since their resolution would
12 require individualized inquiries as to why a break was missed or non-compliant. Paradise further
13 argued that in many instances it paid the required one hour of premium pay for documented
14 violations. [Serb Decl., ¶ 28.]

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

25 For Plaintiff's expense reimbursement claim, he argued Defendant failed to reimburse
26 Plaintiff and the other employees for expenses incurred in using their personal mobile phones and
27 data for business purposes. Of note, Plaintiff and the other employees were frequently contacted
28 by text message and/or phone call with questions and requests regarding their availability for

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

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

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

25 Accordingly, the Parties allocated \$20,000 to PAGA penalties, which amount is reasonable
26 and in line with comparable settlements in other class actions in California. Van Kempen v.
27 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
28 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);

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

9 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
10 successful, could have decimated Plaintiff's case. Accordingly, Plaintiff faced risky issues going
11 forward with this litigation, and given the need to secure class certification, try the case, and deal
12 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's
13 counsel discounted the value of the class claims consistent with the risks discussed above, and
14 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
15 continued. Plaintiff's counsel concluded – in light of these very real and substantial risks –
16 settlement on the proposed terms and without prolonged and costly litigation was in the best
17 interests of the class. The overall \$300,000 recovery represents a significant percentage of
18 Defendant's potential exposure, and given these risks discussed above a total recovery for the
19 class of \$300,000, with an average award of over \$400 per class member, is a fair result within the
20 range of reasonableness considering all potential outcomes. [Serb Decl., ¶ 34.]

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

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

13 **V. CONCLUSION**

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

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18 Dated: March 12, 2024

CROSNER LEGAL, PC

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