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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

PORTIA BARTLEY, as an individual on behalf of herself and on behalf of all others similarly situated, Plaintiff, v. UNIVERSAL TELEVISION LLC, a New York limited liability company; ENTERTAINMENT PARTNERS ENTERPRISES, LLC, a Delaware limited liability company; and DOES 1-100, inclusive, Defendants.	Case No.: 22STCV36428 Assigned for All Purposes to: Hon. Kenneth R. Freeman Dept. SSC-14 **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 Nikki Trenner, Portia Bartley, and Sean Hartranft; [Proposed] Order] Date: July 24, 2025 Time: 11:00 AM Dept.: SSC-14

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I. INTRODUCTION

Plaintiff Portia Bartley respectfully requests that the Court preliminarily approve the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement") entered into between Plaintiff and Defendant Universal Television LLC ("UTV" or "Defendant"). The proposed settlement seeks to resolve claims in this matter in exchange for a non-reversionary $274,500 Gross Settlement Amount. The settlement class consists of all non-exempt COVID production safety team employees who worked for Defendant in California during the Class Period of June 1, 2020 to May 31, 2023. (Agreement, § 1.5).[1]

The Agreement and Notice distribution plan are the products of adversarial, arm's-length negotiations by informed counsel and parties, facilitated by an experienced mediator. The settlement is fair, reasonable, and adequate to all. Plaintiff analyzed the strengths and vulnerabilities of the claims with Defendant's potential exposure and determined the $274,500 proposed settlement is well within the range of reasonableness and is in the Class Members' best interests. The length and risks of continued litigation and trial that affect the values of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and possible delays and appeals, were also considered by Plaintiff and counsel in negotiating the proposed settlement. Further, the proposed settlement satisfies the criteria for preliminary approval under California Rules of Court, Rule 3.769.

Accordingly, Plaintiff seeks: (1) preliminary approval of the settlement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Crosner Legal, PC as Class Counsel; (5) approval of the Parties' proposed Notice of Class Action Settlement ("Notice") and method of notifying the Class Members; (6) a hearing date for Plaintiff's Motion for Final Approval of Class Action Settlement; and (7) entry of an Order Granting Preliminary Approval of Class Action Settlement.

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[1] The fully executed Agreement is attached to the Declaration of Nikki Trenner as Exhibit 1.

II. BACKGROUND/LITIGATION HISTORY

Defendant is a television production company that produces television series for broadcast on the NBC Universal owned networks. Plaintiff was employed by Defendant as a non-exempt COVID Testing Coordinator/Consultant from September 13, 2021 to February 18, 2022. Plaintiff administered COVID-19 screening questionnaires and tests to employees and visitors on the production of the show Loot – Season 1. (Declaration of Nikki Trenner "(Trenner Decl."), ¶ 13.)

On November 17, 2022, Plaintiff filed a class action complaint against Defendant. Plaintiff then timely exhausted her administrative remedies with the LWDA by submitting her PAGA notice on December 5, 2022. Plaintiff did not receive notice from the LWDA that it intended to investigate the alleged violations outlined in his PAGA letter. Consequently, On February 10, 2023, Plaintiff filed a PAGA lawsuit, also in Los Angeles County, alleging violation of the PAGA for the same claims as the class action. On February 20, 2024, Plaintiff amended her class action lawsuit to include her PAGA claim and dismissed the separately filed PAGA action. The operative FAC alleges claims for minimum and overtime wages, meal and rest break violations, inaccurate wage statements, waiting time penalties, unfair competition, and penalties under PAGA.[2] (Trenner Decl., ¶ 14; Exh. 4.)

In October 2024, the Parties participated in mediation with Steve Mehta, Esq., a respected wage and hour class action mediator. The mediation lasted a full day and, while the Parties did not settle at the mediation, they continued to negotiate with the mediator's assistance and reached agreement on all major issues following a mediator's proposal. They then formally reduced the proposed settlement to the Agreement now before the Court for approval. The Agreement meets the requirements in the LASC Checklist for Preliminary Approval. The Agreement has also been uploaded to the LWDA. (Trenner Decl., ¶ 15; Exh. 6.)

III. INVESTIGATION

Prior to the mediation, Defendant provided Plaintiff with extensive informal discovery, including Plaintiff's personnel, time, and payroll records, time records and payroll records for the entire population of Class Members, wage statement exemplars, Defendant's employee handbooks,

[2] Plaintiff uploaded the complaint to the LWDA. (Trenner Decl., Exh. 5.)

including policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, as well as information regarding the number of putative Class Members who are current and former employees, sample arbitration agreements, the number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. From this information, Plaintiff was able to analyze Defendant's liability for the claims asserted in this case and, with the assistance of Plaintiff's experts at Berger Consulting Group, the potential exposure and damages. (Trenner Decl., ¶ 16.)

Based on this informal discovery, Plaintiff contends the Class Members were not paid all minimum or overtime wages, did not receive proper expense reimbursement, were not provided with legally compliant meal and rest periods, did not receive compliant wage statements, and did not receive all wages due on separation of employment. In considering the reasonableness of the proposed settlement, Plaintiff considered each of Defendant's counterarguments, which sharply contested Plaintiff's claims. Plaintiff's Counsel weighed the strength of Defendant's arguments, including the risks of prevailing at class certification and on the merits, and determined that the proposed settlement is in the best interests of the Class. Although remaining confident in the strength of their claims, all these factors led Plaintiff to discount the exposure analysis, discussed in detail below. (Trenner Decl., ¶ 17.)

IV. <u>TERMS OF THE PROPOSED SETTLEMENT</u>

A. Deductions from the Settlement

The Parties have agreed (subject to Court approval) that this action be settled and compromised for the non-reversionary sum of $274,500.00 ("Gross Settlement Amount" or "GSA") (Agreement, §§ 3.1). The GSA includes: (a) attorney's fees of up to $91,500.00 (one-third of the GSA)[3] to compensate Class Counsel for work already performed and all work remaining to

[3] The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in connection with Class Counsel's request for attorney's fees.

be performed (Agreement, § 3.2.2.); (b) actual litigation expenses not to exceed $20,000.00[4] (*Id.*); (c) Administration Costs to Apex Class Action, LLC in an amount not to exceed $5,800 (Agreement, § 1.3, 3.2.3); (d) a Class Representative Service Payment to Plaintiff in an amount not to exceed $10,000 (Agreement, § 3.2.1) and (e) PAGA penalties to the LWDA of $7,500.00 (which is 75% of the $10,000.00 PAGA Payment, with the remaining 25% or $2,500.00 to Aggrieved Employees) (Agreement, § 3.2.5). Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendant separate and apart from the GSA. (Agreement, § 3.1.)

B. <u>Calculation of the Individual Settlement Payments to Class and Aggrieved Employees</u>

After all Court-approved deductions from the GSA, it is estimated that $137,200 ("Net Settlement Amount" or "NSA"), less all applicable employee-side taxes, will be distributed to the estimated 176[5] Class Members, with an average individual settlement amount of around $779.[6] Additionally, it is estimated that the 25% PAGA Payment ($2,500.00) will be distributed to the estimated 118[7] Aggrieved Employees, resulting in an average payment of $21.18[8] per Aggrieved Employee. (Trenner Decl., ¶ 19.) Under no circumstances will any portion of the Settlement revert to Defendant. (Agreement, § 3.1.)

Subject to the terms and conditions of the Settlement, Apex will calculate and issue Individual Settlement Payments to Participating Class Members based on the following formula: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Agreement, § 3.2.4.)

Additionally, Apex will calculate and issue payments to Aggrieved Employees based on the following formula: (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA

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[4] At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class Counsel's request for reimbursement of actual expenses.
[5] This is based on information provided by Defendant in advance of mediation and separately confirmed by Plaintiff.
[6] $137,200 NSA / 176 Class Members
[7] This information is also based on data provided by Defendant in advance of mediation.
[8] $2,500 (25% PAGA Payment) / 118 Aggrieved Employees.

Penalties ($2,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Therefore, the value of each Aggrieved Employee's share of the PAGA Payment ties directly to the amount of pay periods that he or she worked. (Agreement, § 3.2.5.1)

The number of pay periods and weeks worked by each Participating Class Member and Aggrieved Employee will be derived from Defendant's records. (Agreement, § 1.8) Each Class Member's gross settlement award will be apportioned as follows: 20% wages and 80% penalties and interest. (Agreement, § 3.2.4.1) Apex will be responsible for issuing Form W-2s for amounts deemed "wages" and Form 1099s for the portions allocated to penalties and interest. (Agreement, § 3.2.4.1.)

C. Uncashed Funds to Unclaimed Property Fund

Settlement checks must be cashed or deposited within 180 days after the checks are mailed to them. (Agreement, § 4.4.1.) In the event a settlement check remains uncashed, such uncashed funds shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the Participating Class Member and/or Aggrieved Employee for later claim. (Agreement, § 4.4.3.) Because this lawsuit benefits Class Members/Aggrieved Employees who release claims by participating in the lawsuit, the funds representing their settlement payments should remain their property. By sending the uncashed funds to the Unclaimed Property Fund in the name of the Class Member/Aggrieved Employee, he or she can claim his or her property at a future date convenient to the Class Member. Therefore, there will be no unpaid residue or unclaimed or abandoned Class Member funds under California Code of Civil Procedure section 384(a). (Trenner Decl., ¶ 23.)

D. Notice and Extended Response Deadline for Re-Mailed Notices

Within fifteen days after entry of the Preliminary Approval Order, Defendant will provide Apex with the Class Data, containing each Class Member's first and last name, last known mailing address, Social Security number, total number of weeks worked during the Class Period, and total number of pay periods worked during the PAGA Period. (Agreement, § 4.1.) Apex will maintain the Class Data as private and confidential, but Class Counsel will have access to the Class Data so that nothing shall impede Class Counsel from discharging their fiduciary duties to the Class.

(Agreement, § 4.1.)

Prior to mailing, Apex will perform a search for updated addresses in the National Change of Address Database. (Agreement, § 7.4.2.) Apex will use the NCOA and skip traces to attempt to find current addresses for any Notice returned as undeliverable. For any re-mailed Notice, Apex will extend the Class Member's Response Deadline by 14 calendar days. (Agreement, § 7.4.3-4.) If Apex is unable to obtain a better address for a Class Member, the Notice will be deemed undeliverable. (Agreement, § 7.4.3-4.) Within 14 days after receipt of the class data, Apex will mail via regular First-Class mail the Notice to all Class Members. (Agreement, § 7.4.2.)

The contents of the Notice are consistent with the terms of the Agreement. The Notice informs Class Members how and when to request exclusion from or object to the settlement and of their estimated payment amount which they will automatically receive a settlement payment if they do nothing. The Notice further advises Class Members how to obtain documents filed in the case from the Court, Apex or Class Counsel, how to check the Court's website to find out whether the Final Approval hearing date/location has been changed, directs the Class Member to Apex's website and the Court's website to find out whether final judgment has been entered. (Trenner Decl., ¶ 26, Exh. 3.)

E. Responses to the Settlement and Deadline Thereon

Class Members will have 45 days from the initial mailing of the Notice to respond to the settlement by submitting a challenge to the number of weeks or pay periods attributed to them, submitting an objection, or requesting to be excluded from the settlement and the consequences of each choice. (Agreement, §§ 1.44, 7.4.4.) Class Members can object to the settlement in writing via mail or fax by submitting a document with their name, the words "Notice of Objection" or "Formal Objection" and a description of the arguments supporting their objection. Class Members are informed that the Court will hear any objections from any Class Member who attends the Final Approval Hearing. (Agreement, § 7.7.)

Class Members can also submit a written request for exclusion from the settlement by mailing or faxing a written request, including his or her name, address, and phone number, and a statement demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.)

The Notice also informs the Class Member/Aggrieved Employees that they can dispute the number of weeks/pay periods allotted to them to calculate their settlement payments by contacting Apex before the Response Deadline and include any documentation supporting the dispute. Apex will investigate the dispute, request additional information from Defendant, and make a final decision as to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

F. Funding and Distribution of the Settlement

Defendant shall fund the within 14 days of the Effective Date. (Agreement, § 4.2.). Apex shall disburse all payments required under this Settlement within 14 calendar days of receipt of the second installment payment. (Agreement, § 4.3.)

G. Release of Claims

Upon Defendant's payment funding the GSA, Participating Class Members shall forever release the Released Parties[9] for the Released Claims for the Class Period. (Agreement, § 5.2.) Likewise, upon Defendant's payment funding the GSA, Plaintiff, the Aggrieved Employees, and the State of California shall forever release the Released Parties for the PAGA Released Claims for the PAGA Period. (Agreement, § 5.3.)

As discussed below, Plaintiff's Counsel is convinced that the proposed settlement is in the Class Members' best interests based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks continued litigation that affect the value of the claims were all carefully weighed. In addition, the affirmative defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Plaintiff's Counsel in arriving at the proposed settlement. (Trenner Decl., ¶ 32.)

V. <u>ARGUMENT</u>

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*

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[9] "Released Parties" means Defendant and each of its former and present directors, partners officers, employees, shareholders, owners, members, agents, representatives, attorneys, insurers, predecessors, successors, assigns, parent companies, subsidiaries, and affiliated and related entities. (Agreement, § 1.42.)

Justice v. Civil Serv. Comm'n (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217]. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were 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. *Id.* at 1802. As the following shows, all of these elements are present here and the Court should grant of preliminary approval.

A. The Settlement was Reached as a Result of Arm's Length Negotiations

The proposed settlement was reached as a result of arm's-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Following mediation, Counsel for the Parties further negotiated regarding the settlement terms memorialized in the Agreement. (Trenner Decl., ¶ 33.)

While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of litigation and understand the benefit of Class Members receiving significant settlement funds immediately as opposed to risking continued litigation in achieving class certification, the merits of the case before and after trial, the damages awarded and/or an appeal that can take several more years to litigate. (Trenner Decl., ¶ 34.)

B. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of their arguments before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery, referenced above, to support the settlement. The proposed settlement was only possible following significant analysis and evaluation of Defendant's relevant policies and procedures, as well as the data it produced for the putative Class, which permitted Plaintiff's Counsel and expert to engage in a comprehensive analysis of liability and potential damages to prepare for mediation. (Trenner Decl., ¶ 35.) This litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

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C. Counsel for the Parties are Experienced in Similar Litigation

Counsel for the Parties are particularly experienced in wage and hour employment law, class actions and PAGA actions. Plaintiff's Counsel has prosecuted numerous cases on behalf of employees for wage and hour violations and thus are experienced and qualified to evaluate the class and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This experience informed Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.[10] (Trenner Decl. ¶¶ 6-12.)

D. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor into whether the settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116; 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal.App.4th at 129.

In weighing the strength of Plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." 168 Cal.App.4th at 133. Further, this analysis does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal. App. 4th at 409. Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-Clyde &*

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[10] The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

Associates (1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties' investigation and discovery revealed several reasons to discount claims and agree to this settlement.

E. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation

The proposed settlement was only possible following significant analysis and evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant produced for the Class. This permitted Plaintiff's Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted resulted in Plaintiff's central theories of liability, which are based on Plaintiff's claims that Defendant failed to provide compliant meal and rest periods, failed to pay all minimum and overtime wages, failed to provide accurate, itemized wage statements and failed to pay all wages due on separation of employment As explained above, Defendant maintained that the discovery produced demonstrates that it would succeed at both class certification and on the merits. (Trenner Decl., ¶ 36.)

Plaintiff believes this case is suitable for certification on the claimed basis that there are company-wide policies that Plaintiff contends violate California law and uniformly affect the Class Members. However, Defendant's counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319 (2004), class certification is always a matter of the trial court's sound discretion, and decisions following *Sav-On* have reached different conclusions with respect to certification of wage and hour claims.[11] While remaining confident in the strengths of her claims, all of these factors led Plaintiff to discount the following maximum potential damage claims. (Trenner Decl., ¶ 37.)

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[11] *E.g.*, *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc*. (2006) 141 Cal.App.4th 1422 (affirming denial of certification).

1. The Settlement Amount is Reasonable

Defendant provided Plaintiff with class-wide data from which Plaintiff's Counsel could extrapolate a damage analysis in preparation of mediation. Prior to mediation, there were a total of about 176 Class Members and 4,857 work weeks in the Class Period. There are also approximately 118 aggrieved employees and 2,581 pay periods within the PAGA Period. (Trenner Decl. ¶ 38.)

Plaintiff contends Defendant failed to provide legally compliant meal and rest breaks. Specifically, Plaintiff contends Defendant did not maintain a written meal/rest break policy, and that due to the volume of work Defendant imposed and inadequate staffing made it difficult if not impossible for the class members to take all required meal and breaks, and further made it difficult to take breaks on a fully compliant basis even when they were able to take one at all. Per Plaintiff, lunch breaks regularly were taken late, cut short or interrupted by work, or not provided at all. Plaintiff claims this violates Labor Code sections 512, 226.7, and the applicable IWC Wage Order, as well as *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 and *Augustus v. ABM Security Serv., Inc.* (2016) 2 Cal.5th 257 for failure to provide compliant meal and rest periods within the applicable time frames. (Trenner Decl., ¶ 39.)

Defendant denies Plaintiff's contentions, claiming they made meal and rest breaks available to Class Members in compliance with California law. Defendant contend its meal and rest break policies are lawful and that Class Members were provided with all required breaks. In particular, Defendant argued that lunch was provided for employees while on the set, and that all worked ceased while everyone ate lunch, which policy excused any need to record meal periods. Wage Order 11, § 7(A)(3). Finally, Defendant argued that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant contend these claims are vulnerable to a ruling that class treatment is not appropriate. Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated Defendant's maximum exposure for the meal and rest break claims as approximately $265,220 for the meal break claims and about $987,415 for the rest break claim. (Trenner Decl., ¶ 40.)

Plaintiff also asserts Defendant's failed to pay for all hours worked, and that Defendant had a practice of paying Plaintiff and the Class Members according to their scheduled shifts rather than actual hours worked. Per Plaintiff, supervisors would refuse to approve employee hours for the pay period if they did not the exact times supervisors instructed them to record on their time sheets. Plaintiff contends she and the Class Members were required to complete off-the-clock work outside of their scheduled shifts including, but not limited to, completing paperwork, answering questions for colleagues, and responding to calls and messages from supervisors, all of which resulted in unpaid "off the clock" work. (Trenner Decl., ¶ 41.)

In response, Defendant argued its timekeeping and payroll policies accurately tracked and paid for all hours worked by the class members, and that its policies strictly forbade any off the clock work. Thus, per Defendant, if any off the clock work occurred it was done in violation of company policy and without the company's knowledge or authorization. <u>White v. Starbucks Corp.</u> (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). For these reasons as well, UTV argued that class certification would be impossible due to the individualized inquiries that would be needed to determine if off the clock work occurred and the reasons therefor. Without considering any of Defendant's defenses to certification or on the merits, Plaintiff's expert calculated Defendant's maximum exposure for this claim as about $107,450 on the off the clock claim. (Trenner Decl., ¶ 42.)

Plaintiff also contends Defendant required Plaintiff and the Class Members to use their personal cell phones for work related purposes including communicating with supervisors before and after their shifts. However, Defendant failed to fully reimburse employees for the use of their personal cell phones *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137, it was held that § 2802 requires employers to always reimburse employees who are required to use personal cell phones for work-related calls for a reasonable percentage of their cell phone bills. Although Defendant paid $3 per day to Plaintiff and the Class Members for a cell phone reimbursement, Plaintiff contends this was not sufficient amount to reimburse employees for the required use of personal cell phones while at work. Plaintiff further contended she was required to work from home approximately 2 days per week but did not receive any reimbursement for home internet, home telephone, etc. that was necessary for her to perform her duties. On the other hand, Defendant argued its cell phone reimbursement policy was extremely generous and fully compensated employees for all use of their personal devices. Defendant further argued that working from home was voluntary and not a necessary part of the job, and therefore any use of home internet, etc. was purely for personal convenience and not "necessary," and therefore no reimbursement was required. Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated the maximum exposure for expense reimbursement as about $67,500. (Trenner Decl., ¶ 43.)

Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage statements and waiting time penalties would also fail. Defendant also contends it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of past wages. Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would have to prove that it "willfully" failed to pay Class Members appropriate wages due upon separation of employment, and that any failure to pay wages upon separation was not willful. Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated the exposure for wage statement penalties as $249,300 and waiting time penalties as $1,261,700. (Trenner Decl., ¶ 44.)

As far as potential PAGA liability, the theoretical civil penalties likely exceed $1.3 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue. (Trenner Decl., ¶ 46.) As with the class claims, Plaintiff 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 $10,000 to PAGA penalties.

Plaintiff submits 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.

Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the risks discussed above, as well as the potential applicability of arbitration agreements signed by many class members. They carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued, and 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. The overall $274,500 recovery represents a significant percentage of Defendant’s potential exposure and, given Defendant’s multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $274,500, which will result in average award of some $779 per class member, plus additional sums under PAGA, 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. [Trenner Decl., ¶¶ 47-48.]

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"); *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); *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"). Importantly as well, the proposed settlement is non-reversionary and will provide immediate 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). Plaintiff and his counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

F. Provisional Class Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule 23 of the Federal Rules of Civil Procedure, and require*:* numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. While a court must certify a class for settlement purposes if a class has not already been certified, "it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court*

(2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 237-38.

Here, Plaintiff seeks approval of the following Class for settlement purposes only: "all non-exempt COVID production safety team employees who worked for Defendant in California during the Class Period of June 1, 2020 to May 31, 2023."[12] (Agreement, § 1.5).

1. The Proposed Class is Sufficiently Numerous and Ascertainable

First, the class is both sufficiently numerous, consisting of approximately 176 individuals, and ascertainable by reference to Defendant's personnel and payroll records. (Trenner Decl., ¶ 47.) "There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous that 'it is impracticable to bring them all before the court.'" *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court* (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 (finding that "Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records."). Thus, the ascertainability requirement is met.

2. The Typicality and Adequacy Requirements Are Met

The typicality requirement is met if the claims of the named representative are typical of those of the Class, though, "they need not be substantially identical." *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Here, Plaintiff contends her claims are typical of the Class Members' claims because they arise from the same factual basis and are based on the same legal theories applicable to the Class Members. Plaintiff further contends Defendant's policies applied to all Class Members and each Class Member is challenging the same policies and practices. As such, the typicality requirement is satisfied for purposes of settlement. (Bartley Decl., ¶¶ 2-3; Trenner Decl. ¶ 48.)

Adequacy requires that the Plaintiff have no interests adverse to the interests of the proposed Class Members and be committed to vigorously prosecuting the case on behalf of the Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will continue

[12] COVID Team Members were only employed from June 1 2020 to May 21, 2023, which is the class period.

to be committed to vigorously prosecuting this case, and she has no conflicts of interest with the Class. Plaintiff has been and will continue to be committed to vigorously prosecuting this case, and she has no conflicts of interest with the Class. For these reasons, Plaintiff contends she is an adequate class representative. (Bartley Decl., ¶¶ 3-7; Trenner Decl., ¶ 48.)

3. The Commonality Requirement is Met

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the same meal and rest break policies and alleged "de facto" policies resulting in meal period violations, and similarly subject to the same alleged time keeping policies that resulted in off the clock work. Since the focus of the claims against Defendant concern the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Defendant's meal and rest break 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. [Trenner Decl., ¶ 49.]

By now it is well-settled 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 superior to other means for the fair and efficient adjudication of this controversy. [Trenner Decl., ¶ 50.]

G. Apex Should be Appointed as the Settlement Administrator

The Parties agreed to use Apex Class Action, LLC as the Settlement Administrator in this matter. (Agreement, § 1.2). Apex is highly qualified and experienced as a settlement administrator, committed to the security of data (having experienced no data breaches at all), carries insurance for the theft of money or data, and has no relationship with Counsel. (Declaration of Sean Hartranft,

¶¶ 2-7; Exhs. A-B; Trenner Decl., ¶ 51.)

H. Notice to Class Members Complies With California Rule of Court 3.769(f)

California Rule of Court 3.769(f), provides: “If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” Here, the proposed Notice meets all of these requirements, as it advises Class Members of their rights to participate in the settlement, how to and when to object to or request exclusion from the settlement, and the date, time, and location of the final approval hearing. Class Members need not do anything to receive their *pro rata* share of the settlement. (Trenner Decl., Exh. 2.)

VI. CONCLUSION

Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court certify the class for settlement purposes, appoint Plaintiff as Class Representatives, appoint Plaintiff’s Counsel as Class Counsel, appoint Apex as Settlement Administrator, approve the method of notice and the Notice to be sent to the Class, preliminarily approve the Settlement Agreement, enter the proposed order filed herewith, and set a Final Approval hearing date.

Dated: January 27, 2025

CROSNER LEGAL, P.C.

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