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As an individual and on behalf of all others
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

AZIEL JOEY GOMEZ PEREZ, as an individual and on behalf of all others similarly situated,

Plaintiff,

v.

QANTAS AIRWAYS LIMITED, an Australian corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 23STCV18974

Assigned for All Purposes to:
Hon. Stuart M. Rice
Dept. SSC-1

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

Date: May 5, 2025
Time: 10:30 a.m.
Dept.: SSC-1

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I. INTRODUCTION

Plaintiff Aziel Joey Gomez Perez respectfully requests that the Court preliminarily approve the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement") entered into between Plaintiff and Defendant Qantas Airways Limited ("Qantas" or "Defendant"). The proposed settlement seeks to resolve claims in this matter in exchange for a non-reversionary $1,300,000 Gross Settlement Amount. The settlement class consists of all current and former non-exempt employees of Defendant who worked directly or indirectly via a staffing agency at any location in California at any time from August 9, 2019, to the date of preliminary approval, and who have not otherwise released their claims against Defendant. (Agreement, § 1.5).[1]

The Agreement and Notice distribution plan are the products of adversarial, arm's-length negotiations by informed counsel and parties, facilitated by an experienced mediator. The settlement is fair, reasonable, and adequate to all. Plaintiff has analyzed the strengths and vulnerabilities of the claims with Defendant's potential exposure and determined the $1,300,000 proposed settlement is well within the range of reasonableness and is in the Class Members' best interests. The length and risks of continued litigation and trial that affect the values of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and possible delays and appeals, were also considered by Plaintiff and counsel in negotiating the proposed settlement. Further, the proposed settlement satisfies the criteria for preliminary approval under California Rules of Court, Rule 3.769.

Accordingly, Plaintiff seeks: (1) preliminary approval of the settlement; (2) provisional certification of the Class for purposes of the settlement; (3) appointment of Plaintiff as Class Representative; (4) appointment of Crosner Legal, PC as Class Counsel; (5) approval of the Parties' proposed Notice of Class Action Settlement ("Notice") and method of notifying the Class Members; (6) a hearing date for Plaintiff's Motion for Final Approval of Class Action Settlement; and (7) entry of an Order Granting Preliminary Approval of Class Action Settlement.

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[1] The fully executed Agreement is attached to the Declaration of Sepideh Ardestani as Exhibit 1.

II. BACKGROUND/LITIGATION HISTORY

Defendant is the well-known national flag-carrier airline of Australia, and has operations in California at both LAX and SFO airports. Plaintiff Perez worked for Qantas at LAX as an hourly-paid Aircraft Maintenance Engineer from approximately February 2019 through September 2021. (Declaration of Sepideh Ardestani "(Ardestani Decl."), ¶ 13.)

On August 9, 2023, on behalf of himself and a putative class of similarly situated non-exempt employees in California, Mr. Gomez filed a complaint in the Los Angeles Superior Court against Qantas alleging various Labor Code violations. Qantas removed the case to federal court on October 12, 2023, and Plaintiff's motion for remand was denied. The Parties subsequently agreed to private mediation and stipulated to dismiss the federal case pending the outcome of the mediation. (Ardestani Decl., ¶ 14.)

On June 25, 2024, the Parties mediated with Henry Bongiovi, Esq., a respected wage and hour class action mediator. The mediation lasted a full day, and the Parties reached agreement on all major issues. They then formally reduced the proposed settlement to the Agreement now before the Court for approval. (Ardestani Decl., ¶ 15; Exh. 6.)

Finally, as part of the tentative settlement, the Parties agreed Plaintiff would file an amended complaint in this matter for purposes of seeking court approval. Plaintiff gave written notice to Defendant and the LWDA of his PAGA claims by sending the PAGA Notice on October 8, 2024 and exhausted administrative remedies. (Ardestani Decl., ¶ 16; Exh. 4.) The Parties filed in this Court a Joint Stipulation and Proposed Order to Reopen Case and File First Amended Complaint on December 16, 2024, which the Court approved in an order dated December 17, 2024. On January 23, 2025, Plaintiff filed the operative FAC, which includes a derivative claim for civil penalties under PAGA.

III. INVESTIGATION

Prior to the mediation, Defendant provided Plaintiff with extensive informal discovery, including Plaintiff's personnel, time, and payroll records; time records and payroll records for a randomly selected sampling of about 25% of the Class Members;[2] wage statement exemplars;

[2] Which sample Plaintiff's experts suggested would be statistically reliable. (Ardestani Decl., ¶ 17.)

Defendant's employee handbooks, including Defendant's policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages; documentation pertaining to the election and implementation of the Alternative Workweek Schedule ("AWS") for Aircraft Maintenance Engineers ("AMEs") and Licensed Aircraft Maintenance Engineers ("LAMEs"); and information regarding the estimated number of putative Class Members who are current and former employees. Additionally, Defendant provided metrics for the putative Class, including the estimated number of Aggrieved Employees who worked during the PAGA Period, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. From this information, Plaintiff was able to analyze Defendant's potential liability for the claims asserted in this case and, with the assistance of Plaintiff's experts at Berger Consulting Group, Defendant's potential exposure and damages. (Ardestani Decl., ¶ 17.)

Based on this informal discovery, Plaintiff contends the Class Members were not paid all minimum or overtime wages, did not receive proper expense reimbursement, were not provided with legally compliant meal and rest periods, did not receive compliant wage statements, and did not receive all wages due on separation of employment. In considering the reasonableness of the proposed settlement, Plaintiff considered each of Defendant's counterarguments, which sharply contested Plaintiff's claims. Plaintiff's Counsel weighed the strength of Defendant's arguments, including the risks of prevailing at class certification and on the merits, and determined that the proposed settlement is in the best interests of the Class. Although remaining confident in the strength of their claims, all these factors led Plaintiff to discount the exposure analysis, discussed in detail below. (Ardestani Decl., ¶ 18.)

IV. <u>TERMS OF THE PROPOSED SETTLEMENT</u>

A. Deductions from the Settlement

The Parties have agreed to resolve the matter for the non-reversionary sum of $1,300,000.00 ("Gross Settlement Amount" or "GSA") (Agreement, §§ 1.23, 3.1). The GSA includes: (a) attorney's fees of up to $433,333.33 (one-third of the GSA)[3] to compensate Class Counsel for work already performed and all work remaining to be performed (Agreement, § 3.2.2.); (b) actual litigation expenses not to exceed $20,000.00[4] (*Id.*); (c) a representative enhancement to Plaintiff not to exceed $10,000 (Agreement, § 3.2.1); (d) settlement administration costs not to exceed $7,000.00 (Agreement, § 3.2.3); and (e) PAGA penalties to the LWDA of $75,000.00 (which is 75% of the $100,000.00 PAGA Payment, with the remaining 25% or $25,000.00 distributed pro rata to the Aggrieved Employees) (Agreement, § 3.2.5).[5] Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendant separate and apart from the GSA. (Agreement, § 3.1.)

B. Calculation of the Individual Settlement Payments to Class and Aggrieved Employees

After all Court-approved deductions from the GSA, it is estimated that $729,666.67 ("Net Settlement Amount" or "NSA"), less all applicable employee-side taxes, will be distributed to the estimated 361[6] Class Members, with an average individual award of around $2,020.[7] Additionally, the 25% PAGA Payment ($25,000.00) will be distributed to the estimated 231[8] Aggrieved Employees, resulting in an average payment of about $108[9] per Aggrieved Employee. (Ardestani Decl., ¶ 20.) Under no circumstances will any portion of the GSA revert to Defendant. (Agreement, § 3.1.)

Subject to the terms and conditions of the Settlement, Simpluris, Inc. (the proposed Administrator) will calculate and issue Individual Settlement Payments to Participating Class Members based on the following formula: (a) dividing the Net Settlement Amount by the total

[3] The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in connection with Class Counsel's request for attorney's fees.

[4] At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class Counsel's request for reimbursement of actual expenses.

[5] Because this action was filed before June 19, 2024, this settlement is not governed by the amendments to PAGA that took effect on July 1, 2024. Labor Code § 2699(v). Accordingly, the pre-amendment 75%/25% spit between the LWDA and Aggrieved Employees applies. *See* Labor Code § 2699(i) (Version Effective June 27, 2016 - June 30, 2024).

[6] This is based on information provided by Defendant in advance of mediation and separately confirmed by Plaintiff.

[7] $729,666.67 NSA / 361 Class Members

[8] This information is also based on data provided by Defendant in advance of mediation.

[9] $25,000 (25% PAGA Payment) / 231 Aggrieved Employees

number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Agreement, § 3.2.4.)

Additionally, Simpluris will calculate and issue payments to Aggrieved Employees based on the following formula: (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($25,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Therefore, the value of each PAGA Member's share of the PAGA Payment ties directly to the amount of PAGA Period Pay Periods that he or she worked. (Agreement, § 3.2.5.1)

The number of pay periods and weeks worked by each Participating Class Member and PAGA Member will be derived from Defendant's records. (Agreement, § 1.8.) Each Class Member's gross settlement award will be apportioned as follows: 40% wages and 60% penalties and interest. (Agreement, § 3.2.4.2.) Simpluris will be responsible for issuing Form W-2s for amounts deemed "wages" and Form 1099s for the portions allocated to penalties and interest. (Agreement, § 3.2.4.2.)

C. Uncashed Funds to Unclaimed Property Fund

Settlement checks must be cashed or deposited within 180 days after the checks are mailed. (Agreement, § 4.4.1.) In the event a settlement check remains uncashed, such uncashed funds shall be transmitted to California Rural Legal Assistance as the proposed *cy pres* beneficiary. (Agreement, § 4.4.3.) (Ardestani Decl., ¶ 24.)

D. Notice and Extended Response Deadline for Re-Mailed Notices

Within fifteen business days of the entry of the Preliminary Approval Order, Defendant will provide Simpluris with the Class Data, containing each Class Member's first and last name, last known mailing address, dates of employment, Social Security number, total number of Eligible Workweeks worked during the Class Period, and total number of pay periods worked during the PAGA Period. (Agreement, § 4.2.) Simpluris will maintain the Class Data as private and confidential, but Class Counsel will have access to the Class Data so that nothing shall impede Class Counsel from discharging their fiduciary duties to the Class. (Agreement, § 4.2.)

Prior to mailing, Simpluris will perform a search for updated addresses in the National Change of Address Database. (Agreement, § 7.4.2.) Simpluris will use the NCOA and skip traces to attempt to find current addresses for any Notice returned as undeliverable. For any re-mailed Notice, Simpluris will extend the Class Member's Response Deadline by 14 calendar days. (Agreement, § 7.4.3-4.) If Simpluris is unable to obtain a better address for a Class Member, the Notice will be deemed undeliverable. (Agreement, § 7.4.3-4.) Within 14 days after receipt of the Class Data, Simpluris will mail via regular First-Class mail the Notice to all Class Members. (Agreement, § 7.4.2.)

The contents of the Notice are consistent with the terms of the Agreement. The Notice informs Class Members how and when to request exclusion from or object to the settlement and of their estimated payment amount. which they will automatically receive if they do nothing. The Notice further advises Class Members how to obtain documents filed in the case from the Court, Simpluris or Class Counsel, how to check the Court's website to find out whether the Final Approval hearing date/location has been changed, directs the Class Member to Simpluris's website and the Court's website to find out whether final judgment has been entered. (Ardestani Decl., Exh. 3.)

E. Responses to the Settlement and Deadline Thereon

Class Members will have 45 days from the initial mailing of the Notice to respond to the settlement by submitting a challenge to the number of weeks or pay periods attributed to them, submitting an objection, or requesting to be excluded from the settlement, plus additional time for remailed notices. (Agreement, §§ 1.4, 7.4.4.) Participating Class Members may send written objections to the Settlement Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. . Class Members are informed that the Court will hear any objections from any Class Member who attends the Final Approval Hearing. (Agreement, § 7.7.)

Class Members can also submit a written request for exclusion from the settlement by mailing, emailing or faxing a written request, including his or her name, address, and email address phone number, and a statement demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.)

The Notice also informs the Class Member/Aggrieved Employees that they can dispute the number of weeks/pay periods allotted to them to calculate their settlement payments by contacting Simpluris before the Response Deadline and include any documentation supporting the dispute. Simpluris will investigate the dispute, request additional information from Defendant, and make a final decision as to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

F. Funding and Distribution of the Settlement

Defendant shall fund the settlement within 30 calendar days of the Effective Date. (Agreement, § 4.3.). Simpluris shall disburse all payments required under this Settlement within 14 calendar days of receipt of the GSA. (Agreement, § 4.4.)

G. Release of Claims

Upon Defendant's funding of the GSA, Participating Class Members shall forever release the Released Parties[10] for the Released Claims for the Class Period, as detailed in Section 5.1 of the Agreement. Likewise, upon Defendant's funding of the GSA, Plaintiff, the Aggrieved Employees, and the State of California shall forever release the Released Parties for the PAGA Released Claims for the PAGA Period, as detailed in Section 5.2 of the Agreement.

As discussed below, Plaintiff's Counsel is convinced that the proposed settlement is in the Class Members' best interests based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of continued litigation that affect the value of the claims were all carefully weighed. In addition, the affirmative defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Plaintiff's Counsel in arriving at the proposed settlement. (Ardestani Decl., ¶ 33.)

IV. <u>ARGUMENT</u>

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is "fair, adequate and

[10] "Released Parties" means Defendant and its current or former parents, successors, predecessors, affiliates, subsidiaries or related entities, and each of their current or former officers, directors, members, shareholders, managers, human resources representatives, employees, agents, contractors, insurance carriers, representatives, and attorneys. (Agreement, § 1.42.)

reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217]. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following shows, all of these elements are present here and the Court should grant preliminary approval.

A. The Settlement was Reached as a Result of Arm's Length Negotiations

The proposed settlement was reached as a result of arm's-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Following mediation, Counsel for the Parties further negotiated regarding the settlement terms memorialized in the Agreement. (Ardestani Decl., ¶ 34.)

While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation and understand the benefit of Class Members receiving significant settlement funds immediately as opposed to risking continued litigation in achieving class certification, the merits of the case before and after trial, the damages awarded and/or an appeal that can take several more years to litigate. (Ardestani Decl., ¶ 35.)

B. The Settlement is the Result of Thorough Investigation and Discovery

Plaintiff thoroughly investigated and evaluated the factual strengths and weaknesses of the Parties' respective arguments before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery, referenced above, to support the settlement. The proposed settlement was only possible following significant analysis and evaluation of Defendant's relevant policies and procedures, as well as the data it produced for the putative Class, which permitted Plaintiff's Counsel and expert to engage in a comprehensive analysis of liability and potential damages to prepare for mediation. (Ardestani Decl., ¶ 36.) This litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

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C. Counsel for the Parties are Experienced in Similar Litigation

Counsel for the Parties are particularly experienced in wage and hour employment law, class actions and PAGA actions. Plaintiff's Counsel has prosecuted numerous cases on behalf of employees for wage and hour violations and thus are experienced and qualified to evaluate the class and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This experience informed Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.[11] (Ardestani Decl. ¶¶ 7-12.)

D. The Proposed Settlement is a Reasonable Compromise of Claims

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

In weighing the strength of Plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." 168 Cal.App.4th at 133. Further, this analysis 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 which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal. App. 4th at 409. Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-Clyde & Associates*

[11] The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

(1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties' investigation and discovery revealed several reasons to discount claims and agree to this settlement.

E. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation

The proposed settlement was only possible following significant analysis and evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant produced for the Class. This permitted Plaintiff's Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted resulted in Plaintiff's central theories of liability, which are based on Plaintiff's claims that Defendant failed to provide compliant meal and rest periods, failed to pay all minimum and overtime wages, failed to provide accurate, itemized wage statements and failed to pay all wages due on separation of employment. As explained above, Defendant maintains that the discovery produced demonstrates that it would succeed at both class certification and on the merits. (Ardestani Decl., ¶ 37.)

Plaintiff believes this case is suitable for certification on the claimed basis that there are company-wide policies that Plaintiff contends violate California law and uniformly affect the Class Members. However, Defendant's counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319 (2004), class certification is always a matter of the trial court's sound discretion, and decisions following *Sav-On* have reached different conclusions with respect to certification of wage and hour claims.[12] While remaining confident in the strengths of his claims, all of these factors led Plaintiff to discount the following maximum potential damage claims. (Ardestani Decl., ¶ 38.)

1. The Settlement Amount is Reasonable

Defendant provided Plaintiff with class-wide data from which Plaintiff's Counsel could extrapolate a damage analysis in preparation of mediation. Prior to mediation, there were a total of

[12] *E.g.*, *Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144 Cal.App.4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.,* 141 Cal.App.4th 1422 (2006) (affirming denial of certification).

about 361 Class Members (217 formerly employed in the limitations period) and 28,347 work weeks in the Class Period. There are also approximately 231 aggrieved employees and 7,010 pay periods within the PAGA Period. (Ardestani Decl. ¶ 39.)

Plaintiff first asserted Defendant failed to pay for all hours worked and that he and the Class Members regularly had to work "off the clock," which time was neither accounted nor paid for. Here, Plaintiff alleged Qantas's policy/practice was to discourage overtime and require class members to record time according to scheduled shifts rather than actual hours worked, despite the fact that class members were pressured to work more hours in order to meet operational needs, which revolved around timely servicing aircraft as they arrived and not keep them waiting, which would interrupt airport operations. According to Plaintiff, Qantas allegedly failed to coordinate shift start times with the actual arrival of aircraft or accommodate unanticipated arrivals or delays, and as a result class members allegedly had to perform off the clock work before or after their scheduled work times in order to meet operational needs, including to ensure the next crew was on time and/or ready to meet arriving aircraft. For the same reason, Plaintiff alleged he and class members also sometimes had to work during all or some of their lunch breaks in the rush to service aircraft, which time also was not paid for. (Ardestani Decl., ¶ 40.)

Plaintiff further contended Defendant failed to pay all overtime wages due by operating under an Alternative Workweek Schedule but nevertheless failing to fully comply with all requirements necessary for a valid AWS. In particular, Plaintiff's experts' review of the time and pay records produced suggested that Qantas did not always pay overtime premiums when class members either worked less than 10 hours on a shift or when they worked over 10 hours on a shift. Based on Plaintiff's assumptions and without considering any of Defendant's defenses to certification or on the merits, Plaintiff's expert calculated Defendant's maximum potential exposure for this claim as about $485,000 on the off the clock claim (based on two hours of OTC work each week) and about $1,954,000 in unpaid overtime premiums on the improperly implemented AWS claim. (Ardestani Decl., ¶ 41.) For its part, Defendant denies Plaintiff's allegations and contests these calculations.

Plaintiff also contended Defendant failed to provide legally compliant meal and rest breaks. Specifically, as addressed above, Plaintiff alleged that the volume of work Defendant imposed in order to meet operational demands made it difficult if not impossible for the class members to take all required meal and breaks, and further made it difficult to take breaks on a fully compliant basis when they took them. According to Plaintiff, meal breaks frequently started late or were cut short due to the need to service aircraft in time to meet schedules and avoid impacting airport operations with delays. Similarly, Plaintiff alleged rest breaks did not always occur or only lasted 5 or so minutes for the same reasons. Plaintiff claimed this violates Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 and *Augustus v. ABM Security Serv., Inc.* (2016) 2 Cal.5th 257 for failure to provide fully compliant meal and rest periods and within the applicable time frames. Finally, Plaintiff alleged that even when breaks were taken, employees still had to monitor their personal cell phones in case they were called back to work to deal with some issue in working on the aircraft. Based on Plaintiff's experts' analysis of the time data provided, Plaintiff asserts that there was about a 71% unique violation rate for meal periods, primarily based on untimely meal periods. (Ardestani Decl., ¶ 42.)

Defendant denied Plaintiff's contentions, claiming it made meal and rest breaks available to Class Members in compliance with California law. Defendant also contended its meal and rest break policies are lawful and that Class Members were frequently reminded via training and supervisors, that they were required to take all meal and rest breaks. Defendant argued its time records demonstrate that Class Members took duty-free, timely meal and rest breaks. Defendant contended its meal and rest break policies and practices comported with the flexibility the *Brinker* court held was integral to California's meal and rest period requirements. Finally, Defendant argued that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant argued these claims are vulnerable to a ruling that class treatment is not appropriate. Based on Plaintiff's factual assumptions and without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated Defendant's maximum exposure for the meal break claim at about $2,619,890 and the exposure on the rest break claims as approximately $3,742,000. (Ardestani Decl., ¶ 43.)

Plaintiff also alleged Defendant required Plaintiff and the Class Members to use their personal cell phones for work-related purposes, as noted above, primarily for communicating with supervisors during a shift regarding needed work on the aircraft. However, Plaintiff alleges Defendant failed to reimburse employees for the use of their personal cell phones. In *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137, it was held that Labor Code § 2802 requires employers to always reimburse employees who are required to use personal cell phones for work-related calls for a reasonable percentage of their cell phone bills. On the other hand, Defendant argued there was no reason for employees to use their own phones while working because they are provided with company-issued devices to use in the course of their duties, and any use of a personal device was purely for personal preference and therefore not reimbursable. Without taking into consideration any of Defendant's defenses to certification or on the merits, and based on Plaintiff's factual assumptions, Plaintiff calculated Defendant's maximum exposure for expense reimbursement as about $141,750. (Ardestani Decl., ¶ 44.)

Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage statements and waiting time penalties would also fail. Defendant also contended it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of past wages. Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant argued Plaintiff would have to prove that Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of employment, and that any failure to pay wages upon separation was not willful. (Ardestani Decl., ¶ 44.) Without taking into consideration any of Defendant's defenses to certification or on the merits, and based on Plaintiff's factual assumptions, Plaintiff calculated Defendant's maximum exposure for wage statement penalties as $587,400 and waiting time penalties as $2,391,600. (Ardestani Decl., ¶ 45.)

As far as potential PAGA liability, based solely on Plaintiff's factual assumptions and allegations, Plaintiff estimates that the theoretical civil penalties likely exceed $4.2 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue. (Ardestani Decl., ¶ 46.) As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $100,000 to PAGA penalties.

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

Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the risks discussed above, as well as the potential applicability of arbitration agreements signed by many class members. They carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued, and concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $1,300,000 recovery represents a significant percentage of Defendant's potential exposure and, given Defendant's multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $1,300,000, which will result in an estimated average award of over $2,000 per class member, plus additional sums under PAGA, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. (Ardestani Decl., ¶¶ 47-48.)

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

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F. Provisional Class Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule 23 of the Federal Rules of Civil Procedure, and require*:* numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. While a court must certify a class for settlement purposes if a class has not already been certified, "it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 237-38.

Here, Plaintiff seeks approval of the following Class for settlement purposes only: all current and former non-exempt employees of Defendant who worked directly or indirectly via a staffing agency at any location in California at any time from August 9, 2019, to the date on which the Court grants preliminary approval of this Settlement and who have not previously released their claims against Defendant. (Agreement, § 1.5).[13]

1. The Proposed Class is Sufficiently Numerous and Ascertainable

First, the class is both sufficiently numerous, consisting of approximately 361 individuals, and ascertainable by reference to Defendant's personnel and payroll records. (Ardestani Decl., ¶ 49.) "There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous that 'it is impracticable to bring them all before the court.'" *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity

[13] As set forth in the Settlement Agreement, Defendant denies that class certification, collective action certification, or representative treatment is appropriate as to any claim in this action for purposes other than settlement. By participating in this settlement, Defendant is not admitting any liability or wrongdoing whatsoever, nor is it admitting that class certification, collective action certification, or representative treatment is appropriate for any purpose other than for settlement purposes alone. (Agreement, § 2.4.)

prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court* (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 (finding that "Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records."). Thus, the ascertainability requirement is met.

2. The Typicality and Adequacy Requirements Are Met

The typicality requirement is met if the claims of the named representative are typical of those of the Class, though, "they need not be substantially identical." *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Here, Plaintiff contends his claims are typical of the Class Members' claims because they arise from the same factual basis and are based on the same legal theories applicable to the Class Members. Plaintiff further contends Defendant's policies applied to all Class Members and each Class Member is challenging the same policies and practices. As such, the typicality requirement is satisfied for purposes of settlement. (Perez Decl., ¶¶ 2-3; Ardestani Decl. ¶ 50.)

Adequacy requires that the Plaintiff have no interests adverse to the interests of the proposed Class Members and be committed to vigorously prosecuting the case on behalf of the Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will continue to be committed to vigorously prosecuting this case, and he has no conflicts of interest with the Class. Plaintiff has been and will continue to be committed to vigorously prosecuting this case, and he has no conflicts of interest with the Class. For these reasons, Plaintiff contends she is an adequate class representative. (Perez Decl., ¶¶ 3-7; Ardestani Decl., ¶ 50.)

3. The Commonality Requirement is Met

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as Plaintiff contends Class Members all were subject to the same meal and rest break policies and alleged "de facto" policies resulting in meal period violations, and similarly subject to the same improper regular rate policy. Since the focus of the claims against Defendant concerns the legality of (according to Plaintiff) common policies allegedly applied uniformly to the entire class, Plaintiff contends that common issues predominate over individualized inquiries concerning liability. For instance, Plaintiff contends that Defendant's meal and rest break policy is company-wide policy applied equally and consistently to all class members, and this policy is either compliant with California law or it is not. Regardless of that determination, Plaintiff contends it will decide liability for all class members one way or another. Similarly, Plaintiff contends that whether Qantas properly calculated and paid for overtime and properly implemented an AWS is another question common to all class members. (Ardestani Decl., ¶ 51.)

By now it is well-settled a theory of recovery asserting the existence of a uniform policy violating California law is sufficient to satisfy the requirements for class certification. *Jones v. Farmers Ins. Exch.* (2013) 221 Cal.App.4th 986, 996 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment"); *Williams v. Superior Court* (2013) 221 Cal.App.4th 1353 ("A company-wide practice can sustain a common question of fact or law that supports commonality for class certification"). Lastly, a class action is superior to other means for the fair and efficient adjudication of this controversy. (Ardestani Decl., ¶ 52.)

G. Simpluris Should be Appointed as the Settlement Administrator

Subject to Court approval, the Parties agreed to use Simpluris, Inc. as the Settlement Administrator in this matter. (Agreement, § 1.2). Simpluris is highly qualified and experienced as a settlement administrator, committed to the security of data (having experienced no data breaches at all), carries insurance for the theft of money or data, and has no relationship with Counsel. (Declaration of _____, ¶¶ 2-12; Exhs. 1-2; Ardestani Decl., ¶ 53.)

H. Notice to Class Members Complies With California Rule of Court 3.769(f)

California Rule of Court 3.769(f), provides: "If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." Here, the proposed Notice meets all of these requirements, as it advises Class Members of their rights to participate in the settlement, how to and when to object to or request exclusion from the settlement, and the date, time, and location of the final approval hearing. Class Members need not do anything to receive their *pro rata* share of the settlement. (Ardestani Decl. ¶ 54, Exh. 3.)

V. CONCLUSION

Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court certify the class for settlement purposes, appoint Plaintiff as Class Representatives, appoint Plaintiff's Counsel as Class Counsel, appoint Simpluris as Settlement Administrator, approve the method of notice and the Notice to be sent to the Class, preliminarily approve the Settlement Agreement, enter the proposed order filed herewith, and set a Final Approval hearing date.

Dated: March 12, 2025

CROSNER LEGAL, PC

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