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8 on behalf of the State of California,
9 and others similarly situated and aggrieved

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

13 ANJOLIE TATE on behalf of the State of
California, and others similarly situated and
14 aggrieved,

15 Plaintiff,

16 v.

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18 CASPER SLEEP, INC., a Delaware
Corporation; and DOES 1-100, inclusive,

19
20 Defendants.
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Case No.: 23CV031523

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

Date: September 18, 2024
Time: 3:00 p.m.
Dept.: 20

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1 **I. INTRODUCTION**

2 Plaintiff Anjolie Tate 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 an estimated 171 individuals employed by Defendant Casper Sleep, Inc. (“Casper Sleep” or
5 “Defendant”) as non-exempt employees in California during the Class Period of February 10,
6 2022 to January 15, 2024. The proposed \$295,000 settlement will provide about \$136,167 in cash
7 payments to the class, with an average award currently estimated at about \$796. The balance of
8 approximately \$168,833 will cover reasonable attorney’s fees and actual litigation costs,
9 settlement administration costs, a reasonable enhancement award to plaintiff, and payment of civil
10 penalties to the State. The settlement is the product of Plaintiff’s pre-filing investigation, formal
11 discovery and a pre-mediation exchange of information, and arms-length negotiations overseen by
12 experienced mediator Steve Cerveris, Esq.

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

21 **II. BACKGROUND**

22 Defendant Casper is a retailer of sleep products both online and in retail locations. Casper
23 sells its products through hundreds of retailers nationwide, including twelve direct retail locations
24 in California. Plaintiff Anjolie Tate worked for Casper from approximately April 2021 to April
25 2022, as a full-time, non-exempt, hourly employee. Plaintiff worked as an assistant manager in
26 two of Casper’s retail locations in Los Angeles and Torrance. [Brouillette Decl., ¶ 4.]

27 After exhausting administrative remedies with the Labor & Workforce Development
28 Agency (“LWDA”), on April 23, 2023 Plaintiff filed a PAGA-only complaint against Defendant

1 seeking civil penalties for alleged Labor Code violations including : (1) failure to pay all wages
2 due, including minimum and overtime wages (2) failure to provide all required meal and rest
3 breaks or compensation in lieu thereof; (3) failure to reimburse business expenses, (4) failure to
4 provide accurate, itemized wage statements; and (5) failure to pay all wages due upon termination
5 of employment.¹ [Brouillette Decl., ¶ 5; Exh. 2.]

6 Casper Sleep has at all times denied Plaintiff's allegations and maintained its meal and rest
7 break and payroll policies and procedures comply with California law, that it paid employees all
8 wages due at the correct hourly rates, and provided them with required meal and rest breaks or
9 paid the required compensation for any documented meal/rest violations. Defendant also contends
10 there would be no need for any class member to use their own phone on company business and
11 therefore no reimbursement is owed. Additionally, Casper Sleep strongly contends the case
12 cannot be maintained as a representative action, arguing for example that to the extent class
13 members missed meal and/or rest breaks, or that such breaks were non-compliant, it was
14 intermittent and infrequent and evidence of such missed breaks would be anecdotal, and therefore
15 individualized issues would predominate. [Brouillette Decl., ¶ 6.]

16 After Plaintiff filed her complaint, the Parties initiated discovery and, after meeting and
17 conferring regarding discovery, law and motion, and other case management issues, agreed to
18 attempt mediation. The Parties also agreed on a protocol for an exchange of substantial
19 documents and information before the mediation to facilitate the settlement discussions.
20 Consequently, Plaintiff's counsel reviewed payroll records, compensation plans, personnel
21 policies/handbooks, meal and rest break policies, personnel files, and a random of sampling of
22 Class Member paystubs and time records. Plaintiff then had those records analyzed by Berger
23 Consulting Group to look for, inter alia, violation rates for missed, late and/or short meal breaks,
24 potential damages from unpaid overtime, etc. Defendant also provided data regarding the total
25 number of putative class members, the estimated total amount of workweeks and pay periods they

26
27 ¹ Plaintiff also asserted some additional claims under PAGA, such as failure to provide suitable seating and requiring
28 employees to enter into unlawful employment agreements, and for which there is no class-wide right of action such as
a claim for unlawful background checks. As will all of Plaintiff's class claims, Defendant disputed liability on these
claims in their entirety.

1 worked, average pay rates, and information regarding other non-hourly compensation, among
2 other relevant data. [Brouillette Decl., ¶ 7.]

3 The Parties then engaged Steve Cerveris, Esq., a respected professional neutral with
4 substantial wage and hour and class action experience and, in September 2021, the Parties
5 participated in a full day mediation with Mr. Cerveris. Throughout the day, the arms-length
6 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
7 their legal and factual positions, and made numerous offers and counter-offers. After a full day of
8 negotiations, the Parties finally reached agreement on all major issues. The Parties then
9 collaboratively drafted the Class Action and PAGA Settlement Agreement (“Settlement
10 Agreement”) setting forth the settlement terms now before the Court for approval. A true and
11 correct copy of the Settlement Agreement is attached to the Brouillette Declaration as Exhibit 1.
12 [Brouillette Decl., ¶ 8.]

13 Finally, with the mediator’s assistance, the Parties agreed to settle Plaintiff’s claims on
14 both a class-wide and PAGA basis and, accordingly Plaintiff filed a first amended complaint
15 alleging class action allegations consistent with the same alleged Labor Code violations set forth
16 in the initial PAGA-only complaint. [Brouillette Decl., ¶ 9.]

17 **III. THE PROPOSED SETTLEMENT TERMS**

18 Under the settlement, Casper Sleep will pay \$295,000 into a common fund, the Gross
19 Settlement Amount (“GSA”). Attorney’s fees of up to \$98,333.33 (1/3 of the GSA), litigation
20 costs of up to \$12,500, settlement administration costs of no more than \$8,000, a service award to
21 Plaintiff of no more than \$10,000, and PAGA civil penalties in the amount of \$40,000,² all will be
22 paid from the GSA. The balance of around \$136,167 will be allocated pro rata to the Class
23 Members based on their weeks worked during the Class Period. No portion of the GSA will revert
24 to Casper Sleep. [Brouillette Decl., ¶ 10.]

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28 ² Consistent with PAGA, 75% of that sum, or \$30,000, will go to the LWDA and the remaining 25%, or \$10,000, will be distributed pro rata to the Aggrieved Employees (as defined in the Settlement Agreement).

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

2 The settlement provides for conditional certification of a settlement class including all
3 persons employed by Defendant in California and classified as non-exempt who worked for
4 Defendant during the Class Period of February 10, 2022 to January 15, 2024. The Settlement Class
5 consists of about 171 individuals. [Brouillette Decl., ¶ 11.]

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

7 As noted, the settlement obligates Casper Sleep to pay \$295,000 to resolve the Settlement
8 Class's claims, inclusive of attorney's fees and costs. At least \$136,167 from the GSA will be
9 distributed to the Participating Class Members. This is a cash settlement that does not require
10 Participating Class Members to submit a claim form to receive their settlement share. Participating
11 Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty
12 percent of each settlement share will be allocated to wages and the remaining eighty percent will be
13 allocated to expenses, penalties and interest, which allocation is consistent with Casper Sleep's
14 potential liability. Casper Sleep will pay any and all applicable employer-side payroll taxes
15 separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed
16 (because a class member does not cash their settlement check) will be forwarded to the East Bay
17 Community Law Center as the proposed *cy pres* beneficiary. [Brouillette Decl., ¶ 12.]

18 Each Participating Class Member will receive a share of the Net Settlement Amount based
19 on his or her total weeks worked in California as a Casper Sleep during the Class Period while
20 employed as a non-exempt employee. Thus, each Class Member's Individual Settlement Payment
21 will be calculated using criteria typically used in determining appropriate amounts of unpaid wages,
22 unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential
23 statutory penalties under applicable law. These methods are intended to ensure each Class Member
24 receives a settlement award corresponding to the relative value of their potential claims. The
25 proposed allocation provides a reasonable way to compensate Class Members based on the amount
26 of time they worked for Casper Sleep in California The average gross award is estimated to be
27 around \$796.00. [Brouillette Decl., ¶ 13.]

28 /////

1 **C. Settlement Administration**

2 Subject to the Court's approval, the Parties have agreed on Phoenix Settlement
3 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has significant
4 experience administering class action settlements, including numerous wage and hour matters.
5 Phoenix's fees and costs will not exceed \$8,000.00. If the Court approves less than the above
6 amount, the difference will remain in the Net Settlement Amount for distribution to the Participating
7 Class Members. [Brouillette Decl., ¶ 14; Declaration of Jodey Lawrence, ¶¶ 2-16; Exhs. A-B.]

8 **D. The Class Notice**

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

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

21 Class Members will have sixty (60) days to dispute the information in their Notice used to
22 calculate their settlement award, and also have 60 days to submit any objections to the settlement
23 or to request exclusion. If a Class Member disputes their individual information, the Settlement
24 Administrator will review the Class Member's records and any other information submitted, and
25 make a final determination. [Brouillette Decl., ¶ 16.]

26 **F. Release of Claims**

27 All Participating Class Members will release Casper Sleep from all claims alleged in the
28 operative complaint, or that could have been brought based on the factual allegations in the

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

3 **G. Plaintiff's Enhancement Award**

4 A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v.
5 Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
6 and incentive payments ranging from \$2,000 to \$25,000). She devoted time and resources to the
7 litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in
8 preparing for mediation. The service payment provided to Plaintiff as the class representatives is
9 typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d
10 948, 958-59 (incentive awards are "intended to compensate class representatives for work done on
11 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
12 and, sometimes, to recognize their willingness to act as a private attorney general.").

13 Defendant will not oppose a request for an enhancement award to Plaintiff of not more than
14 \$10,000.00 in recognition of her time spent on this matter, the risks she undertook on behalf of the
15 class, and the benefit conferred to the class, as addressed in her declaration filed herewith. If the
16 Court approves less than the above amount, the difference will remain in the Net Settlement Amount
17 for distribution to the Participating Class Members. [Brouillette Decl., ¶ 18.]

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

19 The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of
20 attorney's fees of up to one-third of the GSA, or \$98,333.33 and reimbursement of actual costs
21 and expenses of up to \$12,500.00. At final approval, Plaintiff's counsel will submit a request for
22 attorney's fees and actual litigation costs per the terms of the Settlement Agreement and
23 applicable law, and will provide the Court with appropriate information and evidence regarding
24 hourly rates, tasks performed, and time expended on the case. If the Court approves less than the
25 above amounts, the difference will remain in the Net Settlement Amount for distribution to the
26 Participating Class Members. [Brouillette Decl., ¶ 19.]

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1 **I. PAGA Penalties**

2 As noted, the Parties allocated \$40,000 of the GSA to alleged civil penalties under PAGA,
3 and Plaintiff requests the Court approve that amount as fair, reasonable, and adequate, and
4 consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2),
5 Plaintiff submitted the Settlement Agreement and this motion to the LWDA via its online portal,
6 and as reflected on the accompanying proof of service. [Brouillette Decl., ¶ 20; Exh. 3.]

7 **IV. ARGUMENT**

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

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

20 The first step is a motion for preliminary approval, through which the parties present the
21 court with the proposed settlement and seek a determination that it is sufficiently fair and
22 reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy.
23 Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement is
24 within the "range of reasonableness" and if notice should be provided to the class regarding the
25 settlement's proposed terms and conditions, and whether a final fairness hearing should be
26 scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass'n, Inc. v.
27 Touchstone Ins. Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial
28 policy favoring settlement of class actions, courts generally apply a presumption of fairness to

1 class action settlements when (1) the settlement results from arms-length bargaining, (2)
2 investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3)
3 counsel is experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48
4 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

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

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

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

20 In the present matter, conditional certification is proper since this matter satisfies all
21 requirements for class certification under Code of Civil Procedure section 382. First, the class is
22 both sufficiently numerous, consisting of approximately 171 individuals, and ascertainable by
23 reference to Defendant's personnel and payroll records. [Brouillette Decl., ¶ 21.] Next, Plaintiff is
24 an adequate class representative, as her claims do not conflict with and are not antagonistic to the
25 claims of other class members. [Declaration of Anjolie Tate, ¶¶ 2-9; Brouillette Decl., ¶ 22.]
26 Further, her claims are typical as she is a member of the class and her claims arise from the same
27 employment practices and course of conduct giving rise to the claims of the other class members.
28 [Id.] Lastly, her counsel is experienced and adequate class counsel. [Brouillette Decl., ¶¶ 36-47.]

1 Next, common questions of law and fact predominate – particularly for purposes of a
2 settlement class – as the Class Members all were paid via substantially similar compensation plans
3 that underpaid them for overtime hours worked, and subject to the same policies that resulted in
4 missed/non-compliant meal and rest periods. Since the focus of the claims against Casper Sleep
5 concerns the legality of common policies applied uniformly to the entire class, common issues
6 predominate over individualized inquiries concerning liability. For instance, Casper Sleep’s
7 compensation plans either properly paid the class members for overtime hours worked or they did
8 not. Regardless of this determination, it will decide liability for all Class Members one way or
9 another. Similarly, Defendant’s meal and rest break policies either resulted in de facto violations
10 or they did not, which question can be answered for all class members. [Brouillette Decl., ¶ 23.]

11 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
12 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
13 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
14 consistently applied to a group of employees is in violation of the wage and hour laws are of the
15 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
16 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question fact or
17 law that supports commonality for class certification”). Lastly, a class action is superior to other
18 means for the fair and efficient adjudication of this controversy. [Brouillette Decl., ¶ 24.]

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

21 The proposed settlement resulted from serious, arms-length negotiations facilitated by
22 respected mediator, Steve Cerveris, Esq., who has considerable experience mediating wage and hour
23 class action cases. [Brouillette Decl., ¶¶ 8.] Plaintiff’s counsel Zachary M. Crosner, Jamie K. Serb,
24 and Brandon Brouillette of Crosner Legal, P.C. have years of experience litigating wage and hour
25 class actions. Plaintiff’s counsel are well-qualified to evaluate the risks and benefits of pursuing
26 further litigation or settling the matter. [Brouillette Decl., ¶¶ 36-47.]

27 Next, California law recognizes several factors bearing on the fairness, adequacy, and
28 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168

1 Cal.App.4th 116, 128. These factors include: 1) the amount offered in settlement 2) the strength of
2 plaintiff's case; 3) the risk, expense, complexity, and likely duration of further litigation; 4) the risk
3 of maintaining class action status throughout trial; and 5) the experience and views of counsel. Id.
4 As demonstrated below, the proposed settlement satisfies these requirements.

5 Here, the proposed settlement falls within the range of reasonableness warranting
6 preliminary approval – it involves a significant sum that, when distributed, will confer direct
7 monetary benefits on the class members. Each class member will be entitled to a monetary payment
8 without having to file a claim and each payment will be relative to the value of his or her potential
9 claims.

10 Prior to mediation, the Parties engaged in both formal and informal discovery to facilitate
11 settlement discussions. Plaintiff reviewed documents and information, including but not limited to,
12 regarding Casper Sleep's payroll practices, Plaintiff's pay stubs, timecards, and personnel file, a
13 class list, time and pay data for PAGA period, relevant policies, and arbitration agreements, as well
14 as information from Defendant regarding class size and breakdown, work weeks/pay periods, rates
15 of pay, and other information (extrapolated through mediation) used to formulate a damages model
16 with the assistance of a consulting expert. Plaintiff's counsel are confident they obtained sufficient
17 information to understand the law and facts of this case and make an informed decision regarding
18 the proposed settlement and whether it is fair and reasonable. Through the information exchanged
19 and analysis undertaken, Plaintiff weighed the risks of continued litigation against the benefits of
20 the proposed settlement and determined settlement to be the most reasonable option. [Brouillette
21 Decl., ¶¶ 7, 25.]

22 Using that data, Plaintiff ran various calculations and estimated Defendant's total class-wide
23 liability at about \$1,333,000, including about \$12,000 in unpaid wages on the regular rate issue,
24 \$66,000 on the meal break claims, \$508,000 on the rest break claims, \$24,000 on the expense
25 reimbursement claim, \$246,000 on the wage statement claim, and about \$477,000 in waiting time
26 penalties. [Brouillette Decl., ¶¶ 26-27.] Plaintiff substantially discounted these numbers in light of
27 Defendant's procedural and merits defenses, of which there are many.
28

1 First, on the unpaid wage claims, Plaintiff first contends Casper Sleep failed to correctly
2 calculate the class members “regular rate of pay” by failing to incorporate all required forms of
3 compensation, such as commissions and bonuses, into the calculation. On the regular rate issue, “an
4 employee's ‘regular rate of pay’ for purposes of Labor Code section 510 and the IWC wage orders
5 is not the same as the employee’s straight time rate (i.e., his or her normal hourly wage rate). Regular
6 rate of pay, which can change from pay period to pay period, includes adjustments to the straight
7 time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly
8 compensation the employee has earned.” Alvarado v. Dart Container Corp. (2018) 4 Cal.5th 542,
9 554. Bonuses and other incentive pay designed to increase an employee’s productivity must be
10 included in the regular rate. Id. Here, Plaintiff alleges that since Casper Sleep failed to correctly
11 calculate the regular rate in would up undercompensating employees for overtime, sick time, and
12 break premiums. In response, Defendant argued that its overtime pay policies fully compensated the
13 class members, and further argued there was very little in the way of bonus pay that would even trigger
14 an obligation calculate the regular rate. [Brouillette Decl., ¶ 28.]

15 On the meal break claims, Plaintiff focused primarily on Defendant’s alleged failure to
16 maintain a California-compliant break policy and to provide Plaintiff and the class members with
17 all required meal periods, particularly for second meal periods on shifts lasting longer than 10 hours.
18 In fact, Plaintiff’s expert’s review of the records provided by Defendant suggests that some 45% of
19 pay periods contained at least one unique meal period violation (i.e., missed, late, or short), and that
20 over 90% of shifts of 10+ hours failed to reflect a second meal period. [Brouillette Decl., ¶ 29.]

21 Defendant’s review of records revealed a drastically different violation rate of 18% (without
22 premium pay being taken in to account) and 12% (with premium pay taken into account) during the
23 relevant time period. Defendant further noted that in many instances actually took their meal break
24 (including second meal breaks) even if not reflected on the time sheets and, accordingly, class
25 certification is not appropriate because individual inquiries would be necessary to determine this
26 question. For the same reasons, Defendant contended the claim would fail on the merits because it
27 would be difficult for Plaintiff to show Defendant’s actual or constructive knowledge that a
28 particular class member worked through a specific lunch period. Defendant also contended it

1 maintained a fully-compliant meal break policy at all times, and it always provided the class
2 members with the opportunity to take meal breaks and thus met the requirements imposed by
3 California law. Per Defendant, if individuals did not take a meal period, it was in violation of
4 company policy and, once again, a multitude of individual inquiries would be necessary to determine
5 if an individual may have missed a meal break, or take a late or short break, by personal choice or
6 for some other reason. [Brouillette Decl., ¶ 30.]

7 On the rest break claim, Plaintiff claimed Defendant’s written policy failed to inform
8 employees that rest breaks had to be for a net 10 minutes to be compliant, which failure directly
9 impacted Class Member rest breaks. Thus, per Plaintiff, this failure to communicate that the rest
10 break is a *net* ten minutes resulted in non-compliant breaks. Defendant countered that it is only liable
11 if Plaintiff can prove, on a shift-by-shift basis, that Class Members actually did not take a fully-
12 compliant rest break based on Plaintiff’s theory of liability advanced above. This arguably would
13 have made class certification more difficult and/or rendered trial unmanageable. [Brouillette Decl.,
14 ¶ 31.]

15 The claims for unreimbursed business expenses under Labor Code § 2802 revolved around
16 Plaintiff’s allegations that Casper Sleep required its non-exempt employees to use their personal cell
17 phones for business purposes including communicating with supervisors and co-workers, all without
18 reimbursement for these business expenses. Cochran v. Schwan’s Home Services, Inc. (2014) 228
19 Cal. App. 4th 1137, 1144 (2014) (“[T]o be in compliance with section 2802, the employer must pay
20 some reasonable percentage of the employee’s cell phone bill.”). In response, Defendant argued
21 there was no need for employee’s to use personal phones for legitimate work purposes, and that any
22 such use would have been purely for personal convenience. Thus, per Casper Sleep, use of personal
23 phones wasn’t necessary and therefore not reimbursable. [Brouillette Decl., ¶ 32.]

24 Plaintiff’s claims for penalties under Labor Code §§ 203 and 226 are derivative of the
25 underlying unpaid minimum and overtime wage and meal/rest break claims and, accordingly, they
26 would essentially rise or fall with Plaintiff’s success or failure on her primary claims. Further,
27 Plaintiff had to account for the discretionary nature of such awards and the “good faith” and other
28 defenses available to Defendant. Defendant also raised a good faith defense to the waiting time

1 penalties as it applies to both meal/rest periods and underpaid overtime premiums. Amaral v. Cintas
2 Corp. No. 2, 163 Cal.App.4th 1157, 1203-4 (2008) (employer did not willfully fail to pay wages
3 under Labor Code § 203 even though the class prevailed on the merits for failing to pay living
4 wages). [Brouillette Decl., ¶ 33.]

5 As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled
6 to penalties totaling about \$1,150,000 should Plaintiff prevail on all claims, establish violations of
7 the multiple Labor Code sections at issue, and secure the maximum penalty on all issues. [Brouillette
8 Decl., ¶ 33.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on
9 Defendant's various defenses on the merits and also accounted for the Court's wide discretion to
10 reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington
11 v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period
12 after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions
13 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).
14 Accordingly, the Parties allocated \$40,000 to PAGA penalties. [Brouillette Decl., ¶ 34.]

15 Plaintiff submits this amount is reasonable under the circumstances and in line with
16 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
17 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
18 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
19 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
20 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
21 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
22 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
23 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
24 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
25 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
26 not objected to the settlement.

27 Overall, Defendant raised various defenses to Plaintiff's claims on both class certification
28 and the merits that, if successful, could have negatively impacted Plaintiff's claims or potentially

1 reduced potential damages. Accordingly, Plaintiff faced significant risks going forward with this
2 litigation, and given the need to secure and maintain class certification, prevail at trial, and deal
3 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff
4 and counsel discounted the value of the class claims consistent with the risks discussed above, and
5 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
6 continued. Plaintiff and counsel concluded – in light of these very real and substantial risks –
7 settlement on the proposed terms and without prolonged and costly litigation was in the best
8 interests of the class. The overall \$295,000 recovery represents a significant percentage of
9 Defendant’s potential exposure and, given the multiple litigation risks addressed above, a total
10 recovery for the class of \$295,000, with an average award of some \$786 per class member, is a
11 fair result within the range of reasonableness considering all potential outcomes. [Brouillette
12 Decl., ¶ 35.]

13 Importantly, the mere fact that a settlement does not provide the same recovery as might be
14 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
15 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
16 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
17 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
18 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
19 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
20 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
21 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
22 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
23 fundamentally fair . . . is different from the question whether the settlement is perfect in the
24 estimation of the reviewing court”). Importantly as well, the proposed settlement is non-
25 reversionary and will provide benefits to the Class Members without a claims process. White, 803
26 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket
27 Guide for Judges (3d ed. 2010) at 20, available at www.fjc.gov/sites/
28

1 <default/files/2012/ClassGd3.pdf> (reversionary provisions and/or cumbersome claims process may
2 indicate lack of fairness). Plaintiff and her counsel submit the settlement is within the “range of
3 reasonableness,” and is fair and adequate for the Class.

4 **V. CONCLUSION**

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

8 Dated: August 26, 2024

CROSNER LEGAL, PC

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11 _____
Brandon Brouillette, Esq.

Zach Crosner, Esq.

12 Attorneys for Plaintiff Anjolie Tate, on behalf of themselves
13 and all others similarly situated
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