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10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF RIVERSIDE**

12 TUAN Q. LE and ALEXANDER MEDINA
13 LOPEZ, as an individual and on behalf of all
14 others similarly situated,

15 Plaintiffs,

16 vs.

17 FUTURE TECH METALS, INC., a California
corporation; and DOES 1-100, inclusive,

18 Defendants.
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CASE NO. CVRI2105851

Assigned for All Purposes to:
Hon. Harold Hopp
Dept. 1

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 Nikki Trenner,
Tuan Q. Le, Alexander Medina Lopez,
Michael Sutherland, Michael Gooch, and
Shirin Forootan; [Proposed] Order]

Date: July 31, 2023
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND AND PROCEDURAL POSTURE	1
III.	THE PROPOSED SETTLEMENT TERMS	3
A.	Certification of the Settlement Class.....	4
B.	The Benefit Conferred on the Settlement Class	4
C.	Settlement Administration	5
D.	The Class Notice	5
E.	Right to Correct Information, Opt Out, or Object.....	6
F.	Release of Claims.....	6
G.	Attorney’s Fees and Costs, and Plaintiff’s Enhancement Award	6
IV.	ARGUMENT	7
A.	Standard of Review for a Class Action Settlement.....	7
B.	The Proposed Settlement Class Should Be Conditionally Certified.....	8
C.	The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness	9
D.	Notice to the LWDA	14
V.	CONCLUSION	14

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135	13
<u>Alvarado v. Dart Container Corp.</u> (2018) 4 Cal.5th 542	11
<u>Amaral v. Cintas Corp. No. 2</u> (2008) 163 Cal.App.4th 1157	12
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504	12
<u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953.....	7
<u>Delmer Camp v. Home Depot USA, Inc.</u> (2022) 84 Cal.App.5th 638	10
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794	7, 8
<u>Ferra v. Loews Hollywood Hotel, LLC</u> (2021) 11 Cal.5th 858	11
<u>Global Minerals & Metals Corp. v. Superior Court</u> (2003) 113 Cal.App.4th 836	8
<u>Jennings v. Open Door Mktg. Inc.</u> (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356.....	13
<u>Jones v. Farmers Ins. Exch.</u> (2013) 221 Cal.App.4th 986	9
<u>Kullar v. Foot Locker Retail, Inc.</u> (2008) 168 Cal.App.4th 116	9, 10
<u>Lane v. Facebook, Inc.</u> (9th Cir. 2012) 696 F.3d 811	14

1	<u>North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs.</u>	
2	(1994) 27 Cal.App.4th 1085	7
3	<u>Potter v. Pacific Coast Lumber Co.</u>	
4	(1951) 37 Cal.2d 592	7
5	<u>Slavkov v. First Water Heater Partners I</u>	
6	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303.....	13
7	<u>In re Taco Bell Wage and Hour Actions</u>	
8	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557.....	12
9	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
10	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	13
11	<u>Wershba v. Apple Computer</u>	
12	(2001) 91 Cal.App.4th 224	7, 8, 13
13	<u>White v. Experian Information Solutions, Inc.</u>	
14	(C.D. Cal. 2011) 803 F.Supp.2d 1086	14
15	<u>Williams v. Superior Court</u>	
16	(2013) 221 Cal.App.4th 1353	9

1	Statutes	
2	Cal. Rule of Court. 3.769.....	7
3	Cal. Rule of Court 3.769(c)	7
4	California Rules of Court 3.769(f) and 3.766(d).....	5
5	Civil Code section 1542	6
6	Code of Civil Procedure section 382.....	8
7	Labor Code sections	12
8	Labor Code § 203	12
9	Labor Code § 226	12
10	Labor Code § 2699(e)(2)	12
11	Labor Code section 2699(l)(2)	14
12		
13	Other Authorities	
14	Federal Judicial Center, <u>Managing Class Action Litigation: A Pocket Guide</u>	
15	<u>for Judges</u> (3d ed. 2010).....	14
16	H. Newberg & A. Conte, 4 <u>Newberg on Class Actions</u> (4th ed. 2002) §	
17	11.41	7
18		
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22		
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1 **I. INTRODUCTION**

2 Plaintiffs Tuan Q. Le and Alexander Medina Lopez hereby move the Court for an order
3 granting preliminary approval to a proposed non-reversionary class action settlement to resolve
4 wage and hour claims on behalf of approximately 76 individuals employed by Defendant Future
5 Tech Metals, Inc. (“Future Tech” or “Defendant”) as non-exempt employees, either directly or
6 via a staffing agency, during the period of December 29, 2017 to August 5, 2023. The proposed
7 \$275,000 settlement will provide about \$120,000 in cash payments to the class, with an average
8 award of about \$1,576. The balance of approximately \$155,000 will cover modest enhancement
9 awards to Plaintiffs, reasonable attorney’s fees and actual litigation costs, settlement
10 administration costs, and payment of civil penalties to the State. The settlement is the product of
11 Plaintiffs’ pre- and post-filing investigation, a pre-mediation exchange of information, and
12 lengthy arms-length negotiations overseen by experienced mediator Todd Smith, Esq.

13 As demonstrated below, the settlement is within the “range of reasonableness” for
14 preliminary approval. Plaintiffs’ counsel believes the settlement is a fair result for the class given
15 the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court enter an
16 order: (1) granting preliminary approval to the proposed class action settlement and the Class
17 Action and PAGA Settlement Agreement (“Settlement Agreement”); (2) conditionally certifying the
18 settlement class as defined below; (3) appointing Zachary M. Crosner, Jamie K. Serb, and Nikki
19 Trenner of Crosner Legal, P.C. as Class Counsel; (4) appointing plaintiffs Tuan Q. Le and
20 Alexander Medina Lopez as the Class Representatives; (5) appointing ILYM Group, Inc. as the
21 Settlement Administrator; (6) approving the form of notice to the class and the procedure for
22 providing such notice; and (7) scheduling a final fairness hearing.

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

24 Defendant Future Tech manufactures of aerospace components, screw machine products
25 & turned parts, and has two facilities in California, including one in Riverside. Future Tech
26 employed plaintiff Le as a non-exempt Production Lathe Machinist for almost two years, from
27 September 2018 to August 2020. During his employment, Plaintiff Le generally worked twelve
28 hour shifts, six or seven days per week, and frequently worked the night shift and received shift

1 differential pay. Plaintiff Lopez worked as a Production Lathe Machinist and CNC Operator, until
2 he was terminated in and around February 2020. He typically worked shifts lasting at least 8 to 11
3 hours, 5 days per week, and usually worked the day shift. [Declaration of Nikki Trenner
4 (“Trenner Decl.”), ¶ 3.]

5 Plaintiffs allege Future Tech violated California wage and hour law in several respects.
6 First, they allege a failure to pay all wages due, including failed to incorporate non-discretionary
7 bonuses and shift differential pay into the regular rate of pay when calculating overtime wages
8 and failed to pay employees for all hours worked by (1) failing to compensate employees for
9 work performed while clocked out for meal periods, and (2) utilizing an unlawful rounding policy
10 resulting in the underpayment of wages. Next, Plaintiffs allege Future Tech also failed to provide
11 compliant meal periods by (1) requiring employees to perform work while clocked out for meal
12 periods; (2) frequently requiring employees to take late and/or short first meal periods or skip first
13 meal periods altogether; and (3) failing to provide second meal periods to employees who work
14 shifts of 10 hours or more. As a result, Plaintiffs also allege Defendant failed to provide accurate,
15 itemized wage statements and failed to pay all wages owed upon separation of employment.
16 [Trenner Decl.), ¶ 4.]

17 Based on these allegations, on December 29, 2021, Plaintiff Le filed the underlying class
18 action on behalf of himself and the Class Members, asserting claims for (1) failure to pay
19 minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to
20 provide rest periods; (5) failure to provide itemized wage statements; (6) failure to pay all wages
21 due at termination; and (7) unfair competition. [Trenner Decl., ¶ 5.]

22 Future Tech has at all times denied Plaintiffs’ allegations and maintained its meal and rest
23 break and payroll policies and procedures comply with California law, and that it provided the
24 class members with required meal and rest breaks. Additionally, Future Tech contends its
25 timekeeping and payroll policies accurately track and pay for all hours worked by its employees
26 and at the correct rates of pay. It also strongly contends the case cannot be maintained as any kind
27 of class or representative action, arguing for example that to the extent class members missed
28 meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and

1 infrequent and evidence of such missed breaks would be purely anecdotal, and therefore
2 individualized issues predominate and trial on a representative basis would be unmanageable.
3 [Trenner Decl., ¶ 6.]

4 Since Plaintiff Le filed the initial complaint, and after agreeing to participate in early
5 mediation, the Parties engaged in formal and informal discovery to facilitate an exchange of
6 information necessary to engage in a meaningful mediation. Consequently, Plaintiffs' counsel
7 reviewed payroll records, personnel policies/handbooks, meal and rest break policies, personnel
8 files, and a random of sampling paystubs and time records for about 20% of the pay periods at
9 issue. Defendant also provided documents reflecting its wage and hour policies and practices,
10 and data regarding the total number of current and former employees, the estimated total amount
11 of workweeks and pay periods they worked, and average hourly pay rates, among other relevant
12 data. [Trenner Decl., ¶ 7.]

13 The Parties then engaged Todd Smith, Esq., a highly respected mediator with extensive
14 wage and hour class action experience (particularly in the auto dealership arena) and, in February
15 2023, participated in a full day mediation with Mr. Smith. Throughout the day, the arms-length
16 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
17 their legal and factual positions, and made numerous offers and counter-offers. Near the end of
18 the day, the Parties reached agreement on all major issues and thereafter began drafting the
19 Settlement Agreement. [Trenner Decl., ¶ 8.]

20 Finally, in order to fully effectuate the settlement, the Parties agreed to the filing of a First
21 Amended Complaint to add a claim under PAGA and to further add Plaintiff Lopez as a class and
22 PAGA representative, and the FAC was filed on April 20, 2023. The FAC is the operative
23 pleading for purposes of effectuating the proposed settlement. [Trenner Decl., ¶ 9.]

24 **III. THE PROPOSED SETTLEMENT TERMS**

25 Under the settlement, Future Tech will pay \$275,000.00 into a common fund, the Gross
26 Settlement Amount.¹ Reasonable attorney's fees of up to \$91,666.00 (33.3% of the GSA),

27 _____
28 ¹ Unless otherwise stated, all capitalized terms have the same meaning as those defined in the Settlement Agreement.

1 litigation costs of up to \$20,000, enhancement awards to Plaintiffs of up to \$7,500 each,
2 settlement administration costs of no more than \$8,550, and \$20,000 for civil penalties under
3 PAGA (of which 75%, or \$15,000, will go to the Labor & Workforce Development Agency, and
4 25%, or \$5,000 will go to the Aggrieved Employees) all will be paid from the Gross Settlement
5 Amount. The remainder of approximately \$120,000 will be allocated among the Participating
6 Class Members based on their total workweeks worked during the Class Period. No portion of the
7 Gross Settlement Amount will revert to Future Tech. [Trenner Decl., ¶ 10.]

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

9 The settlement provides for conditional certification of a settlement class including all
10 non-exempt employees who worked either directly or via a staffing company for Defendant in
11 California during the Class Period of December 29, 2017 to August 5, 2023. The Settlement Class
12 consists of approximately 76 individuals.² [Trenner Decl., ¶ 11.]

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

14 This is a cash settlement that does not require Participating Class Members to submit a
15 claim form to receive their settlement share. Participating Class Members will receive their
16 settlement checks automatically via First Class U.S. Mail. Eighty percent of each settlement
17 share will be allocated to wages and the remaining twenty percent will be allocated to penalties
18 and interest. Future Tech will pay any and all applicable employer-side payroll taxes separately
19 and in addition to the Gross Settlement Amount. Subject to the Court's approval, any amounts not
20 claimed (because a class member does not cash his or her settlement check) will be forwarded to
21 the State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 12.]

22 Each Participating Class Member will receive a share of the Net Settlement Amount based
23 on his or her total weeks worked for Future Tech during the Class Period while employed in a
24 non-exempt position. Thus, each Class Member's Individual Settlement Payment will be
25 calculated using criteria typically used in determining appropriate amounts of unpaid wages,
26 unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under

27 ² The "Aggrieved Employees" for purposes of PAGA include non-exempt employees who worked either
28 directly or via a staffing company for Defendant in California during the Class Period of December 29,
2020 to August 5, 2023. There are approximately 31 Aggrieved Employees. [Trenner Decl., ¶ 11.]

1 applicable law. These methods are intended to ensure each Class Member receives a portion of
2 the available settlement funds corresponding to the relative value of his or her potential claims.
3 The proposed allocation provides a reasonable way to compensate Class Members based on the
4 amount of time they worked for Future Tech and the number of instances they missed a meal
5 break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost
6 pay due to the alleged rounding. [Trenner Decl., ¶ 13-14.]

7 The average award will be approximately \$1,576, and the Parties currently estimate the
8 awards will range from about \$10 on the low end to over \$3,100 on the high end. The average
9 PAGA award will be about \$161. [Trenner Decl., ¶ 15.]

10 **C. Settlement Administration**

11 Subject to the Court's approval, and after obtaining multiple bids, the Parties agreed on
12 ILYM Group, Inc. ("ILYM") as the Settlement Administrator. [Trenner Decl., ¶ 16.] ILYM is
13 qualified and has significant experience administering class action settlements, including
14 numerous wage and hour matters. ILYM has agreed to cap its fees and costs at \$8,550.00. If the
15 Court approves less than the above amount, the difference will remain in the Net Settlement
16 Amount for distribution to the Participating Class Members. [Declaration of Michael Sutherland,
17 ¶¶ 2-10; Exhs. A-C.]

18 **D. The Class Notice**

19 The proposed Notice (Exhibit 2 to the Trenner Declaration) sets out information about this
20 case and explains the basic settlement terms in plain language, and meets all requirements under
21 California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the individualized
22 information used to calculate Individual Settlement Payments and each Class Member's
23 estimated settlement award. The Notice likewise details the procedures for Class Members to
24 dispute their individual information, for submitting an objection to the Settlement, and to request
25 exclusion. Further, each notice packet will include a Request for Exclusion form and Objection
26 Form (Exhibits B and C to the Trenner Declaration). In sum, the Notice provides the Class
27 Members with the information necessary to evaluate the Settlement and provides fair opportunity
28 to participate in, opt out of, or object to the proposed Settlement. Some Class Members are more

1 comfortable in either Spanish or Vietnamese, and accordingly the notice documents will be
2 translated into both of those languages in addition to English. [Declaration of Michael Gooch, ¶
3 8.] Coupled with the notice procedure, the proposed Notice provides the Class with the best
4 notice practicable. [Trenner Decl., ¶ 17.]

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

6 Class Members will have forty-five (45) days to dispute the information in their Notice
7 used to calculate their settlement award, and also have 45 days to submit any objections to the
8 settlement or to request exclusion. In the event a Class Member disputes their individual
9 information, the Settlement Administrator will review the Class Member's records as well as any
10 additional information submitted, and make a final determination. [Trenner Decl., ¶ 18.]

11 **F. Release of Claims**

12 All Participating Class Members will release Future Tech from all claims alleged in the
13 operative complaint, or that could have been brought based on the factual allegations in the FAC
14 during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the
15 PAGA notice to the extent alleged in the FAC. The Class and PAGA releases are limited to the
16 claims that were actually pleaded or could have been pleaded based on the alleged facts in the
17 FAC, and PAGA notice for the PAGA claims. Only Plaintiffs Le and Lopez are entering into a
18 full general release of all claims and waiver of Civil Code section 1542. [Trenner Decl., ¶ 19.]

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

20 The settlement provides Defendant will not oppose a request for attorney's fees not to
21 exceed 33.3% of the Gross Settlement Amount, or \$91,666.00, nor will they oppose a request for
22 reimbursement of litigation costs and expenses of up to \$20,000.00. Defendant also will not
23 oppose a request for an enhancement award to each Plaintiff of not more than \$7,500.00 in
24 recognition of their time spent on this matter, the risks each undertook on behalf of the class, and
25 the benefit conferred to the class, as set forth in their respective declarations filed herewith.
26 Plaintiffs' counsel will provide the Court with appropriate summaries and evidence of its efforts
27 and time records in anticipation of the Final Approval Hearing. If the Court approves less than
28 the above amounts, the difference will remain in the Net Settlement Amount for distribution to

1 the Participating Class Members. [Trenner Decl., ¶ 20.]

2 **IV. ARGUMENT**

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

4 The law favors settlement, particularly in class actions where substantial resources can be
5 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
6 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir.
7 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co.
8 (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not
9 unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court.
10 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co.
11 (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and
12 ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review
13 occurs via a two-step process to determine, under all the circumstances, if the proposed settlement
14 is fair, reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

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

28 If the court grants preliminary approval, it then orders the class be given notice in an

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

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

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

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

16 In the present matter, conditional certification is proper since this matter satisfies all
17 requirements for class certification under Code of Civil Procedure section 382. First, the class is
18 both sufficiently numerous, consisting of approximately 76 individuals, and ascertainable by
19 reference to Defendant's personnel and payroll records. [Trenner Decl., ¶ 21.] Next, Plaintiffs
20 are adequate class representatives, as their claims do not conflict with and are not antagonistic to
21 the claims of other class members. Further, their claims are typical given each is a member of the
22 class and their claims arise from the same employment practices and course of conduct giving
23 rise to the claims of the other class members. [Declaration of Tuan Q. Le, ¶¶ 3-7; Declaration of
24 Alexander Medina Lopez, ¶¶ 3-7; Trenner Decl., ¶ 22.] Lastly, Plaintiffs' counsel are experienced
25 and adequate class counsel. [Trenner Decl., ¶¶ 37-42.]

26 Next, common questions of law and fact predominate – particularly for purposes of a
27 settlement class – as the Class Members all were subject to the same meal and rest break policy,
28 and likewise were subject to the same time rounding and regular rate calculation policies. Since

1 the focus of the claims against Future Tech concerns the legality of common policies applied
2 uniformly to the entire class, common issues predominate over individualized inquiries
3 concerning liability. For instance, Future Tech’s meal and rest break policy is company-wide
4 policy applied equally and consistently to all class members, and this policy is either compliant
5 with California law or it is not. Regardless of that determination, it will decide liability for all
6 class members one way or another. Similarly, whether Future Tech correctly calculated the of
7 overtime pay due raises a question common to all class members. [Trenner Decl., ¶ 23.]

8 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
9 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
10 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
11 consistently applied to a group of employees is in violation of the wage and hour laws are of the
12 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
13 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
14 or law that supports commonality for class certification”). Lastly, a class action is superior to
15 other means for the fair and efficient adjudication of this controversy. [Trenner Decl., ¶ 24.]

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

18 The proposed settlement resulted from serious, arms-length negotiations facilitated by
19 respected mediator, Todd Smith, Esq., who has extensive experience mediating wage and hour
20 class actions and has special expertise in auto dealership cases. [Trenner Decl., ¶ 8.] Plaintiffs’
21 counsel Zachary M. Crosner, Jamie Serb, and Nikki Trenner all have years of experience
22 litigating wage and hour class actions. Plaintiffs’ counsel are well-qualified to evaluate the risks
23 and benefits of pursuing further litigation or settling the matter. [Trenner Decl., ¶¶ 37-42.]

24 Next, California law recognizes several factors bearing on the fairness, adequacy, and
25 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
26 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement
27 2) the strength of plaintiff’s case; 3) the risk, expense, complexity, and likely duration of further
28

1 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and
2 views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As
3 demonstrated below, the proposed settlement satisfies these requirements.

4 Prior to mediation, the parties engaged in both formal and informal discovery to facilitate
5 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding
6 Future Tech's payroll practices, a representative sampling of pay stubs and time records for 20%
7 of the class members, applicable compensation plans, meal and rest break policies, etc., and
8 information from Defendant regarding class size and breakdown, number of work weeks/pay
9 periods, average rates of pay, and other information used to formulate a damages model.
10 Plaintiffs' counsel are confident they obtained sufficient information to understand the law and
11 facts of this case and make an informed decision regarding the proposed settlement and whether it
12 is fair and reasonable. [Trenner Decl., ¶¶ 7, 25.]

13 Next, the proposed settlement falls within the range of reasonableness warranting
14 preliminary approval. The proposed settlement involves a significant sum that, when distributed,
15 will confer direct monetary benefits on the class members. As described above, each class
16 member will be entitled to a monetary payment without having to file a claim and each payment
17 will be relative to the value of his or her potential claims. Through the information exchanged and
18 analysis undertaken, Plaintiff weighed the risks of continued litigation against the benefits of the
19 proposed settlement and determined settlement to be the most reasonable option.

20 Using the data obtained from Defendant, Plaintiffs ran various calculations and estimated
21 Future Tech's likely maximum exposure on the class claims at approximately **\$2,014,247** million,
22 including about \$66,738 on the unpaid wage/rounding claim, \$7,583 on the unpaid
23 overtime/regular rate claim, \$1,635,526 on the meal and rest break claims, \$101,950 on the wage
24 statement claims, \$202,630 on the waiting time penalty claims, and [Trenner Decl., ¶ 26.]

25 First, on their unpaid wage claims, Plaintiffs allege Future Tech failed to pay for all hours
26 worked because it rounded employee time punches off to the nearest quarter-hour even though its
27 timekeeping system captured time to the exact minute. Delmer Camp v. Home Depot USA, Inc.
28 (2022) 84 Cal.App.5th 638. Through the rounding, Defendant thereby shaved off small amounts

1 of compensable time and corresponding wages. According to Plaintiffs' expert's analysis, this
2 rounding practice substantially harmed employees more than it benefited them, resulting in the
3 loss of some **\$66,738** in pay over the Class Period. Plaintiffs and the Class Members also were
4 paid nondiscretionary bonuses and shift differentials that were not incorporated into the regular
5 rates of pay for purposes of calculating overtime wages. Alvarado v. Dart Container Corp. (2018)
6 4 Cal.5th 542, 553; Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.5th 858. Per Plaintiffs'
7 experts, this resulted in an underpayment of overtime wages to Class Members in the amount of
8 **\$7,583**. On the other hand, Defendant argued its timekeeping and payroll policies accurately
9 tracked and paid for all employee time and, to the extent there was rounding, it was neutral in its
10 overall effect and thus permissible under California law. [Trenner Decl., ¶¶ 27-28.]

11 On the meal period claims, Plaintiff alleged several violations. First, they argued they had
12 to don and doff protective gear while clocked out for meal periods, which cut into their meal
13 period time. Next, Plaintiffs' expert's analysis of the time records produced suggests numerous de
14 facto meal violations, and showed an overall violation rate of around 75% for missed, late, and
15 short meal periods, inclusive of the 100% violation rate for second meal periods of shifts longer
16 than 10 hours. These findings suggested Defendant could owe as much as **\$817,763** in meal
17 period premiums. [Trenner Decl., ¶ 29.]

18 In response, Defendant argued the break policies were fully compliant with California
19 law, and that it provided all required meal periods and thereby met its obligations under the Labor
20 Code and applicable Wage Order. Further, Defendant argued to the extent employees missed a
21 break or took a non-compliant break, any such discrepancies were aberrational and against
22 company policy and a myriad of individual issues would be required to determine whether the
23 potential violation resulted from employee choice or some other reason. Consequently, per the
24 Defendant, individualized inquiries would dominate on this issue and render class certification
25 inappropriate. [Trenner Decl., ¶ 30.]

26 For the rest break claim, Plaintiffs argued that Defendant frequently provided non-
27 compliant rest breaks, as the Class Members often had to skip rest breaks or received shortened
28 rest breaks due to the hectic nature of the work. As with meal breaks, Defendant argued its rest

1 break policies complied with California law and that it authorized and permitted employees to
2 take all required rest breaks. Defendants further contended that, in light of the fact that it is not
3 required to maintain a record of rest breaks, any evidence of failure to authorize and permit rest
4 breaks and/or discouragement from taking rest breaks would be purely anecdotal and individual
5 issues would predominate on liability. Assuming a 75% violation rate comparable to the meal
6 period issue, Defendant's exposure here was estimated at about **\$817,763**. [Trenner Decl., ¶ 31.]

7 Finally, Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged
8 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims are
9 based on the unpaid wage claims and will rise or fall along with those primary claims, in addition
10 to being subject to "good faith" and other defenses available to Defendant. E.g., Amaral v. Cintas
11 Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to
12 pay wages under Labor Code § 203 even though the class prevailed on the merits on the
13 underlying claim for failing to pay living wages). Defendant argued further that the wage
14 statements accurately contained all required information, and that acted in good faith all times
15 with respect to payment of wages. Plaintiff estimated the exposure on these claims at about
16 Accordingly, Plaintiffs discounted the derivative claims significantly in light of these multiple
17 potential defenses. Plaintiffs' experts estimated the exposure on these claims at about **\$101,950**
18 on the wage statement claims, and about **\$202,630** on the waiting time penalties claim. [Trenner
19 Decl., ¶ 32.]

20 As far as potential PAGA liability, the alleged aggrieved employees theoretically are
21 entitled to penalties totaling about \$1,900,000 should Plaintiffs prevail on all claims, establish
22 violations of the multiple Labor Code sections at issue, and secure the maximum allowable civil
23 penalties. [Trenner Decl., ¶ 33.] As with the class claims, Plaintiffs discounted the potential
24 PAGA penalties based on Defendant's various defenses on the merits and also accounted for the
25 Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor
26 Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded
27 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re
28 Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557

1 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$20,000 to PAGA
2 penalties. [Trenner Decl., ¶ 34.]

3 Plaintiffs submit this amount is reasonable under the circumstances and in line with
4 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
5 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
6 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
7 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
8 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
9 settlement of \$345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of total
10 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the
11 settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D.
12 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA
13 penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA,
14 and the LWDA has not objected to the settlement.

15 Taking into account all of the above-discussed risk factors, Plaintiffs calculated
16 Defendant's exposure on the class claims at around **\$402,850** on a risk-discounted basis and,
17 accordingly, the settlement represents about 70% of the estimated recovery after trial after
18 accounting for the multiple risks of continued litigation as addressed above. Given Defendant's
19 multi-layered defenses and all other potential risks of continued litigation, a total recovery for the
20 class of \$275,000, which will result in average award of over \$1,500 per class member, is a
21 significant result well within the range of reasonableness considering all potential outcomes, and
22 will provide monetary awards to the Class without further delay. [Trenner Decl., ¶¶ 35-36.]

23 Importantly, the mere fact that a settlement does not provide the same recovery as might
24 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
25 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
26 settlement process...even if the relief afforded by the proposed settlement is substantially
27 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
28 settlement because the public interest may indeed be served by a voluntary settlement in which

1 each side gives ground in the interest of avoiding litigation”); 7-Eleven Owners for Fair
2 Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed
3 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
4 that the proposed settlement is grossly inadequate and should be disapproved”); White v.
5 Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
6 contention settlement was not fair and reasonable even though it represented 99% discount off the
7 maximum value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he
8 question whether a settlement is fundamentally fair . . . is different from the question whether the
9 settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed
10 settlement is non-reversionary and will provide immediate benefits to the Class Members without
11 a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class
12 Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
13 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
14 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is
15 within the “range of reasonableness,” and is fair and adequate for the Class.

16 **D. Notice to the LWDA**

17 As required by Labor Code section 2699(l)(2), Plaintiffs gave notice of the settlement and
18 the approval hearing to the LWDA via its online portal. [Trenner Decl., ¶ 43; Exh. 5.]

19 **V. CONCLUSION**

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

23 Dated: June 29, 2023

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