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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

TARA TROTTER, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SEC TRANSPORTATION, INC., a California
Corporation; STOCKTON EDUCATIONAL
CENTER, INC., an unknown association; and
DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0003641

*Assigned for All Purposes to Hon. Jayne Lee,
Department 10C*

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: _____
Time: 9:00 a.m.
Dept.: 10C
Judge: Hon. Jayne Lee

Filed: April 11, 2023
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Trial Date: None Set

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Tara Trotter (“Plaintiff”) seeks preliminary approval of a wage and hour class action and
3 Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$200,000. *See generally*
4 Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]).
5 Plaintiff brought several wage and hour claims as class and representative basis on behalf of similarly
6 situated employees who worked for Defendants SEC Transportation, Inc., and Stockton Educational
7 Center, Inc., (“Defendants”) (Plaintiff and Defendants sometimes collectively referred to as the
8 “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 186
9 Class Members.

10 Plaintiff’s class claims allege that Defendants 1) failed to pay overtime wages, 2) failed to pay
11 minimum wages, 3) failed to provide meal periods or pay premiums in lieu thereof, 4) failed to provide
12 rest periods or pay premiums in lieu thereof, 5) failed to provide accurate wage statements, 6) failed to
13 timely pay all final wages, 7) unlawfully inquired into criminal history, and 8) engaged in unfair
14 competition. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl.
15 Rodriguez”), ¶¶ 2. Plaintiff has also alleged Defendants are liable for civil penalties under the PAGA
16 based on these violations. *See* Decl. Rodriguez, ¶¶ 2-3; Exhibit C (Plaintiff’s Ltr. to the Labor and
17 Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendants have denied all of
18 Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl.
19 Rodriguez, ¶ 5. Defendants have also denied that this case is appropriate for class certification other
20 than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able
21 to compromise and settle all asserted claims as a result of extensive investigations, document and data
22 exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the
23 proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee
24 data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez,
25 ¶¶ 6-10. The prospect of potential class certification issues and the uncertainty of class certification,
26 difficulties of complex litigation, the lengthy process of establishing specific damages and various
27 possible delays and appeals were carefully considered by Plaintiff and Plaintiff’s counsel in agreeing to
28 the proposed settlement. *See id.*

1 It is well within the discretion of this Court to grant preliminary approval of the Agreement as it
2 satisfied all applicable criteria under California law. Accordingly, Plaintiff requests that the Court: (1)
3 certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and
4 conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the
5 Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in
6 the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

7 **II. PROCEDURAL AND LITIGATION HISTORY**

8 Plaintiff filed a class action complaint on approximately April 11, 2023, in San Joaquin County
9 Superior Court against Defendants. Plaintiff exhausted administrative remedies under the PAGA by
10 providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a),
11 (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
12 approximately July 7, 2023, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
13 motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

14 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

15 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
16 potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Declaration of Tara Trotter (“Decl. Trotter”)
17 ¶¶ 5-7, 11. Plaintiff worked during the time all of Defendants’ policies and practices at issue in the
18 Complaint were in effect and provided information regarding these policies and practices, enabling pre-
19 filing investigations to take place. *See* Decl. Trotter, ¶ 2-3, 5-7. The Parties engaged in informal
20 discovery and exchange of documents, including a representative sampling of employee data, such as
21 timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations
22 applicable to the asserted claims. The discovery covered all aspects of the asserted claims, including
23 certification issues, merits issues, damages, the scope and configuration of Class Members, the content
24 and implementation of the wage and hour policies at issue, issues relating to manageability concerns at
25 trial, among other relevant areas. *See* Decl. Rodriguez, ¶ 6-7. The information allowed Plaintiff to
26 determine the extent and frequency of any violations in accordance with Plaintiff’s contentions and
27 create an accurate damages model to assess the reasonableness of any settlement. *See id.*

1 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

2 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

3 The final settlement occurred only after extended, arm's length negotiations. Over the course of
4 approximately thirteen (13) months, Plaintiff has been investigating the claims and discussing with
5 Defendants' counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-10. The
6 Parties exchanged substantial amounts of information and legal analysis in connection with these
7 discussions. *See id.* It was only after these extended discussions, which included a full day mediation
8 with Brandon McKelvey, Esq., that the Parties were able resolve all claims and enter into the
9 Agreement. *See id.* at ¶ 8.

10 **b. The Terms of the Agreement**

11 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
12 which include all nonexempt employees who have worked, or continue to work, for Defendants in
13 California at any time between April 11, 2019, up to either (1) the date a signed order preliminarily
14 approving the settlement is filed by the court, or (2) sixty (60) days after acceptance of the Mediator's
15 Proposal, whichever is earlier; and (b) Aggrieved Employees, which include all nonexempt employees
16 who have worked, or continue to work, for Defendants in California at any time between April 10,
17 2022, up to either (1) the date a signed order preliminarily approving the settlement is filed by the
18 court, or (2) sixty (60) days after acceptance of the Mediator's Proposal, whichever is earlier. *See*
19 Exhibit A, ¶¶ 1.2, 1.5. The mediator's proposal covering the essential terms of the settlement was
20 accepted on September 18, 2023, making the end date for the Aggrieved Employee, Class Member, and
21 Class Period definitions November 17, 2023. *See Decl. Rodriguez*, ¶ 8. There are approximately 186
22 Class Members and 74 Aggrieved Employees.

23 2. Defendants will pay the Gross Settlement Amount of \$200,000, which is exclusive of
24 the employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
25 revert to Defendants. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
26 Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

27 3. The parties agree that up to \$5,000 will be paid to Plaintiff as an Enhancement Payment.
28 This amount will be in addition to any amount Plaintiff may be entitled to under the terms of the

1 Agreement. *See id.* at ¶ 5.4.

2 4. The parties agree that the cost of administering this class action settlement shall be paid
3 from the settlement proceeds. Subject to Court approval, the Parties have selected ILYM Group, Inc. to
4 act as the Settlement Administrator, who has provided a maximum cost estimate of \$6,550. *See* Exhibit
5 D (ILYM Group, Inc., Quote); Exhibit A, ¶ 1.34; Decl. Rodriguez, ¶ 20.

6 5. The Parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
7 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
8 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
9 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
10 by Defendants to maintain compliant policies and take corrective action, the presence of what may
11 likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff
12 believes the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring
13 non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 5-10; *see also Nordstrom Com.*
14 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
15 based on their being disputed and being part of a class settlement which was evaluated based on the
16 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2
17 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
18 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA
19 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
20 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA
21 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
22 *Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
23 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
24 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
25 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
26 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
27 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
28 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.

2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

6. The Parties agree that up to thirty-five (35%) of the Gross Settlement Amount (\$70,000) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendants will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as approved by the Court in an amount not to exceed \$15,000. *See id.* The proposed notice to be sent to Class Members will state this information. *See Exhibit F.*

7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class Representative Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata basis as set forth in the Agreement. *See Exhibit A*, ¶¶ 5.1-5.5, 5.8. These amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See Exhibit A*, ¶¶ 5.1-5.5, 5.11.

8. Class Members who fail to timely opt-out of this settlement will waive all Released Class Claims as set forth in the Agreement. *See Exhibit A*, ¶¶ 1.5, 1.14, 1.26, 1.30, 1.32, 6.1, 7.5.1. Aggrieved Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

9. For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their respective settlement checks within 180 calendar days of issuance, that remaining amount shall be donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the

1 doctrine of *cy pres*. See Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that
2 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. See
3 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
4 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
5 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
6 including providing representation for employees in wage claims before the California Labor
7 Commissioner. See *id.* at 722-724; see also Decl. Rodriguez, ¶ 24-33.

8 **c. Allocation of Settlement Funds**

9 Payment to Participating Class Members and Aggrieved Employees will not require the
10 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
11 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class
12 Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by
13 the Court. Each Class Member's share will be determined by dividing their total weeks worked within
14 the Class Period by the total weeks worked by all Class Members within the Class Period. That
15 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
16 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
17 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
18 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
19 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
20 Aggrieved Employee's individual share. See Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

21 **V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE**
22 **PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE**
23 **CIRCUMSTANCES**

24 It is not required that Class Members be given actual notice of a class settlement; instead, the
25 best practicable notice under the circumstances is all that is required. See *Silber v. Mabon*, 18 F.3d
26 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
27 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
28 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
1994), the Court rejected a class member's argument that he had not received due process because he

1 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
2 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
3 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
4 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice
5 mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members
6 who did not receive actual notice due to their mailings being deemed undeliverable were still properly
7 held to be part of the class settlement because they received the best notice practicable under the
8 circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7
9 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar
10 approach regarding providing notice to class members.

11 Under the proposed notice procedures, Class Members will have sixty (60) days from the date
12 of mailing to review and respond to the Notice of Settlement, which will also be available online. *See*
13 Exhibit A, ¶¶ 1.21, 7.2. The Notice of Settlement contains all information necessary for a Class
14 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.
15 *See id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and
16 surveying of current employees will be utilized as set out in the Agreement to provide the best practical
17 means of ensuring Class Members receive the notice mailing. *See* Exhibit A, ¶¶ 7.3-7.4. Any
18 individual whose initial mailing was deemed undeliverable will have additional time to respond. *See*
19 *id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs,
20 objections, or disputes. *See id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class
21 actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class
22 Members satisfy due process and should be approved in this case.

23 **VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR,**
24 **REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE**
25 **FACTS OF THIS CASE**

26 A class action may not be dismissed, compromised, or settled without Court approval and the
27 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules
28

1 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
2 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2). However, “[d]ue regard should be given
3 to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to
4 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
5 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,
6 is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
7 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re*
8 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
9 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases
10 where substantial resources can be conserved by avoiding the time, expense, and rigors of formal
11 litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re*
12 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th
13 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

14 **a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

15 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
16 determine only whether it is within the range of possible approval such that notice to the class of its
17 terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91
18 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of
19 reasonableness,” it should grant preliminary approval of the class action settlement. *See, e.g., North*
20 *County Contr.’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v.*
21 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining
22 whether the settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the
23 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action
24 status through trial, the amount offered in settlement, the extent of discovery completed and the stage of
25 the proceedings, the experience and views of counsel, the presence of a governmental participant, and
26 the reaction of the class members to the proposed settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.

27
28 ¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 App. 4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the
2 proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached
3 through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
4 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
5 objectors is small.” *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (C.D.
6 Cal. June 10, 2005) (“It is established that the absence of a large number of objectors to a proposed
7 class action settlement raises a strong presumption that the terms of a proposed class settlement action
8 are favorable to the class members”).

9 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
10 **Negotiations Between the Parties**

11 Settlement of this case was reached only after substantial litigation and extensive arm’s length
12 negotiations lasting nearly thirteen (13) months, which included a full day mediation. *See* Decl.
13 Rodriguez, ¶¶ 3, 6-10. At all times, the negotiations were adversarial, although still professional in
14 nature. *See id.* Further, while Plaintiff contends she would ultimately prevail on the claims and the
15 issue of certification, this is not a certainty and there is substantial risk in proceeding to further litigation.
16 *See id.* The ability to secure a guaranteed settlement now and ensure Class Members receive some
17 compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating
18 factor in reaching this settlement. *See id.*

19 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
20 **Information to Enter Into an Informed and Reasonable Settlement**

21 The Parties were in possession of all necessary information during the negotiations. The Parties
22 engaged in substantial informal discovery, which included all necessary components for evaluating the
23 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiff was in possession of
24 this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to
25 make a reasonable estimation of Defendants’ potential liability. *See id.* For these reasons, the
26 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
27 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
28 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

1 **iii. Plaintiff's Counsel are Experienced in Similar Litigation**

2 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
3 actions. *See* Decl. Rodriguez, ¶¶ 12-18. Thus, Plaintiff's counsel are qualified to evaluate the class
4 claims, the value of settlement versus moving forward with litigation, and viability of possible
5 affirmative defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in
6 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
7 benefit to Class Members. *See id.*

8 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
9 **Plaintiff's Case and the Risks and Costs of Further Litigation**

10 Plaintiff's claims and the ability to obtain and maintain certification all the way through trial
11 were heavily disputed by Defendants. *See* Decl. Rodriguez, ¶ 5. A review of the Agreement's terms
12 does not give rise to any doubts about its fairness. Based on the records and facts of this case, Plaintiff
13 has secured a gross recovery of approximately 10% and a net recovery of approximately 5% of the
14 claims' maximum value. *See id.* at ¶¶ 9-10. Additionally, the average net award per class member is
15 approximately \$543.55. *See id.* This settlement is a reasonable compromise of the class and PAGA
16 claims, and is within the percentile ranges of the total available damages that have been approved in
17 other class settlements. *See Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220
18 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir.
19 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that
20 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney's
21 fees was higher than median percentage for recoveries in shareholder class action settlements,
22 averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS
23 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members was
24 approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*,
25 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11%
26 of the projected maximum damages available and a net recovery of approximately 6.7% of the
27 projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015)

(approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery).

v. The Proposed Settlement is a Reasonable Compromise of Claims

The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record before the trial court was sufficient, having included the number of class members, payroll data, declarations describing hours and overtime worked, as well as variances in duties and rest and meal period experience, and a companion action alleging less than \$5,000,000 in damages. This information constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*.” *Id.*

Plaintiff similarly relied upon payroll data and Class Members’ data to determine the realistic potential damages suffered by the class as a whole. *See* Decl. Rodriguez, ¶¶ 6-10. This analysis allowed Plaintiff to determine the extent and frequency of potential violations on all claims as to all Class Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative class that is within the range of what has been found to be sufficient in several other cases. *See, supra*, Section VI.a.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and

approximately \$800 per class member). This settlement represents a reasonable compromise given the percentage of the total demand that was secured, the average recovery per class member, the Court's ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See Decl. Rodriguez*, ¶¶ 9-10.

vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the Putative Class Is Reasonable and Routinely Awarded by Courts

The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 enhancement payment).

In this case, Plaintiff provided and explained documents, being available at all times to discuss the class claims with Plaintiff's counsel. *See Decl. Rodriguez*, ¶ 7; *Decl. Trotter*, ¶¶ 4-8. Plaintiff spent a significant amount of time pursuing wage and hour claims for the benefit of all Class Members. *See id.* Plaintiff brought this action knowing there would be a delay in any payment as the litigation progressed, rather than proceeding only with individual claims in front of the California Labor Commissioner. *See id.* Payment of \$5,000.00 to Plaintiff is appropriate given the risk, assistance, time required in bringing this case and resolution of this case.

vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable and Customarily Approved by Courts

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other

1 than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
2 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
3 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
4 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
5 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
6 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
7 burden alone.” *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
8 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
9 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
10 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

11 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
12 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
13 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886
14 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
15 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
16 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
17 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
18 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
19 Plaintiff and Plaintiff’s counsel were able to negotiate on behalf of the class, and the fee can be shifted
20 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
21 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
22 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
23 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
24 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
25 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

26 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
27 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
28

§14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are generally approved as reasonable in wage and hour settlements below \$10 million:

More particularly, courts may award attorneys fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million. *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five recent wage and hour class actions where federal district courts approved attorney fee awards ranging from 30 to 33%); *Singer v. Becton Dickenson and Co.*, 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee award of 33.33% of the common fund and holding that award was similar to awards in three other wage and hour class action cases where fees ranged from 33% to 40%); *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841 (E.D. Ca. Nov. 14, 2007).

See Martin v. Ameripride Servs., 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff's request of thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further supports finding the fee request reasonable").

These factors support Plaintiff's request for reasonable attorneys' fees. The typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation depending on the complexity of the case. In class action litigation, the typical percentage negotiated between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff's

1 request of 35% (\$70,000) falls within these typical fee arrangements. *See* Decl. Rodriguez, ¶ 19. The
2 quality of counsel and the average net size of settlement payments to Class Members (\$543.55) also
3 support the fee request when compared to other settlements courts have considered as good results. *See*
4 *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class
5 Members will receive an average of approximately \$198.70, with the highest payment to a Class
6 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
7 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
8 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
9 results achieved in this case were very favorable. Class members are provided with immediate
10 monetary relief, with an average award of around several hundred dollars and a minimum award of
11 \$50”).

12 Plaintiff’s counsel also seeks reimbursement of approximately \$9,850.25 for the expenses they
13 have and will continue to incur while prosecuting this litigation through any compliance hearing(s).
14 This is less than the \$15,000 provided for in the Agreement. An itemization for these costs is being
15 filed with this motion as Exhibit E. All expenses were necessarily incurred to properly litigate this
16 case. *See id.* The appropriate analysis in determining whether particular costs are compensable is
17 whether they are of the type typically billed by attorneys to paying clients in the marketplace. *Harris v.*
18 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees
19 those out-of pocket expenses that ‘would normally be charged to a fee paying client.’”); *Abrams v.*
20 *Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for
21 them); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses
22 reimbursable if normally billed to client). The categories of expenses for which Plaintiff’s counsel seek
23 reimbursement here are categories normally charged to hourly clients and, therefore, should be
24 reimbursed out of the common fund. *See* Decl. Rodriguez, ¶ 19. The \$6,550 in Settlement
25 Administrator Costs is also within ranges approved by Courts and should be approved in this case. *See*
26 *Patel*, 2019 WL 2029061, *2 (\$5,261 for settlement administrator’s fees was not excessive where
27 PAGA group consisted of 40 employees); Exhibit D; Decl. Rodriguez, ¶ 20. This is less than the
28 \$15,000 provided for in the Agreement. Exhibit A, ¶ 5.3; Decl. Rodriguez, ¶ 20.

Any allocated amounts not ultimately awarded by the Court will be distributed to Class Members pro rata. See Exhibit A, ¶¶ 5.2-5.4, 5.8.

b. Provisional Certification of the Class is Appropriate

Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three factors: (1) common questions of law or fact predominate; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. See Exhibit A.

i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative Class Members can be readily identified through employee personnel and payroll files. See *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 186 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. See *Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. See *Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. See *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² See *Richmond*, 29

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. See *Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
2 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
3 named representative are typical of those of the class, though “they need not be substantially identical.”
4 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

5 The common questions of law and fact in this case stem from Plaintiff’s contention that
6 Defendants violated California law by 1) failing to pay Plaintiff and Class Members’ split shift
7 premiums, 2) failing to pay Plaintiff and Class Members for all hours worked due to Defendants’
8 failure to pay Plaintiff and Class Members for the time spent waiting for clients to be released from
9 schools, 3) failing to provide Plaintiff and Class Members with off-duty meal and rest periods, 4)
10 failing to pay Plaintiff and Class Members meal period and rest period premiums for missed meal and
11 rest periods and for the on-duty meal and rest periods, 5) failing to pay for all hours worked stated in
12 Plaintiff’s and Class Members’ timecards, and 6) engaging in unlawful inquiry into the criminal
13 history of Class Members. *See Exhibit B*. The waiting time penalties, unfair competition, and PAGA
14 claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same wage
15 and hour remedies under state law. Under these specific circumstances, the commonality and
16 predominance requirements are satisfied. Regarding the typicality requirement, Plaintiff contends she
17 suffered from the same unlawful wage and hour policies, treatment, and circumstances as Class
18 Members did, will request the same remedies, and will rely on the same methods of proof to establish
19 liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

20 **iii. The Adequacy Requirement is Met**

21 The adequacy of representation requirement is met if the named representative and counsel have
22 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
23 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
24 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
25 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
26 number of workweeks they worked for Defendants. *See Exhibit A*. Finally, any settlement class
27 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
28 of workweeks stated in the Notice of Settlement (Exhibit F).

There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's counsel have pursued the wage and hour claims made in the operative Complaint vigorously on behalf of the class. Although Plaintiff also brought individual claims in this action, the settlement of those claims is not contingent on the outcome of the class claims or approval of the class settlement in any way. *See* Decl. Rodriguez, ¶ 34; Decl. Trotter, ¶ 10. Furthermore, the discount to the value of Plaintiff's individual claims is similar to the discount made to the value of the class claims, showing there was no improper preferential treatment given to Plaintiff's individual claims when resolving this litigation. *See id.* Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter engaged Defendants' counsel in settlement discussions over the course of approximately thirteen (13) months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

VII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and conditionally certify the class for settlement purposes; grant preliminary and conditional approval of the proposed settlement; including Plaintiff's class Representative Enhancement Payment, the payment to the LWDA under PAGA, and Class counsel's application for reasonable attorneys' fees and costs; approve the proposed notification procedures, including the Notice of Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of Plaintiff's proposed order is being filed concurrently herewith.

Shimoda & Rodriguez Law, PC

Dated: February 2, 2024

By: 
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
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