David R. Markham (SBN 071814)
dmarkham@markham-law.com
Lisa Brevard (SBN 323391)
lbrevard@markham-law.com
THE MARKHAM LAW FIRM
888 Prospect St., Ste. 200
La Jolla, CA 92037
Tel.: (619) 399-3995 / Fax: (619) 323-1684

Isam Khoury (SBN 58759)
ikhoury@ckslaw.com
Michael D. Singer (SBN 115301)
msinger@ckslaw.com
Maggie Realin (SBN 263639)
mrealin@ckslaw.com
COHELAN KHOURY & SINGER
605 C St., Suite 200
San Diego, CA 92101
Tel.: (619) 595-3001 / Fax: (619) 595-3000

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

CHETERRA YOUNG, an Individual, on behalf of herself and all others similarly situated,

Plaintiff,

v.

PFT ALEXANDER, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendant.

Case No.: 23STCV07449

CLASS AND REPRESENTATIVE ACTION

Assigned For All Purposes To:
Hon. Kenneth R. Freeman

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Date: March 27, 2025
Time: 10:00 a.m.
Dept.: 14

Complaint filed: April 5, 2023
Trial Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

Plaintiff Cheterra Young seeks preliminary approval,[1] under Rule 3.769(c) of the California Rules of Court, of a $225,000 non-reversionary Settlement on behalf of approximately 59 current and former non-exempt employees who worked for Defendant PFT Alexander, Inc. in California between April 5, 2019 and July 30, 2024.

This is a cash settlement, and all Class Members who do not opt out will receive a payment, without submitting a claim form. Plaintiff alleges that Defendant did not keep records of non-exempt employees' meal breaks, in violation of California law, and that its overtime, and meal and rest break policies were unlawful, causing her to work off-the-clock and forego breaks. Plaintiff further alleges derivative claims for inaccurate wage statements and untimely paid wages at termination of employment, as well as a cause of action for violations of PAGA and UCL.

The parties reached this settlement after mediation before an experienced neutral, Kevin Barnes, Esq. Plaintiff argues that Defendant's maximum potential liability for all claims, excluding PAGA penalties,[2] is $2,034,390. This assumes the class would collect meal premiums every day, rest premiums once a week, and would be compensated for 1 hour of overtime, every week. Thus, the $225,000 Maximum Settlement Amount represents almost 16% of Defendant's maximum potential liability for all of Plaintiff's non-PAGA claims, and over 11% of Plaintiff' direct overtime and meal and rest break claims. This is an excellent result in light of the risks of continued litigation, and within the range of typical class action settlement recoveries.

II. FACTS AND PROCEDURE

Plaintiff manufactures, sells and services flow measurement and control systems in the petroleum, chemical, pharmaceutical, aviation, food & beverage, wastewater, and municipal water industries. It has three locations in California, in Signal Hill, Bakersfield and in the Bay Area, as well as a fleet of service and calibration rigs in the Western United States.[3]

Plaintiff worked as a non-exempt service coordinator between June 2022 and March 2023 at

---

[1] This memorandum exceeds the 15-page limit set forth in CRC 3.1113 because it seeks class certification as part of the settlement approval process, which has a 20-page limit.

[2] The settlement of Plaintiff's PAGA claims is discussed in section IV(A)(3), below.

[3] https://www.pft-alexander.com/about.html.

Defendant's Signal Hill location. She was responsible for dispatching technicians who serviced flow management and control systems, providing quotes to customers, and technician billing. Decl. of Cheterra Young ("Young Decl."), ¶3.

On April 5, 2023, Plaintiff filed a class action complaint against Defendant (and submitted a PAGA letter on the same day), alleging claims for unpaid time, meal and rest break violations, failure to keep accurate payroll records, and derivative wage statement, waiting time and UCL claims. Plaintiff amended her complaint on June 12, 2023, adding a cause of action under PAGA. Decl. of Maggie Realin ("Realin Decl."), ¶2.

Plaintiff alleges Defendant failed to record meal breaks for Plaintiff and other non-exempt employees, until around April 26, 2023, after Plaintiff submitted her PAGA letter, advising the LWDA and the Defendant of this claim. Plaintiff further alleged that even if she attempted to take a meal break, she was sometimes interrupted with work matters, such as answering urgent quote requests, or responding to the management's questions. Young Decl., ¶6. For the same reasons, Plaintiff was occasionally unable to take her rest breaks. *Id.*, ¶7. A review of Plaintiff and other employees' records shows Defendant has not paid any meal or rest break premiums during the class period. Realin Decl., ¶3.

Plaintiff also alleged that Defendant's policies do not comply with California law. For example, Defendant's meal break policy advises employees that their meal periods must begin before the start of the 6th hour of work, even though California law provides that the meal break must begin before the end of the 5th hour of work. Realin Decl., ¶4. Also, the policy does not advise employees they are entitled to premiums if they work through a meal (or rest) break. *See id.*

Further, Defendant's rest break policy provides that "due to client needs, an employee may be asked to interrupt their rest periods, assist the client and take their rest period at a later time." Realin Decl., ¶5. However, Plaintiff argues that the applicable Wage Order does not impose such conditions on rest periods. A rest break must be off-duty and free from any work-related interruption; if this requirement is not met, an employee is entitled to a premium. *Id.*, ¶5; *see Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 269 (2016) (rest breaks must be free of duty and employer's control).

///

With respect to Plaintiff's unpaid wages claim, Defendant's policy does not allow overtime without advanced approval from management. *Id.*, ¶6. However, Plaintiff argued that the need for overtime is often not known in advance, and a pre-approval from a manager is not feasible. This creates a Catch-22 situation, resulting in off-the-clock work. Further, the management advised Plaintiff and other employees that they were not allowed to clock in until the start of their shifts. *Id.*, ¶6.

Plaintiff further alleged derivative claims for inaccurate wage statements and for waiting time penalties, and violations of the UCL. *Id.*, ¶7.

At the time this action settled, Plaintiff's motion for class certification was due on August 21, 2024. *Id.*, ¶8.

III. SETTLEMENT REACHED WITH MEDIATOR'S ASSISTANCE

Plaintiff retained counsel with extensive experience in prosecuting wage and hour class actions. Decl. of David Markham ("Markham Decl."), ¶¶2-8; Decl. of Michael Singer ("Singer Decl."), ¶¶3-13.

The parties carefully investigated the claims and facts alleged in this action, and made a thorough study of the legal principles applicable to the claims asserted against Defendant. Defendant produced its employee handbook containing policies at issue in this action, and a 5% class sample of time and pay records for class members (Plaintiff and two other employees). This sample is sufficient for purposes of this settlement, because Defendant does not dispute that until approximately April 26, 2023, it did not record meal break periods for *any* employee, nor paid any meal or rest break premiums. Realin Decl., ¶9. As a result of investigation and discovery, the parties had a clear understanding of their respective claims and defenses. *Id.*, ¶9.

On May 1, 2024, the parties mediated this case before Kevin Banes, Esq., of Kevin T. Barnes Mediation, who is vastly experienced in wage and hour class actions. Following mediation, the parties reached the settlement in principle, and executed a Memorandum of Understanding. After additional weeks of arms'-length negotiations, the parties finalized the terms of the settlement agreement. Realin Decl., ¶10. The executed Settlement Agreement is attached as **Exhibit A** to Singer Declaration.[4]

[4] The Settlement Agreement was submitted to the LWDA concurrent to the filing of this motion, and proof of submission is attached as **Exhibit B** to Singer Declaration. Singer Decl., ¶¶15, 16.

IV. SUMMARY OF THE RISKS TO FURTHER LITIGATION

Plaintiff recognizes several risks to succeeding on certification and the merits of this action. *Id.*, ¶23.

First, as typical in a meal break case, Plaintiff would rely on a timecard review of the missing meal break recordings to assert a presumption under *Donohue v. AMN Servs., LLC*, 11 Cal.5th 58 (2021) that meal breaks were not provided. However, Defendant could potentially argue that the rebuttal of this presumption would involve individual examination of all employees, and doing so could not manageably occur on a classwide basis. *Id.*, ¶23. Further, there is no free-standing cause of action for failure to keep accurate payroll records under Labor Code section 1174(d), as the only remedies available for this claim are penalties under PAGA. *Byrd v. Masonite Corp.*, 215 F.Supp.3d 859, 864-65 (C.D. Cal. 2016).

Regarding Plaintiff's argument about unlawfulness of Defendant's policies, Defendant would likely assert that whether the policy states a meal break will be provided before the start of the 6th hour of work as opposed to before the end of 5th hour of work is a distinction without a difference, as both variations mean the same thing. Realin Decl., ¶24. Likewise, Defendant will argue there is nothing unlawful in requiring overtime pre-approval, and that its policy specifically prohibits off-the-clock work. *Id.*, ¶24. Further, records Defendant produced showed it paid substantial overtime. *Id.*, ¶24.

With respect to Plaintiff's rest break claims, Defendant will argue that the law does not require that employees be advised about their entitlement to premiums. Further, damages and penalties calculations could present complicated issues, as employees did not have to clock out to take rest breaks, or otherwise record them. *Id.*, ¶25.

Lastly, with respect to wage statement and untimely wages claims, they are derivative of Plaintiff's unpaid time, and meal and rest break claims, so if Ms. Young does not prevail on the underlying claims, her derivative claims would also fail. *See Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508, 524-25 (2009). Defendant will likely assert that wages that were not paid cannot form the basis of these derivative claims based on *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018). Realin Decl., ¶26. Also, most recently, the California Supreme Court held that a good-faith defense applicable to Labor Code section 203 extends to Labor Code section 226, in that "if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law."

Naranjo v. Spectrum Sec. Servs., Inc. __ Cal.5th___, 2024 Cal. Lexis 2438, at *3 (2024), which could prevent Plaintiff's recovery of wage statement penalties. Realin Decl., ¶27.

V. SUMMARY OF SETTLEMENT TERMS

A. Settlement Relief

Maximum Settlement Amount ("MSA"):	$225,000, non-reversionary and non-claims made. Settlement Agreement ("SA"), ¶¶1.20, 5.1, 8.1.
Deductions from the MSA:	• Attorneys' fees not to exceed 33.33% of the MSA ($75,000); • Out-of-pocket litigation costs not to exceed $7,500; • Service Payment to Plaintiff not to exceed $10,000; • PAGA penalties of $11,250 (of which 75% or $8,437.50 will be paid to the LWDA and 25% or $2,812.50 to PAGA-Eligible Employees, who are Class Members employed at any time from April 5, 2022 through July 30, 2024; • Administration costs of approximately $3,773.88. *Id.*, ¶¶1.2, 1.27, 1.4, 5.2, 5.4, 5.7, 6.1, 8.1, 8.3.
Net Settlement Amount ("NSA"):	Approximately $117,476. *See id.*, ¶1.24
Definition of the Settlement Class:	All current and former non-exempt, hourly-paid employees who worked for Defendant in California at any time from April 5, 2019 through July 30, 2024. *Id.*, ¶1.38.
Class Period	From April 5, 2019 through July 30, 2024. *Id.*, ¶1.9.
Definition of PAGA-Eligible Employees	All current and former non-exempt, hourly-paid employees who worked for Defendant in California at any time from April 5, 2022 through July 30, 2024. *Id.*, ¶1.29.
PAGA Period	From April 5, 2022 through July 30, 2024. *Id.*, ¶1.28.
The number of Class Members and workweeks worked during the Class Period	59 Class Members and 6,346 workweeks until April 15, 2024. *Id.*, ¶9.2; Realin Decl., ¶14.
The average individual settlement payment	$18.50 per workweek; or approximately $1,990 per class member (without accounting for the number of workweeks worked). *Id.*

1. *Settlement Formula and Distribution*

Participating Class Members will receive their Settlement Payments from the NSA based on the number of workweeks they worked during the Class Period (SA, ¶5.3), calculated as follows:

$$\frac{\text{Workweeks Worked by Class Member}}{\text{Total Workweeks Worked by all Class Members}} \times \text{Net Settlement Amount} = \text{Class Member's Payment}$$

Id.[5]

Defendant will pay employer's side payroll taxes in addition to the MSA. *Id.*, ¶1.18. Class members who do not opt out of the Settlement will release Defendant from all claims that relate to the causes of action asserted in this action – or those that could have been asserted in this action based on the facts alleged in Plaintiff's complaint. *See id.*, ¶¶1.33, 7.3, 11.1; *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521, 538-39 (2021). Plaintiff and the LWDA, acting on behalf of the PAGA-Eligible Employees, will separately release their claims for penalties under PAGA, based on any underlying claims and factual allegations that were alleged, or reasonably could have been alleged in Plaintiff's complaint and/or PAGA letter. SA, ¶1.33. The settlement notice will advise PAGA-Eligible Employees that they cannot exclude themselves from the PAGA portion of the settlement. *Id.*, Ex. 1 to SA (Notice) at 6.2; *see also* SA, ¶¶1.33, 7.1, 7.3.

Settlement checks will be valid and negotiable for 180 days. *Id.*, ¶8.8. Then, the Parties will seek the Court's approval to donate the funds represented by uncashed checks, plus interest, to the State Controller's Unclaimed Property Fund in the name of the intended recipient, pursuant to California Code of Civil Procedure Section 384(b). *Id.*

All Settlement Payments will be reported to the IRS and state tax authorities. Twenty percent (20%) of each class member's settlement payment will be allocated as wages, and 80% as penalties and interest, with withholding to apply only to the portion allocated to wages. *Id.*, ¶5.5. This allocation is based upon the nature of the claims; when allocating a portion of recovery to interest, and accounting for the fact that sections 226, 203, 1174(d) and 2698 provide for the payment of penalties, this tax allocation is reasonable. Realin Decl., ¶11. Class members shall seek their own tax advice regarding this Agreement. SA, ¶¶8.3, 11.3.

2. *Attorneys' Fees and Costs*

Subject to the Court's approval, up to $75,000 or 33.33% of the MSA, may be allocated to attorneys' fees, and up to $7,500 to litigation costs. SA, ¶¶1.4, 5.7. Courts in California wage and hour cases, where the common fund is under $10 million, tend to award attorneys' fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to five wage and hour class

[5] The PAGA Payment allocated to PAGA-Eligible Employees will be calculated similarly on a *pro rata* basis, based on the total amount of workweeks PAGA-Eligible Employees worked during the PAGA Period. *Id.*, ¶8.3.

actions where courts approved fee awards ranging from 30 to 33%). The trial court has discretion to award attorneys' fees based on either the lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 503 (2016). Class Counsel will brief the fee application using both methodologies, as cross checks.[6] Any portion of the requested attorneys' fees and costs not awarded to Class Counsel shall be part of the NSA to be distributed to class members. SA*,* ¶5.7.

3. *PAGA Payment to Labor Workforce Development Agency*

The Parties agreed $11,250, or 5% of the MSA will be allocated for payment under the PAGA. 75% of this amount ($8,437.50) will be paid to the LWDA, and 25% ($2,812.50) to PAGA-Eligible Employees. *Id.*, ¶¶1.27, 5.4. The PAGA penalties under this Settlement represent approximately 1.2% of the total potential PAGA penalties for all of Plaintiff's claims, assuming class members suffered 6 types of violations in every single pay period (1,510 pay periods times $100 multiplied by 6 penalties for unpaid time, meal and rest break violations, failure to maintain accurate payroll records, and derivative 226 and 203 claims, for maximum penalties of $906,000. Realin Decl., ¶12. The subsequent penalties should be calculated at $100, not $200 per pay period because under *Amaral v. Cintas Corp. No. 2,* 163 Cal.App.4th 1157 (2008), to recover $200 per subsequent violation, an employer must have been cited first, which has not occurred here. *Id.* at 1207-09; *see also Hernandez v. Best Buy Stores, LP*, 2017 WL 2445438, 2 (S.D. Cal. June 6, 2017) (holding, based on *Amaral,* that $100 penalty per pay period is warranted because "no court, commissioner, or any other authority had held [that] Best Buy misclassified" the general managers.").

Such allocation falls within the range of other approved PAGA settlements, as courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential penalties. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of 0.2% of the maximum, or $5 per pay period); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept. 28, 2016) (settlement allocating $10,000 to PAGA penalties where potential value was over $5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.*, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (approving $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL 3834873, at *2 (N.D. Cal. July 25, 2017) (finding that "$7,500

[6] 79% of the awarded attorneys' fees will be allocated to Cohelan, Khoury & Singer, and 21% to The Markham Law Firm. Singer Decl., ¶17. The client has given written approval to this split. *Id.*

PAGA payment is reasonable when measured against the total overall settlement [of $345,000] and the possible weaknesses in Plaintiff's case," or 2.2 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017) ($10,000 in PAGA penalties found reasonable).

4. *Settlement Administration Costs*

The parties selected Phoenix Settlement Administrators as the Settlement Administrator. SA, ¶1.37. The parties obtained bids from 4 administrators, and Phoenix's was the most competitive bid. Realin Decl., ¶13. The costs of the Administrator, estimated at $3,773.88, will be deducted from the MSA. SA, ¶8.1. The attached declaration of Michael Moore of Phoenix shows the qualifications and experience of the Administrator, procedures in place to protect the security of class data, the description of the notice procedure, and the anticipated costs of the notice. *See* Moore Decl.

5. *Service Payment to Class Representative*

Subject to Court's approval, Defendant will pay up to $10,000 from the MSA as an incentive award to Plaintiff for her services as a class representative. SA, ¶¶5.2, 8.1. Any portion of the requested Service Payment not awarded to Plaintiff shall be part of the NSA to be distributed to class members. *Id.*

B. Settlement Administration

Within 21 calendar days after the preliminary approval, Defendant will provide the Administrator with a class list containing class members' contact information and sufficient information to determine the total number of workweeks worked within the relevant time periods. SA, ¶7.2. Within 14 calendar days thereafter, the Settlement Administrator will send Class Notice to each class member as provided in this Settlement. *Id.*, ¶7.2. Settlement Administrator will also determine the eligibility for, and the amounts of, any Settlement Payments under the terms of this Agreement, process and distribute class members' payments, and process and mail tax payments to the appropriate state and federal taxing authorities. *Id.*, ¶¶5.5, 6.1, 7.1, 8.1, 8.2. Further, class members will also be able to contact the Settlement Administrator by telephone or e-mail, or access the settlement website,[7] if they have any Settlement questions or need assistance. *See* Class Notice, **Ex. 1** to the SA. Also, any objections to or opt-outs from the Settlement must be delivered to the Settlement Administrator. SA, ¶¶1.36, 7.3, 7.4.

///

[7] The website will contain settlement-related documents, including notice of final judgment. C.R.C., Rule 3.771(b).

VI. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA

There is a strong judicial preference for pre-trial settlement of complex class actions. *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). The trial judge exercises discretion in deciding whether to grant preliminary approval of a class action settlement and "great weight is accorded to [the] judge's views." *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1145 (2000). At this stage, a court limits its inquiry to the extent necessary to reach a reasoned judgment that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

In approving a settlement where the class has not yet been certified, the court must first determine that a class exists. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 619-20 (1997) (commonality must be shown at a preliminary approval stage, although not necessarily manageability). Then, the Court should examine the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

A. The Value of the Class Settlement is Reasonable (*Kullar* analysis)

The settlement amount of $225,000 derives primarily from Plaintiff's unpaid overtime, and meal and rest break claims. Realin Decl., ¶14. Defendant estimates there were approximately 6,346[8] workweeks worked by the class members through April 15, 2024. *Id.* The average hourly rate for class members is $34, and an overtime rate is $51. Based on the analysis of the produced data, Defendant's maximum potential exposure is as follows:

<u>Overtime claim:</u> **$323,646.** This is based on Plaintiff's investigation that class members worked approximately 1 hour of unpaid time every week. Realin Decl., ¶15. Thus, Defendant's exposure for overtime is as follows: 6,346 workweeks times 1 hour of unpaid overtime per week at $51 overtime rate = **$323,646**. *Id.*, ¶15. The minimum/regular wage claim is not valued, because class members were full time employees, so any off-the-clock work would be incurred at an overtime rate. *Id.*, ¶15.

<u>Meal break claim</u>: **$872,950**. Evidence in this action shows that from the beginning of the class period and until approximately April 26, 2023, Defendant did not keep records of meal break recordings, resulting in a 100% meal break violation rate. Thus, the meal break premium calculation is 5,135 workweeks

---

[8] The agreement contains an escalator clause, providing that Defendant has an option to either increase the Maximum Settlement Amount, or cut off the Class/PAGA Periods should the number of workweeks as of April 15, 2024 exceed 6,981. SA, ¶9.2.

until April 26, 2023 times 5 (every day) times $34 hourly rate = $872,950. *Id.*, ¶15.

Rest break claim: **$215,764.** This is based on 1 violation per workweek, based on Plaintiff's evidence that rest breaks were at times missed and interrupted due to work duties. The 6,346 workweeks multiplied by the 1 per workweek violation rate, multiplied by $34 hourly rate equals $215,764 in unpaid rest break premiums. *Id.*, ¶15.

Wage statement penalties: **$148,750**. There are 45 class members and 1,510 pay periods during the applicable limitations period. Defendant's maximum exposure is as follows: $50 initial violation *45 employees = $2,250; $100 subsequent violation * 1,465 pay periods (1,510 pay periods – 45) = $146,500, for a total of $148,750. This results in an average recovery of $3,055 per employee, so is under the $4,000/employee cap. *Id.*, ¶15.

Waiting time penalties: Plaintiff calculated daily wages for 58 former employees at $272 (8 hours at $34), times 30 days, for a total of **$473,280**. *Id.*, ¶15.

Thus, Defendant's potential maximum liability for Plaintiff's direct claims is **$1,412,360**, and an additional **$622,030** for Plaintiff' wage statement and waiting time penalties claims, for a total of **$2,034,390**. Thus, the MSA of $225,000 represents almost 16% of Defendant's maximum potential liability for Plaintiff's direct claims, and over 11% of Defendant's maximum liability for all Plaintiff's non-PAGA claims. *Id.*, ¶16. This result is well within the range of settlements commonly approved by California state and district courts. *Id. See also* section VI(B)(2) below for a detailed explanation.

B. The Proposed Settlement is Fair, Adequate, and Reasonable

The court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1801, *citing Officers for Justice*, *supra*, 688 F.2d. at 625. The "fair, reasonable and adequate" test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.,* 141 Cal.App.4th 46, 61 (2006). However, California courts have been urged to be flexible in dealing with class actions. *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 240 (2001), *citing Cartt v. Super. Ct.*, 50 Cal.App.3d 960, 970, n.16 (1975). Generally, the opinions of counsel should be given considerable weight because of counsel's familiarity with the litigation, and previous experience with cases such as this one. *Officers for Justice, supra,* 688 F.2d at 625; *7-Eleven Owners, supra,* 85 Cal.App.4th at 1151. At the preliminary approval stage, the Court considers if:

> (1) the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls with the range of possible approval.

In re Tableware Antitrust Litig., 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (citing Manual for Complex Litigation, ¶ 30.44 (2d ed.1985)). This Settlement meets all of these criteria.

1. <u>The Settlement is the Product of Serious, Informed and Noncollusive Negotiations</u>

This Settlement is the result of extensive negotiations. Realin Decl., ¶10. Class Counsel analyzed pre-mediation data and investigated class members' claims. *Id.*, ¶9, section III, *supra.* Class Counsel reviewed Defendant's policies, and prepared a damages model. *Id.*, ¶9.

The vigorous litigation of this case gave both parties a clear view of the strengths and weaknesses of their respective positions. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,* 186 Cal.App.4th 399, 410 (2010) (approving settlement where "considerable information [exists] from which to assess the strength of the class claims" and litigation risks); *Kullar v. Footlocker*, 168 Cal.App.4th 116, 129-130 (2008) (trial court should have sufficient information about the potential value of the case and litigation issues to independently review the reasonableness of the settlement.)

The parties participated in mediation before a private neutral with extensive experience in wage and hour class actions. Realin Decl., ¶10; section III(B), *supra.* That indicates the settlement was free of collusion. *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010); *Dunk, supra,* 48 Cal.App.4th at 1802-03. The parties have been cooperative, yet aggressive, and displayed capable and experienced advocacy on both sides. Accordingly, "[t]here is … every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379, 1392 (D. Ariz. 1989).

2. <u>The Settlement has no "Obvious Deficiencies" and Falls within the Approval Range</u>

"[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). Thus, when evaluating the amount offered in settlement, the Court should consider "the complete package taken as a whole," and the amount should "not be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625-28.

(i) The Class Recovery Compares Favorably with Similar Wage and Hour Class Action Settlements

Courts routinely approve settlements where the settlement amount is a lower percentage of the claimed amount of damages. *Thomas v. Cognizant Tech. Sols. U.S. Corp.*, 2013 WL 12371622, at *6 (C.D. Cal. June 24, 2013) (granting final approval in wage and hour action for settlement between 4.4% and 5% of maximum liability); *Villegas v. J.P Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (15%); *In re MyFord Touch Consumer Litig.*, 2019 WL 1411510, at *10 (N.D. Cal. Mar. 28, 2019) (6% of valuation); *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611, 623-24 (N.D. Cal. 2014) (settlement between 9% and 27% of total potential liability fair, adequate and reasonable given the uncertainty of continued litigation); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (approving settlement representing 10% of potential value). Simply put, "the fact that a proposed settlement may only amount to a fraction of the potential recovery does not mean that [it] should be disapproved." *7-Eleven Owners, supra*, 85 Cal.App.4th at 1150, citing *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

Here, the Settlement represents almost 16% of Defendant's maximum potential liability for Plaintiff' direct overtime, and meal and rest break claims, and over 11% of Defendant's maximum liability for all claims, without any risks, costs, and uncertainty of prolonged litigation. Realin Decl., ¶17. Without accounting for the length of each class member's employment, a class member will recover over $1,990 as a result of this settlement, or over $18.50 per workweek. *Id.*, ¶18. Based on the average hourly rate of $34, this amounts to recovery of <u>approximately **57** meal and rest break premiums, or approximately **38** hours of overtime wages per class member</u>. *Id.*, ¶18. This is an excellent result, and well within the range of approved settlement payments. *See e.g.*, *Villegas, supra,* 2012 WL 5878390, at *2, 6 (approving settlement with approximately $255 settlement payment per class member).

(ii) The Formula of Allocation based on Workweeks is Fair and should be Approved

Class members will receive a portion of the MSA based on the number of workweeks they worked during the class period. This formula is realistic because class members' individual recovery is proportionate to the amount of time they were employed with Defendant. Realin Decl., ¶19. As discussed in section IV, *supra*, considering the probability of lengthy litigation in the absence of a settlement, the risk that Plaintiff and the class members might not have obtain certification or succeed at trial, and the risk that the court could award less than $225,000 in damages, the settlement amount is reasonable. *In re*

Mego Fin. Corp. Sec. Litig., 213 F.3d at 458; *Sandoval*, 2010 WL 2486346, at *7.

3. The Settlement does not Improperly Grant Preferential Treatment to Class Representatives or Segments of the Class

Ms. Young will receive $10,000 each for her time and efforts in representing the Class. SA, ¶5.2. "Incentive awards [for class representatives] are fairly typical in class actions." *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010), citing *Rodriguez v. West Publ'g*, 563 F.3d 948, 958 (9th Cir. 2009); *Cellphone Termination, supra*, 186 Cal.App.4th at 1394. "Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as long-distance phone calls, which are reimbursable." *Clark v. Am. Residential Servs.*, 175 Cal.App.4th 785, 804 (2009), citing *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992).

Here, the service payment to Plaintiff is based on the extent of Plaintiff's participation in this action and not conditioned upon Plaintiff's support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1165 (2013). Plaintiff assisted in investigation, participated in multiple call conferences with counsel, provided and reviewed documents, and was on standby during mediation. *See* Young Decl., ¶¶10-12.

Courts award incentive awards in this range. *Ross v. U.S. Bank Nat'l Ass'n*, 2010 WL 3833922, at *3 (N.D. Cal. Sept. 29, 2010) (approving an award of $20,000 to each of four named Plaintiff based on their contributions to litigation and the risk that being a class representative would harm their reputation); *Ridgeway v. Wal-Mart Stores Inc.,* 2017 WL 4071293, at *19 (N.D. Cal., Sept. 14, 2017) ($15,000 incentive awards for each of the named Plaintiff awarded); *Low v. Trump University, LLC*, 246 F.Supp.3d 1295, 1316 (S.D. Cal. 2017) ($15,000 incentive award approved where Plaintiff "devoted significant amounts of time and energy" to the action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *17 ($25,000 for each class representative in wage and hour action). Thus, the proposed service payment is reasonable.

4. The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary Approval

"A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." *Nat'l Rural Telecomms. Corp.*, *supra*, 221 F.R.D. at 527. Here, before settling this action, the parties had a thorough understanding of their respective claims and defenses, as this action has been litigated for over a year. *See* section III, *supra*; Realin Decl., ¶¶4-7, 9, 20. Before mediation, Class

Counsel had investigated class members' claims, examined documents and data, and performed damage calculations. *Id.*, ¶¶9, 21. At the time of mediation, the parties understood their respective positions. *Id.*, ¶21. As a result of the work performed in this case, the real value of the class claims was well known, and Class Counsel determined that the Settlement with Defendant is fair, reasonable, and adequate. *Young v. Polo Retail, LLC,* 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007).

C. The Proposed Class Meets the Qualifications for Certification for Settlement Purposes.[9]

To certify a class, Plaintiff need to show that "the question is one of a common or general interest, of many persons, or…the parties are numerous, and it is impracticable to bring them all before the court." Cal. Code of Civ. Proc. §382. Plaintiff needs to prove that the class is both ascertainable and that there is a well-defined community of interest among class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.,* 34 Cal.4th 319, 326 (2004). A test for "community of interest" consists of the following prongs: (1) there are predominant common questions of law or fact; (2) class representatives have claims typical to those of the class; and (3) class representatives can adequately represent the interests of the class. *Id.*

1. <u>An Ascertainable and Numerous Class Exists</u>

A class is considered ascertainable when: (i) under the class definition the members are clearly identifiable, and (ii) the members can be located and notified through a reasonable expenditure of time and money. *See Reyes v. San Diego County Board of Supervisors*, 196 Cal.App.3d 1263, 1274-75 (1987); *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919-20 (2010). Class members are ascertainable when they can be easily identified by reference to official or business records. *Archer v. United Rentals, Inc.*, 195 Cal.App.4th 807, 828 (2011); *Sevidal*, 189 Cal.App.4th at 919. Here, the Class is composed of approximately 59 current and former non-exempt employees of Defendant in California, who can be identified and located from Defendant's personnel and payroll records. In California, as few as ten (10) or twenty-eight (28) members satisfy numerosity. *Bowles v. Super. Ct.*, 44 Cal.2d 574 (1955); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Thus, numerosity is satisfied, and the class is ascertainable.

2. <u>Common Issues of Law and Fact Predominate over any Individual Issues</u>

"Claims alleging that a uniform policy consistently applied to a group of employees is in violation

[9] Defendant agrees to certify a class for settlement purposes only, and their agreement to do so shall not be construed as an admission of the propriety of class certification outside of the settlement context. SA, ¶¶3, 7.5, 9.1, 10.2.

of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." *Brinker, supra,* 53 Cal.4th at 1033. Here, Plaintiff alleges Defendant's overtime and meal and rest break policies are facially unlawful, which is a common question applicable to all class members across the board. Because these issues are common to all class members, a class action is superior to numerous individual actions, and the maintenance of this action as a class action will save judicial resources, and help avoid inconsistent judgments. *See Savon Drugs*, *supra*, 34 Cal.4th at 326. Class members' interests are relatively small, so they are unlikely to prosecute separate actions. Plaintiff's claims arise from her employment with Defendant in California.

3. Plaintiff's Claims are Typical of the Claims of Class Members

Typicality does not mean that the interests of Plaintiff must be identical to those of absent class members. *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983); *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). They only need to be "reasonably co-extensive with those of absent class members." *Parsons v. Ryan,* 754 F.3d 657, 685 (9th Cir. 2014). Also, the representative plaintiff must be a member of the class she seeks to represent. *La Sala v. American Sav. & Loan Assn.*, 5 Cal.3d 864, 875 (1971). Here, Plaintiff's claims arise from the same facts and legal theories as the class members' claims. Plaintiff was subject to the same policies and practices of Defendant with respect to timekeeping, meal and rest breaks. Young Decl., ¶¶5-7. Thus, typicality is met.

4. Plaintiff and Class Counsel will Adequately Protect the Interests of the Class

To meet adequacy, the named plaintiff must be represented by counsel qualified to prosecute class actions of this type, and the named plaintiff's interests cannot be antagonistic to those of the class. *See McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, Plaintiff retained counsel with extensive experience in prosecuting wage and hour class actions. Markham Decl., ¶¶2-8; Singer Decl., ¶¶3-13. Plaintiff has the same interests as the rest of the class, because she has allegedly been injured in substantially the same manner. Young Decl., ¶¶5-7. Thus, the Court should certify Plaintiff's class claims for Settlement purposes.

VII. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED

A. Proposed Notice Plan

Within 14 calendar days after receiving class data from Defendant, the Administrator will send Class

Notice to class members via first class mail. SA, ¶7.2. First, the Administrator will run a check of the class members' addresses against those contained in the USPS's National Change of Address database, and take any other appropriate steps to validate the correctness of the addresses provided by Defendant. *Id.* If the Notice is returned with the forwarding address, the Administrator will use the forwarding addresses to locate the missing class members, and re-mail the Notice. *Id.*, ¶1.7. If a Notice is returned as non-deliverable with no forwarding address, the Administrator shall conduct an advanced skip trace to locate the most current address, and resend the Notice to any updated address within five (5) calendar days. *Id.* Any responses from the class member (*i.e.*, a dispute regarding calculation of workweeks, a Request for Exclusion, or an objection) are due to the Administrator by the Response Deadline, or within fifteen (15) calendar days from the date of re-mailing, whichever is later. *Id.*

The Class Notice summarizes the terms of the Settlement Agreement, advises the class members of their estimated individual settlement payment, and informs them of their right to object to or exclude themselves from the Settlement within 60 days after the Notice mailing. **Ex. 1**. Because this is the California-only class, and the mailing will occur only in California, 60 days to opt out from or object to the Settlement is sufficient. Realin Decl., ¶22. Further, because class members worked in California, communicating with customers on a daily basis in English, English-only notice is sufficient. Young Decl., ¶3.

B. The Proposed Notice to the Class is Fair and Adequate

The parties agreed on the language of the class notice. *Id.* The threshold requirement regarding the sufficiency of class notice is whether the means proposed for distributing the notice are reasonably calculated to apprise the class of the action, the proposed settlement, and the right to opt out of or object to the settlement. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950); *see also* Cal. Rules of Court, Rule 3.766.

Here, the Notice is sufficient, because it gives class members, in a clear language: (1) basic information about this action and the Settlement; (2) an estimate of the weeks class members worked during the Class Period, and an explanation how class members can dispute this calculation; (3) an explanation how the payout from the Settlement will be calculated for each class member, and an estimate of a class member's Settlement Payment; (4) an explanation how class members can exercise their right to opt-out from, or object to, the Settlement; (5) an explanation that any claims against Defendant that could have been litigated in these two actions will be released if the class member does not opt out, and that PAGA claims will be released whether or not a class member opts out of the class portion of the settlement; (6) name of Class Counsel and information regarding attorneys' fees and costs; (7) the date of the Fairness Hearing and an explanation of eligibility to appear at the Fairness Hearing; and (8) the telephone and e-mail number, as well as website address, where class members can obtain additional information. *See* Ex. 1 to SA (proposed Class Notice).

Thus, the Notice plan proposed by the Settlement is fair and adequate, and complies with the California Rules of Court, Rules 3.766 and 3.769(f).

VIII. CONCLUSION

The proposed Settlement is fair, reasonable and adequate, and warrants preliminary approval.

Respectfully submitted,

THE MARKHAM LAW FIRM
COHELAN KHOURY & SINGER

Dated: August 29, 2024

Isam C. Khoury
Michael D. Singer
Maggie Realin
Attorneys for Plaintiff