

David Mara, Esq. (230498)
Matthew Crawford, Esq. (310230)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for JAMES QUEEN, on behalf
of himself, all others similarly situated, and
on behalf of the general public.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

JAMES QUEEN on behalf of himself, all
others similarly situated, and on behalf of the
general public,

Plaintiff,

v.

SORENSEN COMMUNICATIONS, LLC;
and DOES 1-100,

Defendant.

Case No. 37-2023-00017408-CU-OE-CTL

[Consolidated with Case No. 37-2023-00016623-
CU-OE-CTL]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: September 13, 2024

Time: 10:30 a.m.

Dept.: C-68

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL/PROCEDURAL BACKGROUND.....	2
III.	LITIGATION HISTORY/PARTIES CONTENTIONS	3
a.	Discovery and Investigation.....	3
b.	The Parties’ Staunchly Conflicting Positions.....	3
i.	Meal Periods.....	3
ii.	Rest Periods	4
iii.	Unpaid Wages	5
iv.	Reimbursement.....	6
c.	The Parties Agreed to Attend Mediation.....	7
d.	The Terms of the Proposed Settlement	7
i.	Deductions From the Settlement	7
ii.	Calculation of the Settlement Payments to Participating Class Members	8
iii.	Notice to the Class.....	9
iv.	Distribution of Funds.....	10
v.	Release of Claims	10
IV.	ARGUMENT	12
a.	Class Action Settlements are Subject to Court Review and Approval Under the California Rules of Court	12
b.	The Settlement is Fair, Reasonable, and Adequate	12
i.	The Settlement was Reached as a Result of Arm’s Length Negotiations	13
ii.	The Settlement is the Result of Thorough Investigation and Discovery.....	13
iii.	Counsel for Both Parties are Experienced in Similar Litigation	13

1	iv.	The Proposed Settlement is a Reasonable Compromise of Claims.....	14
2	1.	The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s Case and	
3		the Risks and Costs of Further Litigation.....	14
4	2.	Exposure and the Risks for Each Claim	15
5	A.	Meal Periods	15
6	B.	Rest Periods	16
7	C.	Unpaid Wages	16
8	D.	Reimbursement	17
9	E.	PAGA.....	18
10	3.	The Settlement Amount of \$900,000 is Reasonable.....	19
11	c.	Provisional Class Certification Should be Granted	20
12	i.	The Proposed Settlement Class is Ascertainable	21
13	ii.	The Proposed Settlement Class is Sufficiently Numerous	21
14	iii.	The Commonality Requirement is Met	22
15	iv.	The Typicality Requirement is Met.....	23
16	v.	The Adequacy Requirement is Met.....	23
17	vi.	Notice to Class Members Complies with California Rule of Court 3.769(f).....	24
18	V.	CONCLUSION	24
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Cases

Aguilar v. Cintas Corp. No. 2

(2006) 144 Cal. App. 4th 121..... 15

Avila v. Cold Spring Granite Co.

(E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 ... 19

Bell v. Farmers Ins. Exch.

(2004) 115 Cal. App. 4th 715..... 11

Bono Enterprises, Inc. v. Bradshaw

(1995) 32 Cal. App. 4th 968..... 6

Bowles v. Superior Court

(1995) 44 Cal.2d 574..... 21, 22

Boyd v. Bechtel Corp.

(N.D. Cal. 1979) 485 F. Supp. 610 13

Classen v. Weller

(1983) 145 Cal.App.3d 27..... 23

Donohue v. AMN Services, LLC

(2021) 11 Cal.5th 58..... 4

Dunbar v. Albertson's Inc.

(2006) 141 Cal. App. 4th 1422..... 15

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794..... 12, 13, 20

Gay v. Waiters' & Dairy Lunchmen's Union

(N.D. Cal. 1980) 489 F. Supp. 282 21

Gentry v. Superior Court

(2007) 42 Cal.4th 443..... 21

Ghazaryan v. Diva Limousine, Ltd.

(2008) 169 Cal.App.4th 1524..... 22

1	<i>Glob. Minerals & Metals Corp. v. Superior Court</i>	
2	(2013) 113 Cal.App.4th 836.....	20
3	<i>Green v. Obledo</i>	
4	(1981) 29 Cal.3d 126.....	11
5	<i>Hanlon v. Chrysler Corp.</i>	
6	(9th Cir. 1998) 150 F.3d 1011.....	20, 22, 23
7	<i>Harris v. Superior Court</i>	
8	(2007) 154 Cal. App. 4th 164.....	15
9	<i>Hebbard v. Colgrove</i>	
10	(1972) 28 Cal.App.3d 1017.....	22
11	<i>Henderson v. Ready to Roll Transportation, Inc.</i>	
12	(2014) 228 Cal.App.4th 1213.....	21
13	<i>Ikonen v. Hartz Mountain Corp.</i>	
14	(S.D. Cal. 1988) 122 F.R.D. 258.....	22
15	<i>In re Beef Industry Antitrust Litigation</i>	
16	(5th Cir. 1979) 607 F. 2d 167.....	12
17	<i>In re Cellphone Fee Termination Cases</i>	
18	(2010) 186 Cal. App. 4th 1380.....	11
19	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
20	(1981) 452 U.S. 905	12
21	<i>Iskanian v. CLS Transp. Los Angeles, LLC</i>	
22	(2014) 59 Cal.4th 348.....	22
23	<i>Kaanaana v. Barrett Business Services, Inc.</i>	
24	(2018) 29 Cal.App.5th 778.....	4
25	<i>Kullar v. Foot Locker Retail, Inc.</i>	
26	(2008) 168 Cal.App.4th 116.....	14
27	<i>Linder v. Thrifty Oil Co.</i>	
28	(2003) 23 Cal.4th 429.....	22

1	<i>McGhee v. Bank of America</i>	
2	(1976) 70 Cal.App.3d 442.....	23
3	<i>Mendiola v. CPS Security Solutions, Inc.</i>	
4	(2015) 60 Cal.4th 833.....	5
5	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
6	(2010) 186 Cal.App.4th 399.....	14
7	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
8	(9th Cir. 1982) 688 F.2d 615.....	20
9	<i>Rebney v. Wells Fargo Bank</i>	
10	(1990) 220 Cal.App.3d 1117.....	20
11	<i>Romero v. Producers Dairy Foods</i>	
12	(E.D. Cal. 2006) 235 F.R.D. 474.....	21
13	<i>Rose v City of Hayward</i>	
14	(1981) 126 Cal.App.3d 926.....	21
15	<i>Sav-On v. Superior Court</i>	
16	(2004) 34 Cal.4th 319.....	15, 22
17	<i>Sevidal v. Target Corp.</i>	
18	(2010) 189 Cal.App.4th 905.....	21
19	<i>Tech-Bilt v. Woodward-Clyde & Associates</i>	
20	(1985) 38 Cal.3d 488.....	14
21	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
22	(2012) 203 Cal. App. 4th 1112.....	18
23	<i>Vasquez v. Superior Court</i>	
24	(1971) 4 Cal.3d 800.....	11
25	<i>Walsh v. IKON Solutions, Inc.</i>	
26	(2007) 148 Cal. App. 4th 1440.....	15
27	<i>Wehner v. Syntex Corp.</i>	
28	(N.D. Cal. 1987) 117 F.R.D. 641	23

1 *Wershba v. Apple Computers, Inc.*

2 (2001) 91 Cal.App.4th 2..... 20, 21

3 **Statutes**

4 California Civil Procedure Code § 382..... 20

5 California Labor Code § 2699 18, 19

6 California Labor Code § 2802 6, 7

7 California Labor Code §§ 203 19

8 California Labor Code § 1194.2 19

9 California Labor Code § 226 19

10 California Labor Code § 558 19

11 California Rule of Court § 3.769 1, 11, 12

12 Code of Civil Procedure § 877.6..... 14

13 Federal Rule Civil Procedure 23..... 11, 20

14 **Other Authorities**

15 *Newberg on Class Actions*, 4th ed. 23

16 Wage Order 1-2001..... 5

I. INTRODUCTION

Plaintiff James Queen (“Plaintiff”), on behalf of himself and the approximately 918-member putative class, respectfully request that this Court preliminarily approve the Joint Stipulation and Settlement Agreement¹ (“Settlement Agreement”) entered into between Plaintiff and Defendant Sorenson Communications, LLC (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”). The Parties’ Settlement Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-reversionary \$4,250,000 Gross Settlement Amount (“GSA”). The proposed class is comprised of all current and former hourly-paid non-exempt employees of Defendant who worked within the State of California during the Class Period (“Class Members”). The Class Period is the time period beginning on from April 20, 2019 to May 27, 2024.

It is requested that the Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this proposed settlement of \$4,250,000 – **which is estimated to pay class members an average settlement share of approximately \$2,863.11²** – is well within the range of reasonableness. Moreover, the proposed Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

As the following sections show, Class Counsel are convinced that the proposed settlement is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value 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 various possible delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed settlement. The Settlement Agreement was the product of an all-day mediation with well-regarded and experienced mediator Jeff Ross and was the product of non-collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair, reasonable, and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms of the Settlement Agreement; (2)

¹ The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as **Exhibit 1**.

² \$2,628,333.34 / 918 class members = \$2,863.11 average payout per Class Member.

1 provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4)
2 appointment of Mara Law Firm, PC as Class Counsel; (5) approval of the Parties' proposed notice of
3 class action settlement³ (referred to herein as the "Class Notice" or "Notice") and method of notifying
4 the Class about the settlement; and (6) set a hearing date for final approval.

5 **II. FACTUAL/PROCEDURAL BACKGROUND**

6 Defendant provides language services, such as interpreting and captioning, to the deaf and
7 hearing impaired to assist them in communicating with the general population. In order to carry out
8 its business, Defendant employs hourly non-exempt employees, like Plaintiff, remotely throughout
9 California. Mara Dec. ¶ 9.

10 On February 17, 2023, Plaintiff sent notice to the LWDA of his intent to pursue various wage
11 and hour claims against Defendant on behalf of similarly situated aggrieved employees. Shortly
12 thereafter, Plaintiff filed a putative class action complaint on April 20, 2023, against Defendant in the
13 San Diego County Superior Court, Case No. 37-2023-00016623-CU-OE-CTL, alleging causes of
14 action for: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3)
15 Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and
16 Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay
17 All Wages Due at the Time of Termination of Employment; (7) Failure to Reimburse Business
18 Expenses; (8) Violation of Unfair Competition Law; and (9) Violation of Worker Adjustment and
19 Retraining Notification Act. Plaintiff also filed a separate action alleging identical violations of the
20 California Labor Code and seeking civil penalties under the PAGA on April 25, 2025, against
21 Defendant in the San Diego County Superior Court, Case No. 37-2023-00017408-CU-OE-CTL. The
22 Parties later agreed to consolidate both cases, with 37-2023-00017408-CU-OE-CTL designated as the
23 lead case. Mara Dec. ¶ 10.

24 Defendant denies the allegations of the action in its entirety, denies any liability or wrongdoing
25 of any kind associated with the claims alleged in this action, and further denies that, for any purpose
26 other than settling this action, this matter is appropriate for class treatment. Defendant further contends
27 that it has complied with all applicable California laws, the California Labor Code, the applicable
28

³ The Class Notice is attached to the Settlement Agreement as **Exhibit A**.

California Wage Order(s), and the Unfair Competition Law. Defendant finally contends that, if this matter were to be litigated further, it would have strong defenses to oppose class certification and succeed on the merits of Plaintiff's causes of action. Mara Dec. ¶ 11.

III. LITIGATION HISTORY/PARTIES CONTENTIONS

a. Discovery and Investigation

Through discovery, Plaintiff sought numerous documents and substantial amounts of data that were needed to evaluate the case. These documents included requests for time and wage records for the Class, employee handbooks, policies, and practices in place during the class period, as well as data surrounding the number of current and former employees. Mara Dec. ¶ 12.

This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the production of thousands of documents and thousands of lines of data, including Defendant's employee handbooks, policies, and practices, and a sampling of wage and time records for Plaintiff and Class Members. Using the time and wage records for the Class provided and the data surrounding the number of current and former employees, Plaintiff and his expert were able to establish a potential exposure model in preparation for mediation. Mara Dec. ¶ 13.

b. The Parties' Staunchly Conflicting Positions

i. Meal Periods

Based upon the discovery conducted, Plaintiff contends – and Defendant denies – that Defendant fails to provide Class Members with lawful meal periods. Under California Labor Code § 512(a), “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” Cal. Lab. Code § 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040.

The California Supreme Court in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58 has determined that “[i]f an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was

provided.” *Donohue*, 11 Cal.5th at 74 (citing *Brinker*, 53 Cal.4th at 1052–1053 (conc. opn. of Werdegar, J.)). This presumption does not “only [apply] to records showing missed meal periods,” as “the presumption applies to records showing short and delayed meal periods as well.” *Id.* at 76.

Plaintiff contends that, here, the time records Defendant maintains for class members evidence a significant amount of non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends that it is presumed that meal period violations occurred, and argues that Defendant will be unable to provide sufficient evidence to rebut this presumption. Mara Dec. ¶ 14.

Defendant points out that its meal period policy is facially lawful, that it provides employees with meal periods in compliance with California law, and that Defendant would be able to provide declarations from employees stating that they were able to take these meal periods without any interference from Defendant. As such, any records reflecting non-complaint meal periods would be insufficient to demonstrate any purported violations, and Defendant would be able rebut the presumption under *Donohue v. AMN Services, LLC* for meal periods and defeat Plaintiff’s claim both at class certification and on the merits. Mara Dec. ¶ 15.

ii. Rest Periods

Plaintiff further contends that Defendant fails to provide employees with lawful rest periods. Under Wage Order 4-2001, Section 12(A), “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Under California law, the “onus is on the employer to clearly communicate the authorization and permission [to take meal and breaks] to its employees.” *Bufile v. Dollar Fin. Grp., Inc.* (Cal. App. 2008) 162 Cal. App. 4th 1193, 1199; *see also Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1286-1287 (To meet the “provide” standard, an employer, at a minimum, has to inform its employees in a “meaningful and consistent way” that they could take meal and rest breaks and clearly define what these breaks are.).

Plaintiff contends that Defendant’s rest period policy fails to authorize and permit employees to take rest periods in compliance with California law. Beyond mentioning in passing that an employee

1 might get a rest break during their shift, Defendant fails to maintain any semblance of a formal rest
2 period policy. Nowhere does Defendant's policies does it explain to employees that they are entitled
3 to a rest period for every four hours worked or major fraction thereof, that they are entitled to rest
4 periods of a "net" 10 minutes in duration, that they are entitled to uninterrupted rest periods in which
5 they do not have to respond to messages or alerts, nor that they are free to leave the work premises
6 and spend their rest period time however they choose. In sum, Defendant does not provide lawful rest
7 periods by failing to clearly and meaningfully communicate to employees their entitlement to rest
8 periods as California law requires. *Mara Dec.* ¶ 16.

9 Defendant argues that despite it has no written rest period policy, which Defendant notes is *not*
10 a requirement under California law, Defendant informs each and every employee that they are entitled
11 to take 10 minute rest periods for every four hours worked or major fraction thereof, that they are not
12 under Defendant's control and command during rest periods, and that they can use this time to do
13 whatever they choose. Defendant further claims it has spoken to numerous employees who say they
14 were able to take compliant rest periods, which both refutes Plaintiff's claim and creates individualized
15 issues that would predominate and any trial would be rendered unmanageable. Based on the foregoing,
16 Defendant contends that Plaintiff's rest period claims cannot be certified and will not succeed on the
17 merits. *Mara Dec.* ¶ 17.

18 **iii. Unpaid Wages**

19 In addition, Plaintiff claims that Defendant fails to pay all wages owed to employees for the
20 same reasons just discussed with the meal period claims. Under California law, employees must be
21 paid for all "hours worked," as that phrase is defined in the Industrial Welfare Commission Wage
22 Orders and interpreted by California law. Hours worked is defined in Wage Order 4-2001 as "the time
23 during which an employee is subject to the control of an employer, and includes the time the employee
24 is suffered or permitted to work, whether or not required to do so." Wage Order 4-2001, Subd. 2(K);
25 *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Under this standard, "it is
26 only necessary that the worker be subject to the control of the employer in order to be entitled to
27 compensation." *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 584. Per Labor Code § 1197,
28 these "hours worked" must be compensated at no less than the applicable minimum wage.

1 Under Federal law, an employer can satisfy its minimum wage obligations when the total
2 compensation for an employee in a given workweek results in an average hourly rate that was higher
3 than the applicable minimum wage. However, this “averaging” methodology is unlawful in California.
4 *See Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324 (holding that the federal model of
5 averaging all hours worked for the purposes of minimum wage “inappropriate under California law”).
6 Since *Armenta*, California courts have similarly found that “a piece-rate formula that does not
7 compensate directly for all time worked does not comply with California Labor Codes, even if,
8 averaged out, it would pay at least minimum wage for all hours worked.” *Gonzalez v. Downtown LA*
9 *Motors, LP* (2013) 215 Cal.App.4th 36, 46 (citing *Cardenas v. McLane Foodservices, Inc.* (C.D.Cal.
10 2011) 796 F.Supp.2d 1246, 1252).

11 Plaintiff alleges that Defendant does what California law explicitly forbids and pays employees
12 below minimum wage for the hours they work, and then uses the compensation they receive via piece
13 rate to “average” the employee’s compensation to reach the applicable minimum wage. As a result,
14 this practice shorts these employees several dollars of pay every hour they work. Mara Dec. ¶ 18.

15 Defendant disputes these allegations and argues that it compensates its employees in
16 compliance with California law. Defendant points to the California Supreme Court’s decision in *Oman*
17 *v. Delta Air Lines, Inc.*, which held that “State law limits on wage borrowing permit compensation
18 schemes that promise to compensate all hours worked at a level at or above the minimum wage, even
19 if particular components of those schemes fail to attribute to each and every compensable hour a
20 specific amount equal to or greater than the minimum wage.” *Oman v. Delta Air Lines, Inc.* (2020) 9
21 Cal.5th 762, 789. Defendant argues that its compensation scheme does precisely that in that it
22 compensates employees for all hours worked at the minimum wage, even though some of the
23 components are not, on their own, attributed an amount of compensation equal to the applicable
24 minimum wage. Mara Dec. ¶ 19.

25 iv. Reimbursement

26 Plaintiff further contends that Defendant fails to reimburse Class Members for business
27 expenses. Under Labor Code § 2802, Plaintiff argues that Defendant is required to reimburse Plaintiff
28 and employees for a portion of their personal cell phone bills. Labor Code § 2802(a) reads:

1 An employer shall indemnify his or her employee for all necessary expenditures or
2 losses incurred by the employee in direct consequence of the discharge of his or her
3 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

4 Plaintiff contends that the primary method of communication Defendant uses to contact Plaintiff and
5 employees throughout the day is their personal cell phones, and that Defendant is liable for a
6 reasonable percentage of their cell phone bills under § 2802. Mara Dec. ¶ 20.

7 Defendant contends that they never have required Plaintiff or other employees to use their
8 personal cell phone for business purposes. Defendant further contends if employees decide to use their
9 personal cell phones for business communications, that it was solely that employee's choice, and not
10 the result of any purported mandate by Defendant. Mara Dec. ¶ 21.

11 As evidenced above, the Parties took staunchly conflicting positions with respect to Plaintiff's
12 claims.

13 **c. The Parties Agreed to Attend Mediation**

14 The Parties agreed to attend mediation with mediator Jeff Ross on March 27, 2024. After a full
15 day of mediation, the Parties were able to reach a classwide settlement. Since then, the Parties have
16 met and conferred regarding all the terms of the settlement and finalized their agreement in the Parties'
17 Settlement Agreement. The Parties seek preliminary approval of the Settlement Agreement in the
18 instant motion. Mara Dec. ¶ 22; **Exhibit 1**.

19 **d. The Terms of the Proposed Settlement**

20 Under the terms of the proposed settlement, Defendant will create a settlement fund of
21 \$4,250,000.

22 **i. Deductions From the Settlement**

23 The Parties have agreed (subject to and contingent upon the Court's approval) that this action
24 be settled and compromised for the non-reversionary total sum of \$4,250,000, which includes, subject
25 to Court approval: (a) attorneys' fees of up to \$1,416,666.66 (one-third of the GSA) to compensate
26 Class Counsel for work already performed and all work remaining to be performed in documenting
27 the settlement, administrating the settlement, and securing Court approval; (b) litigation expenses
28

1 estimated not to exceed, \$30,000;⁴ (c) an enhancement payment to the named class representative,
2 James Queen, in a sum not to exceed \$10,000 in consideration for agreeing to a general release of his
3 claims against Defendant which is broader than that of other class members, and in recognition of their
4 efforts in prosecuting their actions; (d) claims administration fees and expenses to Simpluris, Inc.
5 (hereinafter “Simpluris”), estimated not to exceed approximately \$15,000;⁵ and (e) PAGA payment of
6 \$150,000 allocated to Plaintiff’s PAGA claims.

7 **ii. Calculation of the Settlement Payments to Participating Class Members**

8 After all Court-approved deductions from the GSA, it is estimated that \$2,628,333.34 (“Net
9 Settlement Amount” or “NSA”), less all applicable employee payroll taxes⁶, will be distributed to each
10 Participating Class Member.⁷ Subject to the terms and conditions of the settlement, the Settlement
11 Administrator will calculate and issue Individual Class Settlement Shares based on the following
12 formula:

13 Each Participating Class Member will receive a proportionate share of the Net
14 Settlement Amount that is equal to (i) the number of weeks he or she worked for
15 Defendant, based on the Class Data provided by Defendant, divided by (ii) the total
16 number of weeks worked by all Participating Class Members based on the same Class
17 Data, which is then multiplied by the Net Settlement Amount. One day worked in a
18 given week will be credited as a work week for purposes of this calculation. Therefore,
19 the value of each Class Member’s Individual Settlement Share ties directly to the
20 amount of weeks that he or she worked. **Exhibit 1** attached to the Mara Dec. at Section
21 III (56)(A)(i).

22 Furthermore, the Settlement allocates \$150,000 in consideration for the settlement of
23 Plaintiff’s PAGA claims, which is to be distributed separately from the NSA. Settlement Class
24 Members who performed work for Defendant from February 17, 2022 to May 27, 2024 (“PAGA

25 _____
26 ⁴ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the
27 amount of actual expenses incurred during the litigation of this case. Should the actual expenses exceed
28 \$30,000, Plaintiff will only seek reimbursement of costs up to \$30,000.

⁵ Simpluris will present to the Court a declaration in conjunction with the final approval motion
outlining the costs of the settlement administration process. If the settlement administration costs are
lower than the amount allocated in the Settlement Agreement, the difference will be added to the Net
Settlement Amount for distribution to Participating Class Members.

⁶ The employer’s share of payroll taxes due on the portion of the Individual Settlement Payments that
is allocated to wages shall be paid by Defendant separately and in addition to the GSA. **Exhibit 1**
attached to the Mara Dec. at Section I (19).

⁷ Participating Class Members are Class Members who do not submit a valid and timely request to
exclude themselves from this Settlement. **Exhibit 1** attached to the Mara Dec. at Section I (34).

Period”) are also deemed “Aggrieved Employees” and able to recover their share of the civil penalties under the settlement. 75% of this \$150,000, or \$112,500, will be paid to the LWDA, while the remaining 25%, or \$37,500, will be distributed to the Aggrieved Employees. The Settlement Administrator will calculate and issue Individual PAGA Settlement Shares based on pay periods, similar to the class payments, but only for the PAGA Period of February 17, 2022 to May 27, 2024. **Exhibit 1** attached to the Mara Dec. at Section III (57)(A)(i).

The precise number of compensable weeks worked per class member will not be known until the administrator tabulates them, following preliminary approval. Under no circumstances will any portion of the \$4,250,000 settlement revert to Defendant and one hundred percent (100%) of the NSA is available for Class Members to claim.

The Individual Class Settlement Shares will be divided into a “wage portion” to compensate Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate Participating Class Members for alleged interest and penalties. Participating Class Members’ individual settlement shares will be apportioned as follows: 20% wages and 80% penalties and interest. The Individual PAGA Settlement Shares will be apportioned as one-hundred percent (100%) penalties.

iii. Notice to the Class

Upon entry of the order of the Court granting preliminary approval of this Agreement, Defendant shall provide the Settlement Administrator with a list in Excel spreadsheet format containing the name and last known address, telephone number, social security number, and the number workweeks / pay periods for each Class Member within twenty-one (21) business days for purposes of mailing the Notice of Class Action Settlement to the Settlement Class members. Upon receipt of the class data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within ten (10) business days of receipt of the class data, the Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all Class Members via regular First-Class U.S. Mail. Class Members shall have sixty (60) days after the Class Notices are mailed to respond by submitting a challenge to the number of workweeks attributed to them, submitting an objection, or requesting to be excluded from the Settlement Agreement.

1 **iv. Distribution of Funds**

2 No later than sixty (60) days after the Effective Final Settlement Date⁸, Defendant shall provide
3 the GSA to the Settlement Administrator to fund the Settlement and the employer's share of payroll
4 taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Not later
5 than ten (10) business days after receiving the funds from Defendant, the Settlement Administrator
6 shall disburse: (1) the Individual Settlement Shares to each Class Member and Aggrieved Employee;
7 (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as
8 approved by the Court; (3) the Enhancement Payment paid to the Class Representative, as approved
9 by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to
10 the LWDA and to Aggrieved Employees, as approved by the Court.

11 Class Members must cash or deposit their Individual Settlement Payment checks within one
12 hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not
13 redeemed or deposited within one hundred and eighty (180) calendar days after mailing, the Settlement
14 Administrator will transmit the funds to the State of California Controller's Office under the
15 Unclaimed Property Statutes in the name of the Class Member.

16 **v. Release of Claims**

17 As of the Effective Final Settlement Date, the Class Representative and the Class Members
18 will release the Released Class Claims:

19 All claims alleged or could have been alleged based on the facts alleged in the Class
20 Action which arose during the Class Period. **Exhibit 1** attached to the Mara Dec. at
21 Section I (37).

22 As of the Effective Final Settlement Date, the Class Representative and the Aggrieved

23 ⁸ The "Effective Final Settlement Date" of this Settlement shall be the later of the time when: (1) the
24 date of final affirmance of the Judgment on an appeal, the expiration of the time for, or the denial of,
25 a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment
26 following review pursuant to that grant; (2) the date of final dismissal of any appeal from the Judgment
27 or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed
28 and/or not reversed in any part; (3) the final resolution (or withdrawal) of any filed appeal in a way
 that affirms the Final Approval Order and Judgment in a form substantially identical to the form of
 the Final Approval Order entered by the Court, and the time to petition for review with respect to any
 appellate decision affirming the Final Approval Order has expired; or (4) if no appeal is filed, the
 sixty-first (61st) calendar day after the Court enters final approval of the Settlement and the Judgment
 approving this agreement.

1 Employees will release the Released PAGA Claims:

2 Any claims for civil penalties under the California Labor Code and the Private
3 Attorneys General Act, to the extent such claims are predicated upon the Labor Code
4 violations alleged or could have been alleged based on the facts alleged in the PAGA
5 Action and Plaintiff's notice to the LWDA which arose during the PAGA Period.
6 **Exhibit 1** attached to the Mara Dec. at Section I (38).

7 In addition, Plaintiff agreed to a general release of his claims against Defendant. *See Exhibit*
8 **1** attached to the Mara Dec. at Section III (63). At final approval, Class Counsel will seek approval of
9 this Enhancement Payment to the named Plaintiff in the sum of \$10,000. As will be detailed at final
10 approval, the requested enhancement is reasonable in light of the broad general release Plaintiff is
11 giving to Defendant in exchange for the \$10,000 payment.

12 In addition, this payment is further supported by the fact that plaintiffs are often subjected to
13 the stigma associated with bringing these types of lawsuits. In this age of technology, employers
14 engage in thorough background checks on their employees. As these case filings are all public record,
15 a simple "Google" search is all it would take for Plaintiff's name to appear associated with these
16 pending lawsuits against their former employers. This could be a significant factor in any employer's
17 decision to hire Plaintiff in the future.

18 Plaintiff took it upon himself to delay recovery of his individual claims by proceeding with
19 class and representative actions, with a full understanding of the risks involved. Plaintiff was fully
20 aware that class action and representative litigation would cause Defendant to incur hefty costs
21 throughout the litigation, and that if he was unsuccessful in these cases, may be liable for some, or
22 even all, of these costs. Despite this knowledge, Plaintiff pushed forward with the litigation; he was
23 always readily available by phone and fully participated every step of the way throughout the entirety
24 of this process.

25 Courts routinely approve service payments, or incentive awards, to compensate named
26 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
27 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins.*
28 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the
\$10,000 payment to the named Class Representative is fair, appropriate and justified as part of the

1 overall settlement.

2 IV. ARGUMENT

3 a. Class Action Settlements are Subject to Court Review and Approval Under the 4 California Rules of Court

5 Rule 3.769 requires court approval for class action settlements.⁹ “Before final approval, the
6 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court,
7 Rule 3.769(g)) Rule 3.769 further requires a noticed motion for preliminary approval of class
8 settlements:

9 (a) A settlement or compromise of an entire class action, or a cause of action in a
10 class action, or as to a party, requires the approval of the court after hearing.

11 . . .

12 (c) Any party to a settlement agreement may serve and file a written notice of
13 motion for preliminary approval of the settlement. The settlement agreement
14 and proposed notice to class members must be filed with the motion, and the
15 proposed order must be lodged with the motion.

16 Courts act within their discretion in approving settlements that are fair, not collusive, and take into
17 account “all the normal perils of litigation as well as the additional uncertainties inherent in complex
18 class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den.
19 sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.

20 b. The Settlement is Fair, Reasonable, and Adequate

21 In deciding whether to approve a proposed class action settlement under Code of Civil
22 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
23 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
24 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length
25 negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act
26 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
27 small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with
28 the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation

⁹ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 – bearing on the fairness of the proposed settlement are present here and the Court’s grant of
2 preliminary approval is therefore requested.

3 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

4 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
5 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
6 nature. At the mediation and the following negotiations through the mediator, Counsel for the Parties
7 conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms
8 of the settlement are memorialized in the Settlement Agreement which is attached to the Declaration
9 of David Mara, Esq. as **Exhibit 1**.

10 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

11 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
12 reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to
13 support the settlement. The settlement was only possible following discovery and evaluation of
14 Defendant’s policies and procedures, as well as the data produced for the putative class, which
15 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages.
16 This litigation has reached the stage where “the Parties certainly have a clear view of the strengths and
17 weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
18 485 F. Supp. 610, 617.

19 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

20 Both Plaintiff’s Counsel and Defendant’s Counsel are experienced in wage and hour
21 employment law and class actions. Plaintiff’s Counsel has significant experience in litigating unpaid
22 wages, unprovided meal and rest periods, misclassification, overtime, and expense reimbursement
23 class actions. Plaintiff’s Counsel has prosecuted numerous wage and hour class action cases on behalf
24 of employees for California Labor Code violations and thus are experienced and qualified to evaluate
25 the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the
26 viability of the defenses. Mara Dec. ¶¶ 2-8. Indeed, Mara Law Firm, PC was class counsel in
27 *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision
28 of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This experience

1 instructed Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided their
2 determination to endorse the proposed settlement. Defendant’s Counsel has experience representing
3 companies and regularly deals with wage and hour litigation matters. Accordingly, both Parties’
4 Counsel are experienced in wage and hour employment law and class actions.¹⁰

5 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

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

12 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide
13 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
14 attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
15 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
16 provided there is a record which allows “an understanding of the amount that is in controversy and the
17 realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently, “as the
18 court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the
19 court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.”
20 *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38
21 Cal.3d 488, 499-500. As the following subsections show, the Parties’ investigation and discovery
22 revealed plenty of reasons to discount claims and agree to this settlement.

23 **1. The Settlement is Fair and Reasonable Based on the Strengths of
24 Plaintiff’s Case and the Risks and Costs of Further Litigation**

25 The proposed settlement was only possible following significant discovery, an evaluation of
26 Defendant’s relevant policies and procedures, and Plaintiff’s independent investigation. This
27 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The

28 ¹⁰ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class
Notice 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 final approval motion.

1 discovery conducted resulted in Plaintiff's central theories of liability, which are predicated on
2 Plaintiff's claims that Defendant failed to pay employees for all time worked, failed to provide meal
3 and rest periods, and failed to reimburse them for business expenses. As explained above, Defendant
4 maintains that the discovery conducted and documents produced demonstrates that it would succeed
5 at both class certification and on the merits.

6 Although, Plaintiff believes this case is suitable for certification on the claimed bases that there
7 are company-wide policies and practices that Plaintiff contends violate California law and uniformly
8 affect the class members, Defendant's counter-arguments and affirmative defenses raise uncertainties
9 with respect to both class certification and success on the merits. As the California Supreme Court
10 ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the
11 trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with
12 respect to certification of wage and hour claims.¹¹ While remaining confident in the strengths of his
13 claims, all of these factors led Plaintiff to discount the following maximum potential damage claims.

14 **2. Exposure and the Risks for Each Claim**

15 In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff's
16 claims, Defendant provided Plaintiff with information and data points which Plaintiff used to establish
17 a representative damage model, as explained below. Mara Dec. ¶ 23.

18 **A. Meal Periods**

19 Plaintiff argues that Defendant fails to provide Class Members with duty-free 30 minute meal
20 periods before the fifth hour of work in compliance with California law. Approximately 22% of
21 employee shifts over five (5) hours in length in the time records provided by Defendant indicate an
22 instance where Defendant failed to provide a meal period in compliance with California law, whether
23 it be an untimely meal period, a short meal period, or the failure to provide a meal period at all. Under
24 *Donohue*, these are presumed to be meal period violations for which Defendant must compensate

25 ¹¹ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class
26 claiming misclassification and ordering summary adjudication in favor of employees), *review granted*,
27 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON*
28 *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 Class Members. Accordingly, Defendant's *maximum* exposure under Plaintiff's meal period claim is
2 \$1,413,553 (Approximately 35,579 shifts with presumed meal period violations x \$39.73 average
3 hourly rate = \$1,413,553). Mara Dec. ¶ 24.

4 Plaintiff had to discount the maximum exposure of these claims to account for the viability of
5 Defendant's counter arguments. Defendant points out that its meal period policy is facially lawful, that
6 it provides employees with meal periods in compliance with California law, and that Defendant would
7 be able to provide declarations from employees stating that they were able to take these meal periods
8 without any interference from Defendant. Defendant claims this evidence would be more than
9 sufficient to rebut the presumption under *Donohue*, both at class certification and on the merits of the
10 claim. Mara Dec. ¶ 25.

11 **B. Rest Periods**

12 Plaintiff also contends that Defendant has failed to provide Class Members with lawful rest
13 periods. Plaintiff argues that Defendant has failed to adopt a rest period policy that adequately conveys
14 to employees their ability to take rest periods in compliance with California law. Accordingly,
15 Defendant's *maximum* exposure under Plaintiff's rest period claim is \$9,797,616 (Approximately
16 246,605 shifts over 3.5 hours x \$39.73 average hourly rate = \$9,797,616). Mara Dec. ¶ 26.

17 Plaintiff had to discount the maximum exposure of these claims to account for the viability of
18 Defendant's counter arguments. Defendant argues that despite it has no written rest period policy,
19 which Defendant notes is *not* a requirement under California law, Defendant informs each and every
20 employee that they are entitled to take 10 minute rest periods for every four hours worked or major
21 fraction thereof, that they are not under Defendant's control and command during rest periods, and
22 that they can use this time to do whatever they choose. Defendant further claims it has spoken to
23 numerous employees who say they were able to take compliant rest periods, which both refutes
24 Plaintiff's claim and creates individualized issues that would predominate and any trial would be
25 rendered unmanageable. Mara Dec. ¶ 27.

26 **C. Unpaid Wages**

27 In addition, Plaintiff claims that Defendant does not pay Class Members for all time worked.
28 Specifically, Plaintiff alleges that Defendant pays employees below minimum wage for the hours they

1 work, and then uses the compensation they receive via piece rate to “average” the employee’s
2 compensation to reach the applicable minimum wage in violation of California law. As a result, this
3 practice shorts these employees of approximately \$4.00 of pay every hour they work. Accordingly,
4 Defendant’s **maximum** exposure under Plaintiff’s unpaid wages claim is \$525,340 (Approximately
5 26,267 shifts x approximately 5 hours paid on average per shift x \$4.00 = \$525,340). Mara Dec. ¶ 28.

6 Further, if Plaintiff were to prevail on his unpaid wages claim, he may also be entitled to
7 waiting time penalties. Plaintiff calculates the potential **maximum** exposure under the waiting time
8 penalties cause of action as \$1,907,040 (200 former employees x 30 days x 8 hours x \$39.73 =
9 \$1,907,040). Mara Dec. ¶ 29.

10 Additionally, if Plaintiff were to prevail on his unpaid wages claim, he may also be entitled to
11 wage statement penalties. Plaintiffs calculate the potential **maximum** exposure under the wage
12 statement cause of action as \$2,664,000 (\$4,000 x 666 current employees = \$2,664,000). Mara Dec. ¶
13 30.

14 Plaintiff had to discount the maximum exposure of these claims to account for the viability of
15 Defendant’s counter arguments. As discussed above, Defendant disputes these allegations and argues
16 that its piece rate compensation plan does not violate California minimum wage law, as it lawfully
17 compensates its employees pursuant to the California Supreme Court’s decision in *Oman v. Delta Air*
18 *Lines, Inc.* Further, as Plaintiff’s claims for waiting time and wage statement penalties are derivative
19 of his wage claims, Defendant argues that they would not be liable for these either. Should the Court
20 agree with Defendant’s arguments, Plaintiff and Class Members would be entitled to no recovery
21 under these causes of action. Mara Dec. ¶ 31.

22 **D. Reimbursement**

23 Further, Plaintiff claims that Defendant has required Plaintiff and Class Members to incur
24 business expenses during their employment without receiving any reimbursement from Defendant.
25 Specifically, Plaintiff contends that Class Members are required to use their personal cell phones to
26 communicate with Defendant during the workday. If Plaintiff were to prevail on his reimbursement
27 cause of action, Class Members would be entitled to reimbursement for a reasonable percentage of
28 their costs associated with their personal cell phones. Therefore, the **maximum potential exposure**

1 under this theory of liability would be \$965,700 (Approximately 58 months during the relevant time
2 period x \$25, or 25% of a \$100 monthly phone bill x 666 Class Members employed at any given time
3 = \$965,700). Mara Dec. ¶ 32.

4 Plaintiff's reimbursement claim is also subject to risks of obtaining certification and on the
5 merits. Defendants assert that it does not have a policy or practice that requires Class Members to use
6 their personal cell phones for business purposes. Further, Defendant points out that because each Class
7 Member would have to testify as to the extent of their use of their personal cell phone and their
8 understanding of company policy surrounding these issues, class certification would be denied for lack
9 of predominance. Mara Dec. ¶ 33.

10 **E. PAGA**

11 Plaintiff is also seeking PAGA penalties. PAGA allows the private enforcement of certain
12 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
13 provides for a standard penalty amount where a civil penalty is not otherwise specified by statute:

14 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
15 period for the initial violation and two hundred dollars (\$200) for each aggrieved
16 employee per pay period for each subsequent violation.

17 Plaintiff alleges that Defendant has four (4) core violations –failure to pay all time worked, failure to
18 provide meal periods, failure to provide rest periods, and failure to reimburse business expenses – of
19 the Labor Code sections which give rise to PAGA penalties. The statute of limitations for PAGA
20 violations goes back one year. As there were approximately 33,633 pay periods in the statutory period
21 at the time of mediation, Plaintiff calculated Defendant's potential maximum exposure under PAGA
22 as follows:

$$23 \quad \$100 \times 4 \text{ PAGA violations} \times 33,633 \text{ pay periods} = \$13,453,200$$

24 Mara Dec. ¶ 34.

25 Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's non-PAGA
26 claims. In addition, Labor Code § 2699, subdivision (e)(2) provides that "[i]n any action by an
27 aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court
28 may award a lesser amount than the maximum penalty amount specified by this part if, based on the
facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,

1 arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*
2 (“*Thurman*”) (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum
3 penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
4 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112,
5 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its
6 obligations to comply with the law seriously. *Id.* Defendant maintains that if the case were to continue
7 in litigation, it would be able to show that it took its obligations to comply with the law seriously. As
8 such, if Plaintiff were able to prevail on the merits of his PAGA claims, it is likely that the Court would
9 reduce the maximum penalty allowed.

10 In addition, as the PAGA violations asserted by Plaintiff are predicated on the same unlawful
11 conduct that Plaintiff bases his other claims, Plaintiff’s PAGA claims are subject to the same risks on
12 the merits as Plaintiff’s class claims. If Plaintiff is ultimately unable to prevail on any one of his class
13 claims, his recovery under the PAGA as to that violation would also fail. The likelihood of the Court
14 reducing the PAGA damages awarded to Plaintiff and the aggrieved employees – assuming liability
15 is proven as to each of Plaintiff’s claims – is also higher in this case where these same individuals will
16 also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold*
17 *Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist.
18 LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties
19 granted by the underlying Labor Code violations, *see, e.g.,* Cal. Lab. Code §§
20 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award
21 PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA
22 penalties are highly uncertain.”).

23 **3. The Settlement Amount of \$4,250,000 is Reasonable**

24 Not taking into account any of their defenses or arguments, Defendant’s total exposure if
25 Plaintiff was successful in his core claims would be approximately \$12,702,209 [\$1,413,553 (meal
26 period exposure) + \$9,797,616 (rest period exposure) + \$525,340 (unpaid wages exposure) + \$965,700
27 (reimbursement exposure) = \$4,483,306]. If Plaintiff is successful in his unpaid wage claims, he may
28 also be entitled to damages for waiting time and wage statement penalties in the amount of \$1,907,040
and \$2,664,000, respectively. If all of Plaintiff’s claims are successful, he may also be entitled to

1 PAGA penalties in the maximum amount of \$13,453,200. Mara Dec. ¶ 35.

2 Based upon the risks just discussed, Plaintiff had to discount the maximum potential exposure.
3 Plaintiff also had to consider that, should the Court agree with his theories and grant certification as
4 to each of the claims, she may not be awarded the full exposure at trial. Plaintiff also had to consider
5 that the Court could agree with Defendants' arguments. The vast majority of the damages at issue
6 hinge on Plaintiff's theory of liability regarding the ability to leave for meal and rest periods. Should
7 this claim fail, the meal period, rest period, and unpaid wages claims would all fail. Similarly, the
8 derivative claims for waiting time, wage statement, and PAGA penalties would also fail. All of these
9 factors led Plaintiff to reduce the realistic potential exposure in order to gain a definite monetary
10 recovery for the class.

11 In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the settlement
12 amount of \$4,250,000 – **with an average settlement share amount estimated at \$2,863.11** – is a
13 reasonable and fair settlement amount. Mara Dec. ¶ 36.

14 A settlement is not judged **solely** against what might have been recovered, had the plaintiff
15 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
16 reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells*
17 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; "Compromise is inherent and necessary in the
18 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
19 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
20 the public interest may indeed be served by a voluntary settlement in which each side gives ground in
21 the interest of avoiding litigation." *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm'n*
22 (9th Cir. 1982) 688 F.2d 615, 628 ("It is well-settled law that a cash settlement amounting to only a
23 fraction of the potential recovery does not...render the settlement inadequate or unfair").

24 **c. Provisional Class Certification Should be Granted**

25 Under California law, a class action is appropriate when the class is ascertainable and there is
26 "a well-defined community of interest in the questions of law and fact involved affecting the parties
27 to be represented." Cal. Civ. P. Code § 382. State law requirements under California Code of Civil
28 Procedure § 382 for class certification follow federal law according to Rule 23 of the Federal Rule of

1 Civil Procedure: numerosity, typicality of the class representatives' claims, adequacy of
2 representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also*
3 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court
4 must certify a class for settlement purposes if a class has not already been certified, "it is well
5 established that trial courts should use different standards to determine the propriety of a settlement
6 class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used
7 for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836,
8 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

9 Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these
10 elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.
11 Plaintiff seeks approval of the following Class for settlement purposes only: All current and former
12 hourly-paid non-exempt employees of Defendant who worked within the State of California at any
13 time from April 20, 2019 to May 27, 2024.

14 **i. The Proposed Settlement Class is Ascertainable**

15 Plaintiff contends that the proposed Settlement Class is ascertainable because of all of the class
16 members have worked for Defendant and have been identified through Defendant's own records, such
17 as employee and payroll files. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926,932 (finding
18 that "Class Members are 'ascertainable' where they may be readily identified without unreasonable
19 expense or time by reference to official records."); *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th
20 905, 919 ("[c]lass members are 'ascertainable' where they may be readily identified without
21 unreasonable expense or time by reference to official [or business] records."). Thus, the
22 ascertainability requirement is met.

23 **ii. The Proposed Settlement Class is Sufficiently Numerous**

24 The numerosity requirement is met if the class is so large that joinder of all members would be
25 impracticable. *Gay v. Waiters' & Dairy Lunchmen's Union* (N.D. Cal. 1980) 489 F. Supp. 282, *aff'd*
26 (9th Cir. 1982) 694 F.2d 531. "There is no set number required to maintain a class action, and the
27 statutory test is whether a class is so numerous that 'it is impracticable to bring them all before the
28 court.'" *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223

(reversing superior court ruling that nine class members was too few); *Bowles v. Superior Court* (1995) 44 Cal.2d 574 (upholding a class of ten members). “The numerosity requirement is more readily met when a class contains employees suing their present employer . . . This is because class members may be unwilling to sue their employer individually out of fear of retaliation.” *Romero v. Producers Dairy Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the California Supreme Court, “fear of retaliation for individual suits against an employer is a justification for class certification in the arena of employment litigation, even when it is otherwise questionable that the numerosity requirements were satisfied . . . It needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions.” *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 460 (citation omitted), overruled on other grounds in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348.

Here, Defendant’s records show that the proposed Settlement Class has approximately nine hundred and eighteen (918) members. Plaintiff contends that joinder of all Class Members is impracticable and, therefore, a class wide proceeding is preferable. *See 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.). In fact, a class of ten (10) has been certified as a class action. *Id.*, citing *Bowles v. Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that classes of over forty (40) individuals are numerous enough to meet the numerosity requirement. *See Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, the Class that is comprised of approximately nine hundred and eighteen (918) members is sufficient to satisfy the numerosity requirement.

iii. The Commonality Requirement is Met

The commonality requirement is met if there are questions of law and fact common to the class. *Hanlon, supra*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent factual predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies within the class.”). “Predominance is a comparative concept, and ‘the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.’” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334. Commonality exists if there

1 is a predominant common legal question regarding how an employer’s policies impact its employees.
2 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) (“[T]he common legal
3 question remains the overall impact of Diva’s policies on its drives.”). Whether Plaintiff is likely to
4 prevail on his theory of recovery is irrelevant at the certification stage since the question is “essentially
5 a procedural one that does not ask whether an action is legally or factually meritorious.” *Linder v.*
6 *Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-440.

7 Here, Plaintiff contends that the proposed Class Members’ claims all stem from the same
8 allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiff
9 seeks the same legal remedies under state law on behalf of themselves and all Class Members. As
10 liability as to all Class Members is predicated on the same policies and practices, which Plaintiff
11 alleges violates California law, the commonality requirement has been satisfied.

12 **iv. The Typicality Requirement is Met**

13 The typicality requirement is met if the claims of the named representative are typical of those
14 of the class, though, “they need not be substantially identical.” *Hanlon, supra*, 150 F.3d at 1020;
15 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiff contends that his claims are typical of
16 the Class Members’ claims because they arise from the same factual basis and are based on the same
17 legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987)
18 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiff
19 alleges that Defendant’s policies applied to all Class Members. Factual differences may exist between
20 Plaintiff and the Class Members so long as the claims arise from the same events or course of conduct
21 and are based on the same legal theories. *Hanlon, supra*, 150 F. 3d at 1020; *see also Wehner, supra*,
22 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. § 3:15, p.335 [When it is alleged that the same
23 unlawful conduct was directed at or affected both the named plaintiff and the class sought to be
24 represented, the typicality requirement is usually met irrespective of varying fact patterns which
25 underlie individual claims.] As such, the typicality requirement is satisfied.

26 **v. The Adequacy Requirement is Met**

27 The adequacy requirement is met if Plaintiff has no interests adverse to the interests of the
28 proposed Class Members and is committed to vigorously prosecuting the case on behalf of the class.

1 *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51.
2 Plaintiff contends those standards are met here. Plaintiff does not have any conflicts of interest with
3 the Class. He has been and continues to be committed to vigorously prosecuting this case. If any Class
4 Member wishes to opt-out of the Settlement, he or she may do so. Therefore, there is no conflict of
5 interest between Plaintiff and the Class Members.

6 **vi. Notice to Class Members Complies with California Rule of Court 3.769(f)**

7 California Rule of Court 3.769(f), provides:

8 If the court has certified the action as a class action, notice of the final approval hearing
9 must be given to class members in the manner specified by the court. The notice must
10 contain an explanation of the proposed settlement and procedures for class members to
11 follow in filing written objections to it and in arranging to appear at the settlement
hearing and state any objections to the proposed settlement.

12 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises
13 the class of their rights to participate in the settlement, how to and when to object to or request
14 exclusion from the settlement, and the date, time, and location of the final approval hearing. The
15 proposed Class Notice is attached as **Exhibit A** to the Settlement Agreement.

16 **V. CONCLUSION**

17 Plaintiff respectfully submits that the proposed settlement is in the best interests of the class
18 and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted
19 final approval. Under the applicable class action criteria and guidelines, the proposed settlement
20 should be preliminarily approved by the Court, the class should be conditionally certified for purposes
21 of settlement only, and the Notice of Class Action Settlement should be approved.

22 Respectfully Submitted,

23 **MARA LAW FIRM, PC**

24
25 Date: May 21, 2024

Signed: 

26 David Mara, Esq.
27 Matthew Crawford, Esq.
28 Attorneys for Plaintiff JAMES QUEEN, on
behalf of himself, all others similarly situated,
and on behalf of the general public