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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

SARAI CORADO, an individual; on behalf of herself and all others similarly situated and the general public,

Plaintiff,

vs.

HARKINS ADMINISTRATIVE SERVICES, INC., a corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. CVRI2302159

[Assigned for all purposes to the Hon. Harold W. Hopp, Dept. 1]

Court Reservation ID: 962348262796

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: December 3, 2024
Time: 8:30 a.m.
Dept: 1

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 3, 2024, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled court, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, Plaintiff Sarai Corado ("Plaintiff") will and hereby moves the Court for an order granting Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement. In this unopposed motion, Plaintiff seeks the entry of an order to: (1) preliminarily approve the proposed settlement of this class action on behalf of all current and former non-exempt employees of Harkins Administrative Services, Inc., who worked between June 5, 2020 and August 1, 2024; (2) certify a class for settlement purposes only and appoint Bartz Law Group, APC and United Employees Law Group, PC as class counsel for settlement purposes only (hereinafter "Class Counsel"); (3) approve the substance, form, and method to provide class-wide notice; (4) direct that notice of the proposed settlement be given to all Settlement Class Members; and (5) schedule a hearing at which time the following will be considered: (i) the request for final approval of the proposed settlement; (ii) the entry of the Final Judgment; and (iii) approval of Class Counsel's motion for attorneys' fees and costs and Plaintiff's enhancement award.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Aaron Bartz, Walter Haines, Sarai Corado, Jodey Lawrence, Kristen Hammon, Evelyn Wang, and all documents and records on file in this action, and on such other further oral and documentary evidence as may be given at the hearing on this Motion.

Dated: November 4, 2024 BARTZ LAW GROUP, APC

//Aaron Bartz//
Aaron A. Bartz
Attorneys for Plaintiff SARAI CORADO and all others similarly situated

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I. INTRODUCTION

This class action and PAGA settlement is sought on behalf of approximately 1,277[1] current and former non-exempt employees who worked in California for Defendant Harkins Administrative Services, Inc. ("Defendant") between June 5, 2020 and August 1, 2024 ("Class Members").

The case arises out of Plaintiff Sarai Corado's ("Plaintiff's") allegations that Defendant violated California's wage and hour laws, including failing to pay all wages owed and overtime, failing to authorize and permit meal and rest periods, failing to pay meal and rest period premiums at the regular rate of pay, failing to reimburse Class Members for necessary business expenses, failing to provide accurate wage statements, unfair competition in violation of the California Business and Professions Code, and waiting time penalties.

After engaging in extensive informal discovery, and attending a full-day mediation, the parties have agreed to a non-reversionary, all-in common fund settlement of $525,000. The net amount to be paid to Class Members after payment of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Administration Expenses Payment, the Private Attorneys General Act ("PAGA") penalties, and Plaintiff's Class Representative Service Payment), is approximately $275,000 (the "Net Settlement Amount"). Each Class Member's share of the Net Settlement Amount is based on each of their eligible number of Workweeks, and shall receive, on average, approximately $215. So long as the Class Members do not opt out of the Settlement, they will receive an Individual Class Payment. For purposes of this Settlement only, the parties agree that the proposed Class satisfies each of the requirements of Code of Civil Procedure section 382. The Settlement is fair, reasonable, and confers a substantial monetary benefit to the entire Class. Accordingly, Plaintiff requests that the court grant preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") submitted herewith (see Declaration of Aaron Bartz ("Bartz Decl.", Ex. 1),

[1] This figure was calculated at the time of the mediation on May 15, 2024.

conditionally certify the Class, approve the proposed Notice of Class Action and Representative Action Settlement. (See Ex. A to Settlement Agreement).

II. PRE-TRIAL PROCEEDINGS AND SETTLEMENT

A. Informal Discovery

Plaintiff filed her Complaint on April 25, 2023. Next, Plaintiff filed a First Amended Class Action and PAGA Complaint on August 29, 2023, adding claims under the Private Attorneys General Act (PAGA). (Bartz Decl., Ex. 3). Shortly thereafter, the parties discussed the possibility of early resolution, and informal discovery to evaluate the class and PAGA claims.

To that end, Defendant produced hundreds of pages of time and payroll records, and Excel spreadsheets with thousands of lines of pay and time data for the class. Plaintiff also hired experienced damages expert James Toney, to analyze the payroll and related wage data and create a damages model for the various claims alleged in the case. Based upon the analysis of the time records and payroll data, Mr. Toney and Class Counsel were able to calculate damage estimates on a class-wide basis. (Bartz Decl., p. 13).

The parties did not attend Mediation in this matter until they had sufficient data and documents to evaluate the claims in the case. On May 15, 2024, the parties attended a full-day Mediation before experienced wage and hour mediator Gig Kyriacou, Esq. After an all-day mediation, the parties reached a settlement, memorialized in a Memorandum of Understanding the next day on May 16, 2024. Thereafter, the parties entered into the Settlement Agreement on July 30, 2024. (Bartz Decl., Ex. 1).

B. The Operative Settlement Terms and Plan of Allocation

The Class Members entitled to the Net Settlement are all current and former non-exempt employees who worked for Defendant between June 5, 2020 and August 1, 2024. Based upon data through the May 15, 2024 mediation, there are approximately 1,277 Class Members. (Bartz Decl., p. 3).

The Gross Settlement Amount is all in (except for the employer's share of payroll taxes, which Defendant shall pay in addition to the $525,000 settlement), there is no claim form requirement, and no residual will revert to Defendant. (Bartz Decl., Ex. 1, ¶¶ 1.23, 3.1). Class Members will be paid as long as they do not opt out of the settlement. If a Settlement Class Member opts out, their share of the Net Settlement Amount will be allocated to other Participating Class Members. In the event a Class Member does not claim his or her settlement check within 180 days pursuant to the Settlement Agreement, the un-cashed check, plus any accrued interest that has not been distributed pursuant to the order of the Court, shall be voided by the Administrator and the Administrator shall transmit the funds represented by such checks to the California State Controller Unclaimed Property Fund pursuant to governing law to be held there for the benefit of the Class Members under California's escheatment laws, and Class Members shall nevertheless be bound to the Parties' Settlement Agreement and the Court's Final Approval Order and Judgment. (Bartz Decl., Ex. 1, ¶ 4.4.3).

The payment to the Settlement Class Members will be characterized ninety percent interest and penalties, and ten percent wages. (Bartz Decl., Ex. 1, ¶ 3.6.1). Class Counsel determined that this allocation was proper based upon the fact that many of the most substantive violations were earlier in the class period, resulting in substantial penalties and interest owed. The class administrator will issue W-2 statements for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and interest. Defendant will separately pay employer payroll taxes owed on the wage portion of the settlement. (Bartz Decl., Ex. 1, ¶ 3.1).

Based upon Class Counsel's independent analysis and investigation in this matter, the Class will be compensated based on each Class Member's respective number of workweeks worked during the Class Period. Defendant estimates that the total number of workweeks will be no more than 67,286. (Bartz Decl., Ex. 1, ¶ 9).

Based on the settlement terms, there will be an approximate Net Settlement Amount of **$275,000**. In exchange for their payment, Class Members will release Defendant and its directors, officers, employees, and agents from any and all claims, known or unknown, contingent or accrued, arising out of the operative facts alleged in this lawsuit as set forth in more detail in Section 5.3 of the Agreement. (Bartz Decl, Ex. 1, ¶ 5.3). Plaintiff will, in addition to releasing claims alleged in the lawsuit, give a general release of all claims pursuant to Civil Code section 1542. (Bartz Decl., Ex. 1, ¶¶ 5.1-2.)

The parties further agree to appoint an experienced Administrator, Phoenix Class Action Administration Solutions ("Phoenix") to prepare and send notice to the class, receive and process objections, and prepare and mail settlement checks to Settlement Class Members. (Bartz Decl., Ex. 1, ¶ 7). The Administrator will conduct skip-tracing for any Settlement Class Member whose addresses cannot be found. (Bartz Decl., Ex. 1, ¶ 1.10).

The all-in settlement fund will also include all of the attorneys' fees and costs allowed by this Court. The attorneys' fees shall not exceed one-third of the $525,000 Gross Settlement Amount, or $175,000. (Bartz Decl., Ex. 1, ¶ 1.7). A Class Counsel Litigation Expenses Payment not to exceed $20,000 and Administrative Expenses Payment not to exceed $15,000 will also be paid from the Gross Settlement Amount. (Bartz Decl., Ex. 1, ¶¶ 1.3, 1.7).

The PAGA allocation of the Settlement is $30,000, of which $22,500 (75%) will be distributed to the Labor Workforce and Development Agency (LWDA), with the remaining portion - $7,500 (25%) - going to PAGA Aggrieved Employees (all current and former non-exempt employees who worked for Defendant in California at any time during the PAGA Period, from March 23, 2022, through August 1, 2024, subject to court approval). (Bartz Decl., Ex. 1, ¶¶ 1.34, 1.37).

The Settlement also includes Plaintiff's Class Representative Service Payment. Based on Plaintiff's work in connection with this case, including connecting Class Counsel with other witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting with developing the claims and theories in this case, and communicating with Class Counsel during Mediation, Plaintiff seeks $10,000. (Bartz Decl., Ex. 1, ¶ 1.14).

In summary, the settlement fund is allocated as follows:

(1) Net Settlement Amount: Approximately $275,000, assuming the other amounts in the Agreement are approved;

(2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: $175,000 in attorneys' fees and up to $20,000 in costs;

(3) Administrator Expenses Payment not to exceed $15,000;

(4) PAGA payment to the LWDA: $22,500;

(5) Individual PAGA Payments: $7,500;

(6) Class Representative Service Payment of $10,000 for the named Plaintiff.

III. FACTUAL AND LEGAL BACKGROUND

A. Parties

Plaintiff Sarai Corado worked as a non-exempt hourly employee for Defendant's Moreno Valley location between 2018 and 2022. Defendant is an Arizona-based company that has employees at four theater locations in California. (Bartz Decl., p. 2).

B. Nature of Plaintiff's Claims

The operative Complaint alleges claims for 1) Unfair Business Practices; 2) Failure to Pay All Wages; 3) Waiting Time Penalties; 4) Failure to Pay Meal and Rest Period Premiums at the Regular Rate of Pay; 5) Failure to Provide Accurate Itemized Wage Statements; 6) Failure to Provide Meal Periods; 7) Failure to Authorize and Permit Rest Periods; 8) Failure to Reimburse Expenses; and 9) Violation of Labor Code § 2699 (PAGA). Plaintiff further alleges that she and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies.

Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal. App 4th 116, 118 and *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, the Settlement is reasonable. Plaintiff recognizes the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of denial of a motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

Based on the foregoing, Plaintiff has determined that the settlement is a fair, adequate and reasonable settlement and is in the best interests of the Class Members. The reasonable exposure and the reasonable settlement value for each of the alleged claims are as follows:

CLAIM	TOTAL EXPOSURE	SETTLEMENT VALUE
Failure to Pay Wages	$380,000	$38,000
Meal	$1,000,000	$100,000
Rest	$1,000,000	$100,000
Paystub	$1,920,000	$192,000
Waiting time	$5,600,000	$560,000
Reimbursement	$140,000	$14,000
PAGA	$4,906,290	$245,314
TOTAL	**$14,906,290**	**$1,249,314**

1. Overtime/Minimum Wage Violations

Labor Code § 510 provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

Labor Code § 1194 states any employee receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

Plaintiff contends that Defendant failed to pay all wages due in numerous respects. ***First***, Plaintiff alleges that she and other managerial employees frequently worked off-the-clock running errands and responding to phone calls and text messages for work related issues. Plaintiff alleges that she and other Class Members also underwent temperature checks and other Covid-19 prerequisites before clocking in throughout 2021. Time spent in Covid-19 screening is compensable hours worked under California law. *See Boone v. Amazon.com Services, LLC*, 562 F.Supp.3d 1103, 1114 (E.D. Cal. 2022). ***Second***, Plaintiff alleges that Defendant failed to incorporate bonuses and incentive pay in the "regular rate," resulting in underpaid overtime and sick time hours during the Class Period.

Defendant contends that its regular and overtime payment policies were lawful, and that it paid for all time worked, including any overtime worked by Class Members. Defendant also contends that it properly calculated Class Members' overtime at the regular rate of pay.

Plaintiff and her expert analyzed payroll and time records for the class members and calculated that the total verdict value for this claim is approximately $380,000. Plaintiff and her expert assumed 30 minutes per week of unpaid hours, based on discussions with the Plaintiff and other class members. Plaintiff's expert reviewed payroll records for the class, including pay period counts per year, and a weighted average rate of pay. Based on the defenses alleged, as well as fact that the failure to pay wage claims will rest on testimony from Plaintiff and class members, and documented evidence of such violations is scant, Plaintiff placed a reasonable settlement value of the overtime/minimum wage claim at ten percent of the total verdict value, or **$38,000**. This valuation takes into consideration Class Counsel's analysis of the law, and evidence produced by the Defendant. (Bartz Decl., pp. 5-6).

2. Meal and Rest Period Claims

a. Meal period liability and damages

Plaintiff contends that Defendant failed to provide Plaintiff and Class Members with a duty-free 30-minute meal period for every five hours of work as is required by Labor Code § 512 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with the applicable Wage Order(s) results in payment by the employer of one additional hour of pay at the employee's regular rate of pay for each workday that the meal period is not provided. (Labor Code § 226.7.)

In *Brinker*, *supra*, the California Supreme Court held that "under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty for the designated period, but need not ensure that the employee does no work" during the meal period. *Id.* at 1034. However, "...an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 962–63 (2005); *see also Jaimez v. DAIOHS USA, Inc*., 181 Cal.App.4th

1286, 1304–05 (2010) [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638 (S.D.Cal.2010) [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand'" would be illegal].) Defendant also cannot create "incentives to forego, or otherwise encourage[] the skipping of legally protected breaks." *Brinker*, *supra*, 53 Cal.4th at 1040.

Moreover, when time records show short, missed, and late meal periods, there is a presumption that an employer violated California's meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021) ("If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.")

Plaintiff contends that Defendant's meal period practices are unlawful under California law. ***First***, Plaintiff alleges that manager-level employees were required to wear ear pieces and carry communications devices with them during their work hours and therefore alleges that none of their meal periods were off-duty. ***Second***, Plaintiff alleges that because of these on-duty meal periods, Defendant was required to pay meal period premiums and an analysis of the managers' pay records show that very few meal period premiums were paid to managers during the class period. ***Third***, Plaintiff and the Class Members aver that they were never provided uninterrupted, duty-free meal periods, because of the time constraints Defendant placed upon Plaintiff and class members' work.

Defendant contends that Plaintiff and Class Members had the ability and in fact did take meal periods, and that if they did not, it was their own choice, and therefore not actionable. Defendant further contends that it has time records showing such meal periods. Defendant also contends that manager-level employees were not required to carry communication devices with them while they were on their meal periods.

Class Counsel and Plaintiff's expert calculated the maximum verdict value of the meal break claim to be approximately $1,000,000. This calculation is based on the assumption that each late, missed or short meal period was the result of Defendant's interference with Plaintiff's and the class members abilities to take duty-free meal periods. Accordingly, Class Counsel and her expert determined a total violation rate for the class members, and average rate of pay based on the payroll data for the class. Based on discussions with Plaintiff and interviews of other Class Members, and the defenses raised, Plaintiff believes she had a ten percent probability of recovering all of these damages. Accordingly, Plaintiff contends the reasonable exposure of the meal break claim is approximately **$100,000**. (Bartz Decl., p. 7).

b. <u>Rest period liability and damages</u>

Section 12(A) of the IWC Wage Order(s) states: "Every 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." Moreover, during rest periods, "employees must not only be relieved of work duties, but also be freed from employer control over how they spend their time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when an employer adopts common policies that prevent employees from taking their rest breaks, it presents a common factual issue by which liability may follow. *See Jaimez v. Daiohs USA, Inc.*, 181 Cal.App.4th 1286, 1304 (2010). Indeed, "[t]he wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks." *Brinker, supra*, 53 Cal.4th at 1040.

Here, Plaintiff contends that Defendant did not authorize or permit Plaintiff or the Class Members duty-free rest periods for multiple reasons. ***First***, Plaintiff contends that team leaders and managers were provided with communication devices that were required to be on-cal at all times, including during their rest periods. *See Augustus, supra*, 2 Cal.5th at 270-273 (holding that security guards who were on-call with radios during their rest periods were not freed from the employer's control). ***Second***, Plaintiff contends the rest periods were interrupted with work inquiries and other duties, which is "irreconcilable with employees' retention of freedom to use rest periods for their own purposes." *See Augustus,* 2 Cal.5th at 270.

Defendant contends that its rest period policies were lawful and appropriate, and that all class members were afforded ample time to take duty-free rest periods throughout their workday. Defendant further contends that no Class Members were required to carry communication devices while on their rest periods.

Based on discussions with Plaintiff and interviews of other Class Members, Class Counsel assumed a 50% violation rate for all shifts by class members of 3.5 hours or more. Based on that assumption, Plaintiff's expert calculated total violations across the class, multiplied by an average rate of pay for the class members. As such, Class Counsel and the expert calculated the maximum verdict value of the rest period claims to be approximately $1,000,000. Based on the difficulty of proving rest period violations on a class-wide basis, and the lack of objective evidence proving such violations, Plaintiff believes they had a ten percent chance of recovering all of the rest period damages. As such, Plaintiff believes the reasonable exposure of the rest break claim is approximately **$100,000**. (Bartz Decl., p. 9).

3. Waiting Time Penalty

The waiting time penalty claim is purely derivative. Plaintiff and her expert analyzed the data to find that there are approximately 1,074 former employees included in the putative class that would be eligible for the Labor Code §203 penalties. Plaintiff and her expert calculated the reasonable exposure of this claim at approximately $5,600,000. Plaintiff further discounted the waiting time penalty claim based on risk and the fact that waiting time penalties are not awarded if a good faith dispute exists as to whether the wages were owing. Further, the Class would have the burden of proving a "willful" withholding of wages. Plaintiff considered that under *Labor Code* §203 there is only a penalty if "an employer willfully fails to pay" all wages due to an employee upon separation. Willfulness does not exist if there is a "good faith dispute," in fact or law that wages were due, even if the employer's reasoning ultimately proves incorrect. *Amaral v.*

Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1204; 8 Cal. Code Regs. § 13520 ("A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recover on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.")

Once Plaintiff determined the maximum reasonable exposure of the claim, Plaintiff placed a settlement value of **$560,000** or approximately ten percent of the reasonable exposure value, based upon the above discounts applied to the reasonable value of the claim. (Bartz Decl., p. 9).

4. Paystub

As to the paystub penalty, which is derivative of the other claims identified above, Plaintiff and her expert arrived at a maximum reasonable exposure of this claim of approximately $1,920,000. This figure was arrived at by assuming that each wage statement that was provided to the class members violated Labor Code §226.

Defendant argues that, even assuming there are any violations, which they deny, the fact that derivative violations were minor and that the Defendant had presented evidence of a good faith dispute as to any violation rendered the violations meritless. *Hurst v. Buczek Enters., LLC* (N.D. Cal. 2012) 870 F.Supp.2d 810, 829 (no section 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector Mktg. Corp.* (2009) 656 F.Supp.2d 1128, 1146 (N.D. Cal. 2009) (the "employer did not knowingly and intentionally fail to provide itemized wage statements" where there was a "good faith dispute").

Based on the raised defenses, as well as the risk of certification and related risks of proving all violations, Plaintiff has placed a reasonable settlement value of **$192,000** or ten percent of the reasonable exposure of the pay stub claim. (Bartz Decl., p. 10).

5. PAGA

Plaintiff contends that PAGA penalties are owed based on the numerous alleged Labor Code violations identified above. Once a PAGA violation is found, a court must award civil penalties. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1211-1213.

Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

Significantly, moreover, there is a very real possibility that a court would substantially reduce the penalties, even if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4 (C.D. Cal. 2011) (reducing penalties from $2.8 million to $500,000 based on wage statement violations because to assess full penalties would be unjust and arbitrary); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed on appeal).

Plaintiff and her expert calculated the reasonable PAGA penalties to be valued at $4,906,290 based on this being an initial violation against Defendant. Plaintiff believes the few cases that reported a PAGA trial that the discretionary penalties are discounted by approximately 75%-85%. Based on the uncertainty of recovery, Plaintiff believes the PAGA claim's reasonable value is five percent of the total value, or approximately **$245,314**. (Bartz Decl., p. 11).

6. Reimbursement Claim

California Labor Code section 2802(a) provides:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her 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.

Plaintiff contends that Defendant failed to comply with California's reimbursement requirements by failing to adequately reimburse Plaintiff and the class members for using their personal cell phones while working for Defendant and were not reimbursed for such usage. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137 (2014).

In *Cochran*, the court stated: "The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee. Thus, to be in compliance with section 2802, the employer must pay some reasonable percentage of the employee's cell phone bill." *Id*. at 1144.

Defendant contends that it paid for all reasonable and necessary expenses incurred by Plaintiff and Class Members, and that the reimbursement claim has little to no value.

Plaintiff contends that this claim is valued at $140,000.00 based upon average cell phone usage and failure by Defendant to reimburse class members for their monthly usage while at work. Given the fact that there are individualized issues in proving reimbursement violations and damages, Plaintiff believes this claim's reasonable value is **$14,000**, or ten percent of the total value. (Bartz Decl., p. 12).

7. Total Damage Exposure[2]

Plaintiff believes that the $525,000 settlement achieved in this case is very good for the class members. Based upon a reasonable exposure value of $1,249,314, the Settlement represents approximately 42% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, and the risks of going to trial, Class Counsel believe this Settlement is a good result for all of the Class Members. (Bartz Decl., p. 12).

IV. THE CLASS ACTION SETTLEMENT MEETS THE REQUIREMENTS FOR PRELIMINARY APPROVAL

When a proposed class action settlement is reached, the settlement must be submitted to the court for approval. H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at § 11.41, p. 11-87. Review of a proposed class action settlement involves two hearings. First, the settlement must be preliminarily approved by the court. Second, a final settlement approval

[2] The Unfair Competition claim is subsumed into the Kullar analysis above. The Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of damages, and is included within the above analysis.

hearing is set, where evidence and argument are submitted concerning the fairness, adequacy, and reasonableness of the settlement, and class members may be heard regarding the settlement. *See Manual for Complex Litigation*, Fourth §§ 21.632-21.633 (2004).

The question presented on a motion for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, Fourth, § 21.632 at 321; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement...may be submitted to members of the prospective Class for their acceptance or rejection." *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* 323 F.Supp. 364, 372 (E.D. Pa. 1970). The court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing Officers for Justice v. Civil Service Com'n*, etc., 688 F.2d 615, 625 (9th Cir. 1982) and *Fed. Rules Civ. Proc.*, Rule 23(e). There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm's length by counsel for the Class, is presented for court approval. *Newberg*, supra, §11.41, p. 11-88. However, the ultimate question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the court.

A. <u>The Role Of The Court In Preliminary Approval Of A Class Action Settlement</u>

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235 (2001); *Dunk*, 48 Cal. App. 4th at 1801. Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable and adequate. That determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. *See, e.g., J. Moore, Moore's Federal Practice* §§ 23.80-23.85 (2003). With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *See Officers for Justice, supra*, 688 F.2d at 625.

B. Factors To Consider In Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

> If the proposed settlement is the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, the court should direct notice to be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Manual of Complex Litigation, Second §30.44, at 229. This settlement meets all of these criteria.

1. The settlement is the product of serious, informed, and non-collusive negotiations

This Settlement is the result of arms-length and hard-fought negotiations. Defendant has denied and continues to deny all of the claims and contentions alleged in this case. Nonetheless, Defendant has agreed to settle this case in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and the uncertainties of trial and appeals.

Plaintiff and Class Counsel recognize the expense of continuing to litigate and trying this case against Defendant through possible appeals which could take several years. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the case. Based upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members.

Here, the litigation has been adversarial and displayed capable and experienced advocacy on both sides. "There is likewise every reason to conclude that settlement negotiations were vigorously conducted at arm's length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. AZ 1989).

2. <u>The settlement has no "obvious deficiencies" and falls within the range for approval</u>

The proposed settlement herein also has "no obvious deficiencies" and is well within the range of permissible compromise. This settlement, which represents approximately 42% of the reasonable settlement exposure faced by Defendant, is entitled to preliminary approval. *See, e.g., Glass v. UBS Fin. Servs.*, 2007 WL 221862, *4 (N.D. Cal. January 26, 2007) (approving settlement of unpaid overtime wages where the settlement amount constituted approximately 25 to 35% of the estimated actual loss to the class). Each Settlement Class Member will receive the same opportunity to participate in and receive payment. Clearly, the goal of this litigation, to seek redress for the Class, has been met.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Com*., 150 F.3D 1011, 1026 (9th Cir. 1998). Here, Defendant has maintained that its wage and hour policies comply with California law, and believes it would be successful if it continued to litigate this action. Notwithstanding the risk of continuing to litigate this case, after vigorous, arms-length negotiations that included an all-day mediation, the parties reached a proposed settlement of $525,000, where each member of the Class will receive payment unless the class member opts out of the settlement.

3. <u>No preferential treatment is given to the class representatives or other members of the class</u>

All of the Class Members will share in the Settlement according to the Workweeks they worked as a non-exempt employee for Defendant in California during the PAGA Period. The compensation formula is objective, justified, and reasonable in this case, and does not improperly grant preferential treatment to any Class Member.

4. <u>The parties engaged in adequate discovery prior to settlement</u>

The agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Class Counsel obtained substantial informal discovery from Defendant, including personnel, and pay data for Plaintiff, and thousands of lines of payroll data on a Excell spreadsheets for the class. Class Counsel also independently obtained information from several class members in addition to Plaintiff regarding the claims at issue.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and potential appeals down the road. Defendant and its counsel also agree that the settlement is fair and in the best interest of the Settlement Class Members. There can be no doubt that counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

5. <u>The class representative's service payment is reasonable</u>

Plaintiff has spent numerous hours, working with Class Counsel to uncover the alleged wage violations, and communicated during mediation, to achieve the result herein. But for Plaintiff, this settlement would not have been reached. The proposed Class Representative Service Payment for Plaintiff is intended to recognize her initiative, risk, and efforts on behalf of the Class. Courts routinely approve class representative service payments, also known as incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for efforts in bringing the case); Manual for Complex Litigation, § 21.62, fn. 971 (noting that such awards "may sometimes be warranted for time spent meeting with Class Members, monitoring cases, or responding to discovery").

6. Plaintiff counsel's attorney's fees and costs are reasonable

California courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

Class Counsel has extensive experience in employment litigation and has successfully handled wage and hour class actions. Class Counsel seeks up to 33.33% of the Settlement Amount for attorney's fees, which is less than Class Counsel's collective lodestar. The $525,000 settlement is a very good result for the Class Members.

Moreover, Class Counsel seeks costs not to exceed $20,000, plus an Administration Expenses Payment not to exceed $15,000, which Defendant has agreed to pay out of the Gross Settlement Amount. All such costs are reasonably necessary in prosecuting this action.

V. THE PROPOSED CLASS NOTICE IS FAIR AND APPROPRIATE

The method and content of a Class Notice to class members should be designed to fairly apprise them of the terms of the proposed settlement and options available to them. *See Philadelphia Housing Authority v. American Radiators& Standard Sanitary Corp.*, 323 F. Supp. 364, 378 (E.D. Pa. 1970). An appropriate notice is one which has a reasonable chance of reaching a substantial percentage of the class members. *See Cartt v. Superior Court*, 50 Cal. App. 3d 960, 974 (1975).

The proposed Notice of Class Action and Representative Action Settlement, attached as Exhibit A to Exhibit 1 of the Bartz Declaration, is fair and reasonable in this case. It describes the nature of the lawsuit, the Class, the settlement amount, the proposed plan of allocation of the settlement amount, and the attorneys' fees that Class Counsel may receive. The proposed notice also describes the Settlement Agreement in sufficient detail to allow the Class Members to make an informed choice whether to opt out or object to the Settlement. The proposed Notice also contains information on opting out of the Class, objecting to the settlement, and sets forth the final approval hearing date and time.

Moreover, the parties propose that the Class Notice be mailed by the Administrator to all Class members at the last known address maintained by Defendant, and updated by the Administrator, if necessary, after accessing the National Change of Address database. In the event the Class Notice is returned as undeliverable, the Administrator will perform a skip-trace procedure, and if such procedure reveals a new address, the Administrator will re-mail the Notice within five business days.

In summary, the proposed notice here describes the proposed settlement with enough specificity to permit Class Members to make an informed decision whether to participate in the settlement.

VI. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court preliminarily approve the Settlement, approve the Class Notice, and set the date and time for the Final Approval Hearing.

Dated: November 4, 2024 BARTZ LAW GROUP, APC

//Aaron Bartz//
Aaron A. Bartz
Attorneys for Plaintiff SARAI CORADO and all others similarly situated