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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**
10

11
12 PRICILLA COOPER, as an individual and
on behalf of all others similarly situated,

13
14 Plaintiff,

15 v.

16 AMTEC HUMAN CAPITAL, INC., a
17 California Corporation; THE CLOROX
COMPANY, a Delaware Corporation;
18 THE CLOROX INTERNATIONAL
COMPANY, a Delaware Corporation; and
19 DOES 1-100, inclusive,

20 Defendants.
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Case No.: 23CV038864

Assigned for All Purposes to:
Hon. Michael Markman
Dept. 23

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Brandon K. Brouillette,
Pricilla Cooper, and Jodey Lawrence; [Proposed]
Order]

Date: September 24, 2024
Time: 10:00 a.m.
Dept. 23

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1 **I. INTRODUCTION**

2 Plaintiff Pricilla Cooper hereby moves the Court for an order granting preliminary approval to a
3 proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of
4 approximately 200 individuals employed by defendant Amtec Human Capital, Inc. (“Amtec” or
5 Defendant”) in California and classified as non-exempt who worked for Defendant and were placed with
6 The Clorox Company or The Clorox International Company during the Class Period of June 16, 2019 to
7 July 13, 2024. The proposed \$300,000 settlement will provide about \$136,500 in cash payments to the
8 class, with an average award currently estimated at about \$683. The balance of approximately \$163,500
9 will cover reasonable attorney’s fees and actual litigation costs, settlement administration costs, and an
10 enhancement award to plaintiff. The settlement is the product of Plaintiff’s pre-filing investigation,
11 formal discovery and a pre-mediation exchange of information, and arms-length negotiations overseen
12 by experienced mediator Steve Pearl, Esq.

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

21 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

22 Defendant Amtec provides staffing services and temporary help to clients in several industries,
23 including aerospace, construction and engineering, and manufacturing. Plaintiff was a direct hire of
24 Amtec and assigned to work at facility of former Defendant The Clorox Company,¹ where she worked
25 as a warehouse worker, repacker, and palleter from aaround September 2021 to June 2022, when she
26 was terminated. [Declaration of Brandon K. Brouillette (“Brouillette Decl.”), ¶ 4.]

27 Plaintiff alleges a number of wage and hour violations by Defendant. First, she alleges a
28 failure to provide all required meal and rest breaks, and that Defendant had a practice of “auto-

deducting” 30 minute meal periods regardless of whether such meal periods actually were taken or lasted a full 30 minutes, resulting in lost hours worked when meal breaks were missed or cut short. Plaintiff also alleges this same policy resulted in meal period violations and also that Amtec failed to provide compliant meal periods before the end of the fifth hour of work and pay meal period premiums when required. She further alleges rest break violations based on a non-compliant written policy and failure to provide all required rest breaks. Lastly, she alleges Defendant failed to reimburse employees for use of their personal cellular devices for company business. [Brouillette Decl., ¶ 6.]

Based on these allegations, Plaintiff’s filed a class action lawsuit alleging wage and hour violations against Defendant captioned *Pricilla Cooper v. Amtec Human Capital, Inc., et al.* initiated on June 16, 2023, and also filed a separate PAGA-only lawsuit alleging wage and hour violations against Defendant captioned *Pricilla Cooper v. Amtec Human Capital, Inc., et al.* initiated on July 19, 2023. [Brouillette Decl., ¶ 6.]

Amtec has at all times denied Plaintiff’s allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, that it provided employees with required meal and rest breaks or paid the required compensation for any documented meal/rest violations. Additionally, Amtec strongly contends the case cannot be maintained as a class action, arguing for example that to the extent class members missed meal and/or rest breaks, that such breaks were non-compliant, or that class members had to sue their own phones for work it was intermittent and infrequent and evidence of such missed breaks or phone use would be anecdotal, and therefore individualized issues would predominate. [Brouillette Decl., ¶ 7.]

Once the matter was at issue, the Parties initiated written discovery and began meeting and conferring regarding discovery, law and motion, and other case management issues, and ultimately agreed to attempt early mediation. The Parties also agreed on a protocol for an exchange of additional documents and information before the mediation to facilitate the settlement discussions. Consequently, Plaintiff’s counsel reviewed payroll records, compensation plans, personnel policies/handbooks, meal and rest break policies, personnel files, and a random

¹ The Clorox Company and The Clorox International Company both are being dismissed from the case as part of the settlement.

1 of sampling of Class Member paystubs and time records. Defendant also provided data regarding
2 the total number of putative class members, the estimated total amount of workweeks and pay
3 periods they worked, average pay rates, and information regarding other non-hourly
4 compensation, among other relevant data. [Brouillette Decl., ¶ 8.]

5 The Parties then engaged Steve Pearl, Esq., a respected professional neutral with
6 substantial wage and hour and class action experience. In May 2024, the Parties participated in a
7 full day mediation with Mr. Pearl. Throughout the day, the arms-length negotiations were hard-
8 fought and adversarial as the Parties exchanged extensive information on their legal and factual
9 positions, and made numerous offers and counter-offers, and ultimately reached agreement on all
10 major issues. The Parties then collaboratively drafted the Class Action and PAGA Settlement
11 (“Settlement Agreement”) setting forth the settlement terms now before the Court for approval.
12 A fully-executed, true and correct copy of the Settlement Agreement is attached to the Brouillette
13 Declaration as Exhibit 1. [Brouillette Decl., ¶ 9.]

14 **III. THE PROPOSED SETTLEMENT TERMS**

15 Under the settlement, Amtec will pay \$300,000 into a common fund, the Gross Settlement
16 Amount (“GSA”). Attorney’s fees of up to \$100,000 (1/3 of the GSA), litigation costs of up to
17 \$15,000, settlement administration costs of no more than \$8,500, a service award to Plaintiff of
18 no more than \$10,000, and PAGA civil penalties of \$30,000, all will be paid from the GSA. The
19 balance of around \$136,500 will be allocated pro rata to the Class Members based on their weeks
20 worked during the Class Period. No portion of the GSA will revert to Amtec. [Brouillette Decl.,
21 ¶ 10.]

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

23 The settlement provides for conditional certification of a settlement class including all
24 individuals employed by Amtec in California and classified as non-exempt who worked for
25 Defendant and were placed with The Clorox Company or The Clorox International Company
26 during the Class Period of June 16, 2019 to July 13, 2024. The Settlement Class consists of about
27 200 individuals. [Brouillette Decl., ¶ 11.]

28 /////

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

2 As noted, the settlement obligates Amtec to pay \$300,000 to resolve the Settlement Class's
3 claims, inclusive of attorney's fees and costs. At least \$136,500 from the GSA will be distributed
4 to the Participating Class Members. This is a cash settlement that does not require Participating
5 Class Members to submit a claim form to receive their settlement share. Participating Class
6 Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty-
7 five percent of each settlement share will be allocated to wages and the remaining seventy-five
8 percent will be allocated to penalties and interest, which allocation is consistent with Amtec's
9 potential liability. Amtec will pay any and all applicable employer-side payroll taxes separately
10 and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because
11 a class member does not cash their settlement check) will be forwarded to the State Controller's
12 Unclaimed Property Fund. [Brouillette Decl., ¶ 12.]

13 Each Participating Class Member will receive a share of the Net Settlement Amount based
14 on his or her total weeks worked in California as a non-exempt employee during the Class Period..
15 Thus, each Class Member's Individual Settlement Payment will be calculated using criteria
16 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
17 missed meal and rest breaks, and potential statutory penalties under applicable law. These
18 methods are intended to ensure each Class Member receives a settlement award corresponding to
19 the relative value of their potential claims. The proposed allocation provides a reasonable way to
20 compensate Class Members based on the amount of time they worked for Amtec in California
21 and the amount unpaid overtime, the number of missed meal breaks and/or rest breaks, etc. The
22 average award is estimated to be around \$683. [Brouillette Decl., ¶ 13.]

23 **C. Settlement Administration**

24 Subject to the Court's approval, the Parties have agreed on Phoenix Settlement
25 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has
26 significant experience administering class action settlements, including numerous wage and hour
27 matters. Phoenix's fees and costs will not exceed \$8,500. If the Court approves less than the
28 above amount, the difference will remain in the Net Settlement Amount for distribution to the

1 Participating Class Members. [Brouillette Decl., ¶ 14; Declaration of Jodey Lawrence, ¶¶ 2-6;
2 Exhs. A-C.]

3 **D. The Class Notice**

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

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

17 Class Members will have forty-five (45) days to dispute the information in their Notice
18 used to calculate their settlement award, and also have 45 days to submit any objections to the
19 settlement or to request exclusion. If a Class Member disputes their individual information, the
20 Settlement Administrator will review the Class Member's records and any other information
21 submitted, and make a final determination. [Brouillette Decl., ¶ 16.]

22 **F. Release of Claims**

23 All Participating Class Members will release Amtec and the Released Parties (including
24 the Clorox Defendants) from all claims alleged in the operative complaint, or that could have
25 been brought based on the factual allegations in the complaint during the Class Period. The
26 release is limited to the claims that were actually pleaded or could have been pleaded based on
27 the alleged facts in the operative complaint. [Brouillette Decl., ¶ 17.]

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

2 A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v.
3 Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
4 and incentive payments ranging from \$2,000 to \$25,000). She devoted time and resources to the
5 litigation, provided documents, assisted Class Counsel with investigating the claims asserted and
6 in preparing for mediation. The service payment provided to Plaintiff as the class representatives
7 is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563
8 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work
9 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
10 the action, and, sometimes, to recognize their willingness to act as a private attorney general.").
11 Defendant will not oppose a request for an enhancement award to Plaintiff of not more than
12 \$10,000.00 in recognition of her time spent on this matter, the risks she undertook on behalf of
13 the class, and the benefit conferred to the class, as addressed in her declaration filed herewith. If
14 the Court approves less than the above amount, the difference will remain in the Net Settlement
15 Amount for distribution to the Participating Class Members. [Brouillette Decl., ¶ 18; Declaration
16 of Pricilla Cooper, ¶¶ 2-9.]

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

18 The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award
19 of attorney's fees of up to one-third of the GSA, or \$100,000 and reimbursement of actual costs
20 and expenses of up to \$15,000.00. Plaintiff's counsel will submit a request for attorney's fees
21 and actual litigation costs at final approval per the terms of the Settlement Agreement and
22 applicable law, and will provide the Court with appropriate information and evidence regarding
23 hourly rates, tasks performed, and time expended on the case. If the Court approves less than
24 the above amounts, the difference will remain in the Net Settlement Amount for distribution to
25 the Participating Class Members. [Brouillette Decl., ¶ 19.]

26 **I. PAGA and Notice to the LWDA**

27 As noted, the Parties allocated \$30,000 to resolution of Plaintiff's alleged claims under
28 PAGA. Consistent with PAGA, \$22,500 of that amount will go to the LWDA for the State's

1 share of the civil penalties, while the remaining \$7,500 will be distributed pro rata to eligible
2 Aggrieved Employees. Prior to filing this motion, Plaintiff provided notice of the proposed
3 settlement of the PAGA claims and the approval hearing to the LWDA. [Brouillette Decl., ¶ 20;
4 Exh. 2.]

5 **IV. ARGUMENT**

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

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

19 The first step is a motion for preliminary approval, through which the parties present the
20 court with the proposed settlement and seek a determination that it is sufficiently fair and
21 reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy.
22 Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement
23 is within the “range of reasonableness” and if notice should be provided to the class regarding
24 the settlement’s proposed terms and conditions, and whether a final fairness hearing should be
25 scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v.
26 Touchstone Ins. Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial
27 policy favoring settlement of class actions, courts generally apply a presumption of fairness to
28 class action settlements when (1) the settlement results from arms-length bargaining, (2)

1 investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3)
2 counsel is experienced in similar litigation, and (4) the percentage of objectors is small. Dunk,
3 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

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

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

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

20 In the present matter, conditional certification is proper since this matter satisfies all
21 requirements for class certification under Code of Civil Procedure section 382. First, the class
22 is both sufficiently numerous, consisting of approximately 200 individuals, and ascertainable by
23 reference to Defendant's personnel and payroll records. [Brouillette Decl., ¶ 21.] Next, Plaintiff
24 is an adequate class representative, as her claims do not conflict with and are not antagonistic to
25 the claims of other class members. [Cooper Decl., ¶¶ 2-9; Brouillette Decl., ¶ 22.] Further, her
26 claims are typical as he is a member of the class and his claims arise from the same employment
27 practices and course of conduct giving rise to the claims of the other class members. [Id.]
28 Lastly, her counsel is experienced and adequate class counsel. [Brouillette Decl., ¶¶ 36-47.]

1 Next, common questions of law and fact predominate – particularly for purposes of a
2 settlement class – as the Class Members all were paid via substantially similar company-wide
3 policies that resulting in missed/non-compliant meal and rest breaks, etc. Since the focus of the
4 claims against Amtec concerns the legality of common policies applied uniformly to the entire
5 class, common issues predominate over individualized inquiries concerning liability. For
6 instance, Amtec either had an “auto deduct” policy or did not, which policy either properly
7 recorded meal breaks or it did not. Similarly, whether use of personal phones was “reasonable”
8 or “necessary” to the perform the required duties of the job presents yet another common issue.
9 Regardless of these determinations, it will decide liability for all Class Members one way or
10 another. [Brouillette Decl., ¶ 23.]

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

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

21 The proposed settlement resulted from serious, arms-length negotiations facilitated by
22 respected mediator Steve Pearl, Esq., who has extensive experience mediating wage and hour
23 class actions. [Brouillette Decl., ¶ 9.] Plaintiff’s counsel Brandon Brouillette and Zachary
24 Crosner, and Crosner Legal PC, have years of litigation experience, including litigating wage and
25 hour class actions. Plaintiff’s counsel are well-qualified to evaluate the risks and benefits of
26 pursuing further litigation or settling the matter. [Brouillette Decl., ¶¶ 36-47.]

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

1 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement
2 2) the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further
3 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and
4 views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As
5 demonstrated below, the proposed settlement satisfies these requirements.

6 Prior to mediation, the parties engaged in extensive formal informal discovery to facilitate
7 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
8 Amtec's payroll practices, pay stubs and time records for a sampling of class members, meal and
9 rest break policies, etc., and information from Defendant regarding class size and breakdown of
10 job positions, work weeks, rates of pay, and other information used to formulate a damages model.
11 This extensive information then was analyzed by a consulting expert to look for meal and rest
12 break violation rates, time spent working off the clock, etc., and other issues relevant to liability
13 and damages. Plaintiff's counsel are confident they obtained sufficient information to enable them
14 to understand the law and facts of this case and make an informed decision regarding the proposed
15 settlement and whether it is in the best interests of the class. [Brouillette Decl., ¶¶ 8, 25.]

16 Next, the proposed settlement falls within the range of reasonableness warranting
17 preliminary approval. The proposed settlement involves a significant sum that, when distributed,
18 will confer direct monetary benefits on the class members. As described above, each class
19 member will be entitled to a monetary payment without having to file a claim and each payment
20 will be relative to the value of his or her potential claims.

21 Plaintiff's analysis was supported by the pre-mediation production described above,
22 which permitted Plaintiff's counsel to estimate potential damages on various theories of
23 liability. Using that data, Plaintiff ran various calculations and estimated Amtec's likely
24 maximum exposure on the class claims at approximately \$1,635,810, including approximately
25 \$360,600 on the meal period claims, about \$360,600 on the rest period claims, about \$44,060 on
26 the expense reimbursement claim, around \$139,800 on the wage statement claims, and
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1 \$730,750 on the waiting time penalty claims.² [Brouillette Decl., ¶¶ 26-27.] Plaintiff and
2 counsel substantially discounted the value of these claims, however, in light of Defendant’s
3 multi-layered defenses on both class certification and on the merits, and the considerable risks
4 posed by proceeding with the litigation.

5 On the meal and rest break claims, Plaintiff contends that Amtec’s alleged “auto-deduct”
6 policy obscured the fact that employees missed meal periods completely or received shortened
7 breaks. Plaintiff further alleged Amtec regularly provided meal periods that did not start until
8 after the fifth hour of work thus were untimely. In Donohue v. AMN Servs., LLC (2021) 11
9 Cal.5th 58, 61, the California Supreme Court recognized “the meal period provisions are
10 designed to prevent even minor infringements on meal period requirements, and rounding is
11 incompatible with that objective.” Thus, per Plaintiff and Donohue, even minor infringements
12 on the meal period requirements resulted in a violation and obligation for Amtec to pay the
13 required premium pay. Plaintiff’s review of the time and payroll records provided suggested
14 these deficiencies in the policies affected employee breaks. For example, Plaintiff’s analysis
15 showed a 28% violation rate for meal period violations. Similarly, Plaintiff alleged Amtec’s
16 written break policy likewise was non-compliant, failed to properly reflect the time periods for
17 taking breaks, and also resulted in “de facto” violations. [Brouillette Decl., ¶ 31.]

18 In response, Amtec argued its written meal and rest break policies are fully compliant,
19 and that it provided employees with the opportunity to receive all required breaks. Defendant
20 further maintained that, in light of its compliant policies, whether a class member missed a meal
21 period, received a late meal period, or missed a rest break would have been aberrational and
22 against company policy. Thus, per Amtec, these issues are not amenable to class or
23 representative treatment since their resolution would require individualized inquiries as to why a
24 break was missed or non-compliant. [Brouillette Decl., ¶ 31.]

25
26
27 ² While Plaintiff’s complaint alleges claims for unpaid wages, her investigation and discovery did not
28 suggest any potentially widespread violations for unpaid wages that could be addressed via a class or
representative action. Accordingly no value was attributed to those claims for purposes of settlement.
[Brouillette Decl., ¶ 26.]

1 On the expense reimbursement claim, Plaintiff alleges Defendant's management and
2 supervisors would constantly text Plaintiff and other employees on their cell phones throughout
3 their shifts to communicate with them on work-related issues, and that no reimbursement was
4 paid. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137; Stuart v.
5 RadioShack (N.D. Cal. 2009) 641 F.Supp.2d 901, 903-04 (if an employer "knows or has reason
6 to know that the employee has incurred a reimbursable expense. . . it has the duty to exercise
7 due diligence and take any and all reasonable steps to ensure that the employee is paid for the
8 expense.") On the hand, Amtec argued there would be no conceivable need for employees to
9 use their own phones while working or for any work-related purposes, and if they did so it was
10 purely for personal convenience rather than business necessity. Thus, per Amtec, no
11 reimbursement is owed. [Brouillette Decl., ¶ 32.]

12 The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid
13 wage claims, and accordingly are subject to the same risks and uncertainties plus additional
14 risks posed by the need to take into account the discretionary nature of such awards and the
15 "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008)
16 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code
17 § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus,
18 while these claims largely are derivative of the unpaid wage claim, they also are subject to
19 additional defenses. [Brouillette Decl., ¶ 32.]

20 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
21 entitled to penalties totaling around \$575,000 in civil penalties should Plaintiff prevail on all
22 claims and establish violations of the multiple Labor Code sections as to each and every pay
23 period at issue. [Brouillette Decl., ¶ 33.] As with the class claims, Plaintiff discounted the
24 potential PAGA penalties based on Defendant's various defenses on the merits and also accounted
25 for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all.
26 Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court
27 awarded penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal);
28

1 In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557
2 (PAGA penalties denied after trial).

3 Accordingly, the Parties allocated \$30,000 to PAGA penalties, and Plaintiff submits this
4 amount is reasonable under the circumstances and in line with comparable settlements in other
5 wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D.
6 Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA
7 penalty from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water
8 Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500
9 PAGA payment reasonable when measured against the overall settlement of \$345,000 and the
10 possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the
11 LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able
12 to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S.
13 Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
14 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
15 objected to the settlement.

16 The settlement obviates the significant risk that this Court may find any kind of class or
17 representative resolution unachievable or deny certification of all or some of Plaintiff's claims.
18 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued
19 litigation would be lengthy and expensive as the parties pursued merits discovery, a probable
20 motion to decertify, as well as trial and possible appeals, and would further and substantially
21 delay any recovery by the class with no assurance of recovering significantly more than the
22 proposed settlement. While Plaintiff is confident in the merits of these claims, legitimate
23 controversies exist regarding each one of them. Plaintiff also recognizes proving the amount of
24 wages and penalties due each Class Member would be an expensive, time-consuming, and
25 uncertain proposition. [Brouillette Decl., ¶¶ 34-35.]

26 Plaintiff and counsel discounted the value of the class claims consistent with the risks
27 discussed above, and carefully weighed the likelihood of the class receiving substantially
28 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very

1 real and substantial risks – settlement on the proposed terms and without prolonged and costly
2 litigation was in the best interests of the class, and the overall \$300,000 recovery represents a
3 significant percentage of Defendant’s potential exposure. Given these risks, a total recovery for
4 the class of \$300,000, which will result in average award of over \$680 per class member, is a
5 significant result well within the range of reasonableness considering all potential outcomes, and
6 it will provide direct monetary awards to all Class Members without further delay. [Brouillette
7 Decl., ¶ 35.]

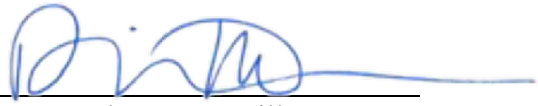
8 Importantly, the mere fact that a settlement does not provide the same recovery as might
9 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
10 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
11 settlement process...even if the relief afforded by the proposed settlement is substantially
12 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
13 settlement because the public interest may indeed be served by a voluntary settlement in which
14 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
15 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
16 different from the question whether the settlement is perfect in the estimation of the reviewing
17 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
18 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential
19 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
20 should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803
21 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though
22 it represented 99% discount off the maximum value of the claims). Importantly as well, the
23 proposed settlement is non-reversionary and will provide timely benefits to the Class Members
24 without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center,
25 Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
26 [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary provisions and/or
27 cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the
28 settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

1 **V. CONCLUSION**

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

5
6 Dated: August 30, 2024

CROSNER LEGAL, P.C.

7
8 By: 
9 Brandon K. Brouillette
10 Zachary M. Crosner
11 Attorneys for Plaintiff Pricilla Cooper