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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

CHARLES P. SANDLIN III, on behalf of
himself, and others similarly situated,

Plaintiff,

v.

SECURE NURSING SERVICE, INC., a
California Corporation, and DOES 1-50,
inclusive,

Defendants.

Case No: 20STCV25675

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Hearing Date: January 20, 2022
Hearing Time: 10:00AM

Honorable Judge Yvette M. Palazuelos
Department 9

Trial Date: Not Set
Action Filed: July 7, 2020

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1 **I. INTRODUCTION**

2 Plaintiff Charles Sandlin III (“Plaintiff”) and Defendant Secure Nursing Services, Inc.
3 (“Defendant”), have reached a full and final settlement of the above-captioned action, which is set
4 forth in the Amended Class Action Settlement Agreement (“Agreement” or “Settlement”) filed
5 herewith.¹ The Court preliminarily approved the Agreement via its Preliminary Approval Order
6 dated September 17, 2021 (“Preliminary Approval Order”); and pursuant to the Preliminary
7 Approval Order the approved Class Notice has been disseminated to the Class.²

8 After disseminating the Notice to the members of the Class, to date there have been no
9 objections and no opt outs, which means that the entire Class is currently participating in the
10 Settlement. (Decl. Zakay ¶9.) This is a stellar response from the Class evidencing their approval
11 of the Settlement.

12 This Settlement is an excellent result for the Class Members in light of the serious doubts as
13 to the result of the adjudication of their claims, along with further uncertainty as to whether class
14 certification could be maintained through trial. Considered as a whole, the Settlement of
15 approximately \$350,000.00 represents more than 23.5% of the value of the maximum actual
16 damages at issue. Furthermore, the Settlement represents more than 19% of the maximum
17 combination of damages and penalties to the Class, assuming all of these amounts could be proved
18 at trial.

19 Under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), this Settlement is a
20 fair and reasonable recovery of Plaintiffs’ wage and hour claims (which were subject to considerable
21 uncertainty, both as to the merits and certification). The response of the Class has been extremely
22 positive. Accordingly, Plaintiff respectfully submits that the Class Settlement should be finally
23 approved as fair, reasonable, and adequate.

24
25 _____
26 ¹ A copy of the Agreement is attached as Exhibit 2 to the Declaration of Shani O. Zakay (“Decl.
27 Zakay”), served and filed herewith. Capitalized terms in this Memorandum have the same meaning
28 as contained in the Agreement.

² The “Class” is defined as “all individuals who worked for Defendant as per-diem nurses and/or
travel nurses in California during the Class Period. The Class Period is defined as the period
between April 6, 2016 and May 1, 2021.

1 **II. THE SETTLEMENT BEFORE THE COURT**

2 Plaintiff and Defendant reached a full and final Settlement of the above-captioned action,
3 which is embodied in the Agreement filed concurrently with the Court. As consideration for this
4 Settlement, Defendant has agreed to pay the all-in, non-reversionary amount of Three Hundred and
5 Fifty Thousand Dollars (\$350,000) (“Gross Settlement Amount”). The Gross Settlement Amount
6 includes all payments of the Settlement Shares to Participating Class Members, the Class
7 Representative Service Payment to Plaintiff, Settlement Administration Expenses, the PAGA
8 Payment, and Court-approved attorneys’ fees and costs. Defendant will separately pay the
9 employer’s share of payroll taxes to the qualified settlement fund, per the Agreement. (Decl. Zakay
10 ¶3(a).)

11 The Net Settlement Amount shall equal the net amount available for Settlement Shares to
12 Participating Class Members from the Gross Settlement Amount after deducting the Court-
13 approved amounts for the Class Representatives Service Payment, the Class Counsel Fees Payment,
14 the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the expenses the
15 Settlement Administration Costs. The Settlement Administrator will pay a Settlement Share from
16 the Net Settlement Amount to each Participating Class Member. The submission of a claim form
17 is not required in order for the Participating Class Member to be paid his or her Settlement Share.
18 The Settlement Share for each Participating Class Member will be calculated as follows: The
19 Settlement Share for each Participating Class Member will be calculated by (a) dividing this amount
20 by the total number of workweeks worked by all Participating Class Members in the California
21 Class during the California Class Period to determine a dollar amount per workweek (“Workweek
22 Payment”), and (b) multiplying the total number of workweeks worked by each Participating Class
23 Member in the Class during the Class Period by the Workweek Payment. The entire Net Settlement
24 Fund shall be distributed. (Decl. Zakay ¶3(b).)

25 Class Members were sent the Court approved Class Notice, using the procedure approved
26 by the Court, by mailing the notice packets after updating class members’ addresses using the
27 National Change of Address database and, for any notice packets returned as undeliverable, re-
28 mailing such notices to any forwarding address provided or updated address located through skip

1 tracing. Class Members were provided with the opportunity to exclude themselves (“opt out”) if
2 they did not want to participate in the Settlement. Class Members who did not “opt out” are deemed
3 Participating Class Members who are bound by the Settlement and will be mailed a settlement
4 payment. The Notice advised the PAGA Employees that they will receive payment from the Net
5 PAGA Amount regardless of their decision to participate in the Action. The Class Notice also
6 advised Class Members of their right to object to the Settlement. This notice process is documented
7 in the accompanying Declaration of Lluvia Islas (the Settlement Administrator). (Decl. Zakay
8 ¶3(c).)

9 If a Participating Class Member’s Settlement Share check is not cashed within 180 days
10 after its last mailing to the Participating Class Member, the funds from such uncashed checks will
11 be paid to the State of California Controller’s Office of Unclaimed Property and the Participating
12 Class Member will remain bound by the Settlement. (Decl. Zakay ¶4).

13 The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the
14 Gross Settlement Amount as their Class Counsel Fees Payment. Class Counsel will apply
15 separately for an award of litigation expenses incurred in the prosecution and settlement of the
16 Action in an amount not exceeding \$15,000. **In support of this request, Class Counsel is**
17 **providing evidentiary support, including lodestar, in the declarations submitted concurrently**
18 **herewith.** The Agreement provides for payment of Class Representative Service Payment of no
19 more than \$5,000 for Plaintiff, or such lesser amount as may be approved by the Court in
20 compensation for his services. Defendant does not oppose the requested Class Counsel Fees
21 Payment, Litigation Expenses, Settlement Administration Costs, or Class Representative Service
22 Payment. (Decl. Zakay ¶5).

23 The Parties allocated \$8,000 from the Gross Settlement Amount for settlement of civil
24 penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of Labor
25 Code §2699(i) the PAGA Payment shall be allocated \$6,000 to the LWDA (“LWDA Payment” or
26 the “PAGA Payment”) as the LWDA’s share of the settlement of civil penalties and \$2,000 to the
27 Net Settlement Amount for distribution to the Aggrieved Employees (“Net PAGA Amount”).
28 (Decl. Zakay ¶6).

1 The Settlement was reached through arm's length negotiations. On February 1, 2021, the
2 Parties participated in an all-day mediation presided over by Gig Kyriacou, Esq., a respected
3 mediator of wage and hour class and PAGA actions. Prior to the mediation, the Parties prepared
4 by exchanging data and records, calculating damages, and submitting mediation briefs to the
5 Mediator. Defendant provided Class Counsel with necessary records and information for the
6 members of the Class. Defendant produced a sample consisting of pay records and time records for
7 the Class Members for the entire Class Period. Defendant also produced Defendant's relevant
8 employment policies, including compensation policies and timekeeping policies. Plaintiffs
9 analyzed the data with the help of an expert and prepared and submitted a mediation brief to
10 Mediator Kyriacou. The Parties were unable to reach an agreement to settle the Action, at which
11 point Mediator Kyriacou made a mediator's proposal, which was accepted by the Parties. The
12 Parties documented the agreement in the form of a Memorandum of Understanding. The Parties
13 then prepared the full Agreement which was signed by the Parties and received preliminary approval
14 from the Court by Order dated September 17, 2021. (Decl. Zakay ¶7).

15 The Settlement is fair, adequate and reasonable to the Class and should be finally approved
16 for the same reasons the Court granted preliminary approval to the Settlement, finding that it is fair,
17 adequate, and reasonable as to all potential Class Members. In sum, this Settlement valued at
18 \$350,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
19 that liability in this case was far from certain in light of the defenses asserted by Defendant. There
20 have been no objections and no opt outs. Given the complexities of this case, the defenses asserted,
21 the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the
22 proposed Settlement is fair, reasonable and adequate, and should be finally approved. (Decl. Zakay
23 ¶8).

24 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND** 25 **APPROVAL OF CLASS ACTION SETTLEMENTS**

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th
27 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is
28 particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners*

1 for *Fair Fran. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“[V]oluntary conciliation
2 and settlement are the preferred means of dispute resolution. This is especially true in complex class
3 action litigation.”)

4 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
5 class action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)
6 (citing *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579
7 (1980).) The court must decide whether the proposed settlement falls within the range of reasonable
8 settlements, taking into account that settlements are compromises between the parties reflecting
9 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. See
10 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to
11 be judged against a hypothetical or speculative measure of what might have been achieved had
12 plaintiffs prevailed at trial.”) In *Wershba*, appellants argued that the settlement was too low given
13 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
14 underlying class claims are not a basis for upsetting the settlement of a class action.” *Id.*; see also
15 *7-Eleven, supra*, at 1150.

16 Courts have repeatedly emphasized that there is a strong initial presumption that the
17 compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
18 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption
19 of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court
20 to act intelligently; (2) the settlement is reached through arm’s-length bargaining; (3) counsel is
21 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App.
22 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91.
23 Here, all of these factors support a presumption of fairness.

24 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

25 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
26 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); see also *Officers for Justice v. Civil Service*
27 *Com’n*, 688 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is “the protection of
28

1 those class members, including the named plaintiffs, whose rights may not have been given due
2 regard by the negotiating parties.” *Dunk, supra*, at 1801.

3 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
4 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that
5 the trial court should consider in evaluating the reasonableness of a class action settlement
6 agreement include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration
7 of further litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
9 views of counsel, the presence of a governmental participant, and the reaction of the class members
10 to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
11 (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App.
12 4th 399, 408 (2010).

13 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at
14 1801. Due regard should be given to what is otherwise a private consensual agreement between the
15 parties. *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that
16 the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
17 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
18 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
19 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.*

20 These factors are analyzed seriatim below, and all support final approval of the Settlement
21 before this Court, consistent with this Court’s Preliminary Approval Order.

22 **1. The Investigation and Discovery Are Sufficient to Allow Counsel and the Court to**
23 **Act Intelligently**

24 On July 7, 2020, Plaintiff filed a class action Complaint against Defendant in the Superior
25 Court of the State of California, County of Los Angeles. Plaintiff asserted claims that Defendant:
26 (1) Violated California Business and Professions Code § 17200 *et seq.*; (2) Failed to pay minimum
27 wages in violation of California Labor Code §§ 1194, 1197, and 1197.1 (3) Failed to pay overtime
28 wages in violation of California Labor Code §§ 510, *et seq.*; (4) Failed to provide required meal

1 periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
2 (5) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512
3 and the applicable IWC Wage Order; (6) Failed to provide accurate itemized wage statements in
4 violation of California Labor Code § 226; and (7) Failed to provide wages when due in violation of
5 California Labor Code §§ 201, 202 and 203. On September 4, 2020, Plaintiff filed a First Amended
6 Complaint, asserting additional claims against Defendant for: (8) Wrongful Termination in
7 Violation of Public Policy; and (9) Violation of Constitutional Right to Privacy. On April 12, 2021,
8 the Parties stipulated for leave for Plaintiff to file a Second Amended Complaint against Defendant
9 in the Superior Court of California, County of Los Angeles, asserting an additional claim for
10 violations of the Private Attorneys General Act (“PAGA”). On April 23, 2021, Plaintiff filed the
11 Second Amended Complaint, alleging an additional claim for violations of the PAGA. (Decl. Zakay
12 at ¶11(a)).

13 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
14 Counsel has diligently evaluated the Class Members’ claims against Defendant. Class Counsel
15 engaged in informal discovery in preparation for the mediation, and received significant responses
16 and documents to the discovery requests. Defendant produced a large sample consisting of pay
17 records and time records for the Class Members for the entire Class Period. Defendant also
18 produced relevant employment policies, including compensation policies and timekeeping policies.
19 Class Counsel conducted extensive review of time records and data with the help of an expert.
20 Based on the foregoing data and their own independent investigation, evaluation and experience,
21 Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the best interest
22 of the Class in light of all known facts and circumstances, including the risk of significant delay,
23 the defenses asserted by Defendant, and potential appellate issues.

24 **2. The Settlement Was Reached Through Arm’s-Length Bargaining**

25 This Settlement was the result of arm’s-length negotiations as well as informal settlement
26 conferences between the Parties through their respective attorneys. After comprehensive legal and
27 factual analysis, Class Counsel possessed sufficient information for intelligent evaluation of the
28 case for purposes of settlement. Prior to the initiation of settlement discussions, Class Counsel

1 reviewed and outlined the case based upon the information for the Class, and determined the
2 conditions of settlement which would be fair and reasonable to the Class with the assistance of an
3 expert. Class Counsel was experienced in the types of settlement appropriate to resolve these wage
4 and hour claims on behalf of employees. (Zakay Decl. ¶12(a)).

5 The fact that the Settlement was negotiated with the assistance of a mediator supports
6 approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS Fin.*
7 *Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
8 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
9 litigation, with the assistance of a well-respected mediator with substantial experience in
10 employment litigation[, and] this factor supports approval of the settlement.”)

11 **3. Class Counsel is Experienced in Similar Litigation**

12 As set forth in the declarations submitted in support of this motion, Class Counsel have
13 extensive experience in wage and hour matters and have previously been appointed as Class
14 Counsel by California courts. Class Counsel support approval of the Settlement based upon their
15 experience in wage and hour litigation.

16 **4. There Are No Objections by the Class Members**

17 The reaction of the Class unequivocally supports approval of the Settlement. On October
18 1, 2021, the Settlement Administrator Court-approved Class Notice to the Class Members, which
19 provided each Class Member with the terms of the Settlement, including notice of the claims at
20 issue and the financial terms of the Settlement, including the Class Counsel Fee Payment, Litigation
21 Expenses, and Class Representative Service Payments being sought, how individual Settlement
22 Shares would be calculated, and the specific, estimated payment amount to that individual. In
23 disseminating the Class Notice, the Settlement Administrator followed the notice procedures
24 authorized by the Court in its Preliminary Approval Order. Significantly, there have been no
25 objections and no opt outs. (See Declaration of Lluvia Islas at ¶¶ 11-12.) As a result, the entire
26 Class has elected to participate in the Settlement and will be sent a settlement check. The final
27 administration results are documented in the accompanying Declaration of the Settlement
28 Administrator Lluvia Islas.

1 The absence of any objector strongly supports the fairness, reasonableness and adequacy of
2 the Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
3 (S.D.N.Y. 2000) (“If only a small number of objections are received, that fact can be viewed as
4 indicative of the adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-
5 119 (3d. Cir. 1990) (29 objections out of 281 member class “strongly favors settlement”); *Laskey*
6 *v. Int’l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to
7 the proposed settlement should be considered when determining fairness of settlement). Here,
8 where there are no objections, the approval of the Class is evident.

9 **5. The Risk, Expense, Complexity and Likely Duration of Further Litigation**

10 The risks and complexity of the alleged claims are discussed in detail in the Declaration of
11 Zakay at ¶ 13. Where both sides face significant uncertainty, the attendant risks favor settlement.
12 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted
13 by Defendant presented serious threats to the claims of the Plaintiffs and the other Class Members.
14 Defendant asserted that the employment practices complied with all applicable Labor Laws.

15 Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th
16 1004 (2012) weakened, if not eliminated, Plaintiff’s claims, on liability, value, and class
17 certifiability as to the meal and rest period claims. A major component of the damages alleged to
18 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
19 during the mediation, Defendant aggressively argued that Defendant’s policies and culture afforded
20 the Class Members an opportunity to take timely meal and rest breaks, and that employees like the
21 Plaintiffs *chose* not to take compliant breaks. Defendant argued, therefore, that under the *Brinker*
22 decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and
23 strictly enforced lawful policies, afforded Plaintiff and the Class Members compliant meal and rest
24 breaks, and had a system in place to pay premiums when breaks were missed, short or untimely.
25 Finally, the court may find remitter/reduction of the statutory damages appropriate. See e.g.
26 *Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505,
27 at *5 (E.D. Pa. 2007). Defendant also argued that it was not required to include the housing and
28 meals and incidental per diems in its traveling employees’ regular rate of pay because it pegged

1 those per diems to the number of hours/shifts worked – a defense upheld by some courts. See *Clarke*
2 *v. AMN Servs., LLC* (C.D. Cal. 2018) 2018 U.S. Dist. LEXIS 162330, revd. and remanded (9th Cir.
3 2021) 987 F.3d 848. If successful, these defenses could eliminate or substantially reduce any
4 recovery to the Class. While Plaintiff believes that these defenses, and others, could be overcome,
5 Defendant maintains these defenses have merit and therefore present a serious risk to recovery for
6 the Class. (Decl. Zakay at ¶13).

7 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
8 to obtain class certification and thereby not recover on behalf of any employee other than
9 themselves. Defendant argued that the individual experience of each employee varied with respect
10 to the alleged claims. While other cases have approved class certification of wage and hour claims,
11 class certification in this action would have been hotly disputed and was by no means a foregone
12 conclusion. Finally, even if class certification was successful, as demonstrated by the California
13 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
14 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
15 (Decl. Zakay at ¶13).

16 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
17 trying the Action against Defendant through possible appeals which even if successful could take
18 several years. Class Counsel have also taken into account the uncertain outcome and risk of
19 litigation, especially in complex actions such as this Action. Class Counsel are also mindful of and
20 recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the
21 Action. As demonstrated by the decision in *Duran*, the complexities and duration of further
22 litigation cannot be overstated. There is little doubt that Defendant would post a bond and appeal
23 in the event of an adverse judgment. A post-judgment appeal by Defendant would have required
24 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
25 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed
26 recovery today outweigh an uncertain result three or more years in the future. Moreover, post-trial
27 motions and appeals would have been inevitable. Costs would have mounted and recovery would
28 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and

1 Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon
2 their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the
3 Agreement is in the best interest of the Class Members. (Decl. Zakay ¶13).

4 In sum, the Settlement is a fair and reasonable result, and provides the Class with a
5 significant recovery, particularly when viewed in light of the fact that Defendant asserted serious
6 and substantial defenses both to liability and to class certification. Given the complexities of this
7 case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
8 reasonable and adequate, and should be finally approved. (Decl. Zakay ¶13).

9 **6. The Amount Offered in Settlement**

10 The Settlement in this case is fair, reasonable and adequate. As detailed during preliminary
11 approval, the Gross Settlement Amount compares favorably to the value of the claims. Class
12 Members will receive immediate and certain payments of considerable amounts under the
13 Settlement. Currently, the overall maximum and average Participating Class Member allocations
14 are estimated to be \$3,319.40 and \$476.67 respectively. Additionally, the overall maximum and
15 average PAGA Member allocations are estimated to be \$25.58 and \$4.88 respectively. (Decl. Islas
16 at ¶ 14).

17 Plaintiffs estimate that Defendant was subject to maximum liability for damages in the
18 amount of \$1,488,904.68 consisting of \$559,318.68 for underpaid overtime, and \$929,586 for meal
19 and rest break periods. In addition, Plaintiff calculated that Defendant could be liable for \$339,700
20 for wage statement penalties.³ Finally, Plaintiffs' expert calculated that Defendant could be liable

21 ³ While Plaintiff alleged claims for statutory penalties, he recognizes that this claim is subject to
22 various defenses asserted by Defendant, including, but not limited to, a good faith dispute defense
23 as to whether Defendant, as a staffing agency, is governed by Labor Code Section 201.3, instead of
24 Section 203, which, if proven, would significantly limit the amount of damages owed to the
25 California Class. Moreover, Plaintiff's claims pursuant to Labor Code Section 226 and various
26 PAGA penalties are also subject to a good faith defense as to whether any premium wages for meal
27 or rest periods or other wages were owed given Defendant's position that Plaintiff and the Class
28 were properly compensated. *See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at
*9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion for summary judgment on claim for
failure to provide accurate itemized wage statements "because a good faith dispute exists...
[therefore, defendant] was not 'knowing and intentional' in failing to provide [Section 226]
statements"); *see also Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is
no willful failure to pay wages if the employer and employee have a good faith dispute as to whether

1 for PAGA penalties in an amount of \$2,325,100.⁴ Consequently, the Settlement of approximately
2 \$350,000 represents more than 23.5% of the value of the maximum actual damages at issue.
3 Furthermore, the Settlement represents more than 19% of the maximum combination of damages
4 and penalties to the Class, assuming all of these amounts could be proved at trial. (Decl. Zakay
5 ¶14(b)).

6 V. CONCLUSION

7 Plaintiff respectfully submits that the proposed Settlement satisfies the standard of fairness
8 established under California law and should therefore be finally approved as fair, reasonable and
9 adequate and request entry of the Final Approval Order and Judgment.

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11 DATED: November 17, 2021

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13 ZAKAY LAW GROUP, APLC

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15 By: 
16 Shani O. Zakay
17 Attorney for Plaintiffs

18 and when the wages were due.”). Additionally, there is serious doubt as to whether violations of
19 the meal/rest period regulations, which require payment of a “premium wage” for each improper
20 meal period, give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang’s China Bistro,*
21 *Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App.
22 5th 1308, 1336 (2018). This issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal.
23 App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest break premiums
24 “do not entitle employees to pursue the derivative penalties in sections 203 and 226.”

25 ⁴ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
26 Defendant, including that Class Members may not be able to recover subsequent penalties until, at
27 a minimum, Plaintiff provided PAGA notice. *See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
28 1209 (2008) (“Until the employer has been notified that it is violating a Labor Code provision
(whether or not the commissioner or court chooses to impose penalties), the employer cannot be
presumed to be aware that its continuing underpayment of employees is a “violation” subject to
penalties.”). In addition, Plaintiff recognizes that PAGA claims bear some risk. *See Carrington v.*
Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.