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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF CONTRA COSTA

23 Robert Anthony Gonzalez, Maurice
24 Frank, and Ethan Collins individually and
25 on behalf of all similarly situated
26 individuals and all aggrieved employees,

27 Plaintiff,

28 v.

Golden Gate Bell, LLC and DOES 1
to 100,

Defendants.

Case No. MSC21-00956

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AN ORDER:**

- (1) PRELIMINARILY APPROVING
CLASS ACTION AND PAGA
SETTLEMENT;**
**(2) DIRECTING DISTRIBUTION OF
NOTICE OF SETTLEMENT; AND**
**(3) SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**

Date:
Time:
Dept.: 12
Judge: Hon. Charles Treat

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I. INTRODUCTION

Plaintiffs seek preliminary approval of a wage and hour settlement that will deliver a fund of \$4,500,000 for a group of just over 21,000 employees who worked in Bay Area Taco Bell fast-food restaurants operated by Defendant Golden Gate Bell (“GGB”). There is no requirement for Class Members to file claim forms and there will be no reversion to Defendant. Once this Court grants final approval, every Class Member will receive a check, and those checks will be substantial. Assuming the Court approves all requested fees and expenses, the average payment will be more than \$100.

The settlement resolves multiple different cases that bring claims against the same employer. Those cases are the consolidated proceedings in *Ethan Collins and Maurice Frank v. Golden Gate Bell, LLC* (Case Nos. RG18913275, RG19037980, and HG18919698 pending in Alameda Superior Court), and *Robert Anthony Gonzalez v. Golden Gate Bell, LLC*, Case No. MSC21-00956 pending in this Court. The parties have agreed to seek approval of the settlement in this Court and have informed the Alameda Superior Court that this Court will be handling the approval process. The Alameda Court has stayed proceedings in the *Collins/Frank* matter pending this Court’s approval of the settlement. Graves Decl. Exh. 10.

Approval of the settlement is a two-step process. First, this Court will grant preliminary approval and notice of the settlement will be sent to all Class Members. After every Class Member has had an opportunity to comment or opt out of the settlement, this Court will review the Class Member response and rule on final approval.

To grant approval, this Court need only find that that the settlement is the product of arm’s-length negotiation and falls within the range of reasonableness. These cases have been vigorously litigated for years and have been the subject of two all-day mediations and extensive follow-up negotiations. This is the definition of arm’s-length. The recovery is not just within the range of reasonableness, it is excellent. This Court should grant preliminary approval.

II. PROCEDURAL HISTORY

A. *Frank v. Golden Gate Bell*

On July 2, 2018, Plaintiff Maurice Frank gave notice to the Labor and Workforce Development Agency (“LWDA”) of his claims that franchise restaurant operator Golden Gate Bell had violated the Labor Code and Wage Order by, *inter alia*, failing to provide meal breaks, and failing to pay for all hours worked. Graves Decl. Exh. 2. On July 18, 2018, Plaintiff Frank filed a class action complaint against Golden Gate Bell in Alameda County Superior Court. *Id.* Exh. 1. On September 6, 2018, Frank filed a separate PAGA complaint in Alameda County. *Id.* Exh. 2.

B. *Collins v. Golden Gate Bell*

On June 25, 2018, Plaintiff Ethan Collins gave notice to the LWDA of his claims that Golden Gate Bell had violated the Labor Code and Wage Order by, *inter alia*, failing to provide required information on paystubs, failing to provide meal breaks, failing to reimburse cell phone and mileage expenses, and failing to pay for all hours worked. Graves Decl. Exh. 3. On August 30, 2018, Collins submitted to the LWDA a notice regarding additional representative PAGA and class claims. Graves Decl. Exh. 4. On August 30, 2018, Collins filed a class action and PAGA complaint against Golden Gate Bell in Santa Clara County Superior Court. Graves Decl. Exh. 5.

C. Removal and Consolidation

Defendant removed both the *Collins* and *Frank* class actions to federal court, where the matters were related. Plaintiffs moved to remand under 28 U.S.C. §1332(d) on the grounds that over two-thirds of the proposed class members are California citizens. The District Court remanded on June 21, 2019. After remand, the parties stipulated to move the *Collins* matter to Alameda County and to consolidate the *Collins* and *Frank* matters. The Court granted the parties’ request to consolidate on November 13, 2019. The second amended consolidated complaint was filed on August 9, 2021. Graves Decl. Exh. 6.

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G. Mediation and Settlement

The parties have attended two separate mediations in this matter. In August of 2020, Plaintiffs Frank and Collins and Defendant attended an all-day mediation with noted mediator David Rotman. Prior to the mediation, Plaintiffs' Counsel engaged in a vigorous analysis that included payroll records, time records, and paystubs. Graves Decl. ¶24. To better understand the data, Counsel for Plaintiff Collins utilized an outside expert skilled at data analysis. *Id.* at ¶25. The analysis included multiple alternative calculations of potential violations and the recovery to the Class under different legal theories and possible rulings. *Id.* Class Counsel also used information gathered by interviewing multiple employees and reviewing thousands of pages of policy documents. *Id.* at ¶26. Despite the immense preparation, the parties failed to come to an agreement. *Id.* at ¶27.

In April of 2022, all parties attended a second mediation with noted mediator Tripper Ortman. The second mediation included Defendant and Plaintiffs Frank, Collins, and Gonzalez. Graves Decl. ¶28. Prior to the second mediation, Defendant provided updated data, including time and payroll records. *Id.* at ¶29. Counsel for Collins went through an intensive review of all available data to build a detailed liability analysis that allowed for dynamic calculation of potential liability based on different factual and legal outcomes. *Id.* Counsel also retained an independent expert to analyze voluminous payroll data to determine damages and penalties on a pay period basis. *Id.* at ¶30. Counsel for Collins drafted a 37-page single-spaced mediation brief with 57 exhibits. *Id.* at ¶31. Counsel for Frank reviewed and contributed to the brief and exhibits. *Id.* at ¶32. Although the mediation was productive, a settlement was not reached. *Id.* at ¶33.

After the second mediation, the parties continued to negotiate through mediator Ortman while Plaintiffs worked on motions for partial summary judgment and class certification. In September of 2022, the parties executed an initial Memorandum of Understanding. Graves Decl. ¶35. Months of additional negotiation were required to reach the final settlement agreement. Defendant provided signatures on the Class Action and PAGA Settlement Agreement on April 4, 2023. *Id.* at Exh. 9.

III. THE CLASS

The Settlement Class is the same as what Plaintiffs sought to represent in their complaints. The Settlement Class is composed of all individuals employed by Defendant Golden Gate Bell in California as non-exempt employees from July 18, 2014 to November 1, 2022. Graves Decl. Exh. 9 at ¶1.5-1.12.

IV. THE CLAIMS

A. Off-the-Clock Work

Plaintiffs allege that Defendant required employees to attend trainings and, in some cases, physically come to a restaurant to see the work schedule, resulting in employees working without that work time being recorded or paid. Such work results in an underpayment of wages and also a failure to pay minimum wage. Defendant disputes this claim and asserts that all time worked was recorded and paid.

B. Failure to Reimburse Business Expenses

Labor Code §2802 and Paragraphs 8 and 9 of the applicable Wage Order require an employer to reimburse employees for business expenses. Plaintiffs contend that Defendant failed to reimburse for necessary expenses, namely for the use of personal vehicles to deliver supplies to restaurants, and use of cell phones to communicate with management. Plaintiffs also allege that Defendant sometimes required employees to pay for cash register shortages from their own personal funds. Defendant contends that employees were free to request mileage reimbursement and denies all other claims.

C. Failure to Provide Breaks

Employers must provide a meal break after five hours of work, and a second meal break after 10 hours of work in a day. Cal. Lab. Code §512. The operative Wage Order also requires that employers must provide rest breaks at set intervals. Plaintiffs assert that Defendant did not provide meal or rest breaks when a restaurant was busy or short-staffed. Defendant contends that employees were always provided with all required breaks.

1 **D. Reporting Time Pay**

2 Section 5(b) of the applicable Wage Order requires that an employee be paid
3 reporting time pay if he or she “is required to report for work for a second time in any
4 one workday and is furnished less than two hours of work on the second reporting.”
5 Where this happens, the employee is entitled to two hours of pay. A review of
6 timekeeping data showed shifts in which an employee was required to return to work for
7 a second time in a workday, but was not provided with the minimum hours required.

8 **E. Meal and Rest Break Premium Pay**

9 Whenever an employer fails to provide an employee with a required meal or rest
10 break, the employer is required to pay the employee an additional hour of pay at the
11 employee’s regular rate of pay. Cal. Lab. Code §226.7. Plaintiffs assert that Defendant
12 failed to provide this premium pay when breaks were not provided, as a matter of
13 uniform policy. Defendant disputes that it was required to provide premium pay, and it
14 denies that it failed to provide meal breaks to employees.

15 **F. Failure to Record Work Hours**

16 Paragraph 7 of the Wage Order requires employers to record the work times for
17 each employee. Plaintiffs allege that Defendant did not record hours worked during the
18 same circumstances that led to the off-the-clock work allegation described above.
19 Defendant contends that it instructed employees to record all work hours.

20 **G. Failure to Provide Accurate Wage Statements**

21 Labor Code §226 requires employers to provide an itemized statement of wages,
22 including the name and address of the legal entity that is the employer. Plaintiffs contend
23 that Defendant’s statements were missing the name and address of the employer.
24 Plaintiffs also have a wage statement claim that is derivative of the meal break and wage
25 claims in that Plaintiffs claim the wage statements provided inaccurate hours worked,
26 gross wages, and net wages. Defendant disputes these claims.

H. Failure to Pay Timely Wages

Labor Code §204 mandates that wages be paid twice a month. Plaintiffs allege that Defendant violated this statute by failing to pay both meal period premiums due under Labor Code Section 226.7, and off-the-clock wages. Defendant disputes these allegations and also argues that Section 204 is inapplicable to Section 226.7 wages.

I. Failure to Pay Wages Upon Termination

California Labor Code §§201 and 202 require employers to pay employees all wages earned by the employee at the time of the employee's termination from employment, where the termination is involuntary; and within 72 hours of the employee's voluntary resignation from employment. Plaintiffs allege that Defendant failed to pay wages and meal break premiums owed to employees when they resigned or were subject to termination. Defendant contends that all required wages were paid.

J. Violation of Unfair Competition Law

The California Unfair Competition Law prohibits any unlawful, unfair or fraudulent business act or practice. Cal. Bus. & Prof. Code §17200 *et seq.* Plaintiffs contend that the other issues raised in the complaint give rise to liability under the Unfair Competition Law. This claim does not provide independent monetary relief.

V. THE VALUE OF THE CASE

Prior to each mediation, Plaintiff's Counsel developed an analysis rubric that identified multiple estimated liability amounts for each cause of action by applying multiple potential outcomes on disputed factual or legal issues. The values below represent the estimated values that Counsel believed were most likely:

A. Off-the-Clock Wages

Off-the-clock wages are based on an estimate of 30 minutes per week. Graves Decl. ¶39. The maximum possible estimated liability was \$4,911,266.11. *Id.*

B. Reimbursement

Plaintiffs performed multiple analyses of reimbursement liability. The maximum potential estimate for all reimbursement claims was \$12,140,656.39. Graves Decl. ¶40.

1 **C. Reporting Time Pay**

2 Among the multiple analyses run by Plaintiffs, the maximum potential estimated
3 reporting time pay was \$1,616,020.51. Graves Decl. ¶41.

4 **D. Meal and Rest Break Premium Pay (Labor Code §226.7)**

5 Based on the data provided by Defendant, the maximum possible premium pay
6 damages are \$35,766,219.24. Graves Decl. ¶42.

7 **E. Interest**

8 Plaintiffs assume interest at ten percent per annum for wages (including off-the-
9 clock wages, meal and rest break premium wages, and reporting time wages) and
10 reimbursement. Total estimated interest assuming the largest possible estimated value
11 for all wages and reimbursements was \$13,860,885.92. Graves Decl. ¶43.

12 **F. PAGA and Statutory Penalties**

13 Just 25% of each PAGA penalty will be available to the Class Members. Notably,
14 Defendant can only be required to pay a given penalty one time for an individual
15 employee on a given workweek. For example, if Defendant issued pay stubs that were
16 defective both in that they omitted the name and address of the employer and also failed
17 to accurately state all wages earned, the company would still be subject to, at most, a
18 single civil penalty and a single statutory penalty for that violation.

19 **1. Labor Code §558**

20 Failure to pay wages results in a penalty of \$50 for the initial pay period, and \$100
21 for each subsequent pay period. Cal. Lab. Code §558. The total maximum potential
22 liability for this penalty was \$26,827,450. Graves Decl. ¶44.

23 **2. Labor Code §203**

24 The total estimated penalty here is \$30,015,745.57. Graves Decl. ¶45. Defendant
25 argued that the failure to pay is not willful so no penalty should apply.

26 **3. Labor Code §210**

27 For each instance in which an employer fails to timely pay wages, the employer is
28 subject to a civil penalty of \$100 dollars for the initial failure, and \$200 for each

1 subsequent or willful failure to pay each employee, plus 25% of the amount of wages
2 withheld. The total maximum estimated penalty under this section was \$45,142,451.19,
3 including the recurring civil penalty and the 25% of unpaid wages. Graves Decl. ¶46.

4 **4. Labor Code §226.3**

5 Failure to provide an accurate paystub can trigger a civil penalty of \$250 for the
6 first violation and \$1,000 for each subsequent violation under Section 226.3. The
7 maximum estimated penalty was \$163,842,750. Graves Decl. ¶47.

8 **5. Labor Code Section 226(e)**

9 Paystub violations can also trigger a statutory penalty under Labor Code §226(e),
10 which prescribes a penalty of \$50 for the initial pay period, and \$100 for each subsequent
11 pay period. The penalty is subject to a cap of \$4,000 per individual. The maximum
12 estimated liability for this penalty was \$16,512,450. Graves Decl. ¶48.

13 **6. Labor Code §1197.1**

14 Section 1197.1 requires the employer, in addition to paying the wages owed, to
15 pay a penalty of \$100 for the first pay period in which a minimum wage violation is
16 committed, per employee; and \$200 for each subsequent pay period, per employee, in
17 which a violation is committed. These penalties total \$41,837,500. Graves Decl. ¶49.

18 **7. Labor Code §2699(f)**

19 The Labor Code does not lay out civil penalties for two alleged violations: failure
20 to reimburse (Labor Code §2802) and failure to accurately record hours worked (Wage
21 Order ¶ 7(A)(3); Labor Code §1198). Each of these is subject to a penalty of \$100 for an
22 initial violation and \$200 for each subsequent violation. The maximum estimated Labor
23 Code §2699(f) penalties for each of these violations was \$46,885,300. Graves Decl. ¶50.
24 Taken together, the penalties for these two violations totaled \$93,770,600. *Id.*

25 **8. Total Liability**

26 Class Counsel built multiple liability models with different assumptions about how
27 a court might resolve various issues related to calculating penalties and damages. Prior to
28 any judicial reduction, and excluding attorney's fees, total liability under these models

1 ranged from \$367,023,163.28 to \$486,243,994.93. Graves Decl. ¶51. Accounting for the
2 75% distribution of PAGA penalties to the State, recovery for class members (prior to any
3 judicial reduction) ranges from \$148,014,778.33 to \$195,294,094.04. Graves Decl. ¶52.

4 VI. LITIGATION RISKS

5 The maximum theoretical penalties in this case are large, but Defendant has
6 asserted multiple defenses and any payment of penalties is contingent on Plaintiffs
7 prevailing at trial. The key risks included:

8 **Loss on the Merits.** Defendant presented a vigorous defense on the merits of
9 each claim.

10 **Reduction of Penalties.** Labor Code §2699(e)(2) gives the trial court discretion
11 to reduce penalties under some circumstances. For example, in *Fleming v. Covidien,*
12 *Inc.*, 2011 U.S. DIST. LEXIS 154590, 9 (CD. Cal. 2011), the court imposed an 82%
13 reduction. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018) the
14 reduction took total penalties from \$70 million to \$150,000. That is a 99.98% reduction.
15 In this case, the total penalty liability is exponentially higher than the underlying wage
16 liability. Plaintiffs perceived a significant risk that this Court would impose a dramatic
17 reduction in penalties if they were awarded.

18 **Class Certification.** Because a denial of certification could eliminate any
19 recovery for the Class, and because reversal of a class certification ruling is difficult to
20 obtain on appeal, the risk associated with certification reduces the value of the claims.

21 VII. THE SETTLEMENT

22 A. The Common Fund

23 The proposed settlement will be a common fund with no reversion to Defendant.
24 Graves Decl. Exh. 9 at ¶1.21. The parties refer to the amount that Defendant will pay to
25 create the common fund as the “Gross Settlement Amount.” Plaintiffs expect the
26 distributions from the Gross Settlement Amount to look like this:
27
28

Gross Settlement Amount	\$4,500,000
LWDA Payment ¹	(\$300,000)
Requested Service Awards ²	(\$40,000)
Requested Attorney Fees ³	(\$1,800,000)
Estimated Attorney Costs	(\$80,000)
Estimated Administration Costs	(\$70,000)
Net Distribution Amount	\$2,210,000

B. Payments to the Class Members

The entire Net Distribution Amount will be distributed among the Settlement Class Members. Graves Decl. Exh. 9 at ¶1.27. Settlement Class Members are those Class Members who do not exclude themselves from the Settlement. Graves Decl. Exh. 9 at ¶1.35. There will not be any requirement to submit a claim form to receive payment. *Id.* Assuming approval of the payment amounts described above, the average Individual Settlement Payment will be approximately \$105. Graves Decl. ¶54.

The Individual Settlement Payment for each Settlement Class Member will be based on the number of pay periods worked by each individual with payments being proportional to the time worked. Graves Decl. Exh. 9 at ¶3.1.4.

For tax treatment, Individual Settlement Payments will be allocated as follows: 20% for back wages, and 80% for claims of statutory and civil non-wage payments. Graves Decl. Exh. 9 at ¶3.1.4.1. Back wages will be reported on IRS Form W-2. The remainder will be reported on IRS Form-1099 as required. *Id.*

¹ The total PAGA payment is \$400,000. Pursuant to the Act, 75% will be paid to the LWDA for civil penalties, while the remaining 25% will be distributed to Settlement Class Members as part of the Net Settlement Fund. Graves Decl. Exh. 9 at ¶3.1.5.

² The Settlement provides for service payments to each of the three Plaintiffs, with Collins and Frank each receiving \$15,000 and Gonzalez receiving \$10,000, for a total of \$40,000.

³ Plaintiffs will file a motion for award of attorney fees concurrent with the motion for final approval. The motion for attorney fees will be based on Counsels' lodestar supported by detailed contemporaneous time records recorded in 1/10th hour increments.

1 **C. Release of Claims by the Class**

2 The claims released by the Class correspond exactly to the allegations in the cases.
3 Graves Decl. Exh. 9 at ¶5. Class Members release claims that “alleged or could have
4 been alleged . . . based upon facts alleged in the Operative Complaints or PAGA
5 Notices.” *Id.* at ¶5.2. The period of release is limited to the period for which the Class is
6 receiving compensation. *Id.*

7 **VIII. NOTICE PROCEDURES**

8 The job of mailing notices to Class Members, receiving Class Member responses,
9 and ultimately mailing payments after this Court grants final approval will be performed
10 by a professional third-party Settlement Administrator. Graves Decl. Exh. 9 at ¶7.1.
11 After considering bids from several firms (Graves Decl. Exhs. 11-18), the parties selected
12 ILYM Group as the Settlement Administrator (“the Administrator”).

13 The notice process has three basic steps: **First**, within 10 days of Preliminary
14 Approval, Defendant will provide the Administrator with the Class Data, which will
15 include: (i) the number of pay periods during which each Class Member worked;
16 (ii) the position held by each Class Member during the applicable time period;
17 (iii) the last-known address, all phone numbers, and all email addresses for each Class
18 Member in Defendant’s database; and (iv) each Class Member’s social security number.
19 Graves Decl. Exh. 9 at ¶¶1.8, 4.1.

20 **Second**, within 14 days of receiving the Class Data, the Administrator will send
21 each Class Member the Notice of Settlement by U.S. Mail. Graves Decl. Exh. 9 at
22 ¶7.4.2. Notices will be in both English and Spanish, and include a unique ID number for
23 and the estimated Individual Settlement Payment for each Class Member. *Id.* The
24 proposed Notice form can be found at Exhibit 19 to the Declaration of Allen Graves filed
25 herewith. The Notice complies with all requirements of Rule 3.769(h) of the California
26 Rules of Court, and provides an explanation of the settlement and procedures for Class
27 Members to object or appear at the final approval hearing if they wish to be heard.
28

1 **Third**, if any Notice is returned, the Administrator will perform a single skip trace
2 to try to obtain an updated address. Graves Decl. Exh. 9 at ¶7.4.2. If the skip trace yields
3 a new address, the Administrator will re-mail the Notices to the new addresses. *Id.* The
4 Administrator will maintain toll-free telephone support and a website Class Members can
5 use to contact the Administrator. *Id.* at ¶7.8.1. The website will contain the Notice and
6 other settlement-related documents. *Id.*

7 Each Class Member will have until the Response Deadline to submit any objection
8 to the settlement, submit a request for exclusion from the class claims being released by
9 the settlement, or challenge the amount of his or her Individual Settlement Payment as
10 described in the notice. Graves Decl. Exh. 9 at ¶¶7.5.1, 7.7.2, 7.6. The Response
11 Deadline will be 45 calendar days after the date the initial Notices are mailed to Class
12 Members. *Id.* at ¶1.42.

13 The settlement administrator will provide a final report attaching all objections,
14 requests for exclusion, and challenges to Individual Settlement Payment amounts within
15 10 days after the void date for the last settlement check. Graves Decl. Exh. 9 at ¶7.8.6.
16 Plaintiffs will provide the entire report to the Court with their Motion for Final Approval.

17 **IX. FINAL APPROVAL AND PAYMENT**

18 After the Class Member response deadline and receipt of the Administrator's
19 report, Plaintiffs will file a motion for final approval and a separate motion seeking
20 approval of the requested service payments, attorney fees, and costs. The motion for final
21 approval will ask this Court to certify a class solely for the purpose of settlement.

22 The requirements for certification of the settlement class are distinctly less
23 stringent than those applied to a contested motion. "In some ways, the court's review of
24 certification of a settlement-only class is lessened; as no trial is anticipated in a
25 settlement-only class case, the case management issues inherent in the ascertainable class
26 determination need not be confronted." *Luckey v. Superior Court*, 228 Cal. App. 4th 81,
27 93-94 (2014). With settlement removing the need for trial, class certification will be an
28 easy call. Defendant will provide a list identifying every Class Member, thus

1 establishing ascertainability and numerosity. The stipulation for a class-wide settlement
2 establishes commonality and typicality. Adequacy is established by Class Counsel's
3 background and experience, along with the five-year history of this litigation. Graves
4 Decl. ¶¶56-58.

5 Once final approval is granted, Defendant will transfer the Gross Settlement
6 Amount to the Administrator, and the Administrator disburse all payments within 14
7 calendar days after receiving the Gross Settlement Amount. Graves Decl. Exh. 9 at ¶4.3.
8 If any Individual Settlement Payments are returned by the postal service, the
9 Administrator will attempt to obtain an updated address and re-mail returned checks
10 within 7 days. *Id.* at ¶4.3.2. Checks issued to Settlement Class Members will go stale
11 and no longer be negotiable after 180 days. *Id.* at ¶4.3.1. Upon final approval, Plaintiffs
12 will ask the Alameda County Superior Court to dismiss the consolidated *Frank* and
13 *Collins* matter pending in that court. *Id.* at ¶6.2.

14 **X. FINAL ACCOUNTING AND JUDGMENT**

15 The process for disposing of any unused funds and the entry of the final judgment
16 are governed by Code of Civil Procedure §384. After all payments have been made and
17 all checks issued to Class Members have either been negotiated or gone stale, the
18 Settlement Administrator will provide a report describing all payments as required by
19 Code Civ. Proc. §384(b); and Plaintiffs shall file this report with the Court. The Court
20 will conduct a final accounting hearing to oversee distribution of any remaining funds to
21 a charity *cy pres* recipient as required by Section 384(b).

22 At the final accounting hearing, Plaintiffs will request that the Court order
23 distribution of any amount remaining in the Settlement Fund to be equally divided
24 between *cy pres* recipients both of which meet the criteria described in Section 384(b):
25 Public Counsel and the Boys & Girls Club of Sonoma Valley. Graves Decl. Exh. 9 at
26 ¶4.3.3. Both organizations meet the criteria described in Section 384(b) by operation
27 child advocacy programs. Graves Decl. Exhs. 20-21 None of the parties or their counsel
28 have any relationship with either of the proposed *cy pres* recipients. Graves Decl. at ¶60.

1 Plaintiffs will provide the Court with an Amended Judgment authorizing the *cy pres*
2 distribution as required by Section 384(b). That Judgment will comply with the
3 requirements of Cal Rules of Court, Rule 3.769(h) and will provide for retention of the
4 Court’s jurisdiction to enforce the terms of the judgment.

5 **XI. PRELIMINARY APPROVAL IS APPROPRIATE**

6 **A. The Preliminary Approval Process**

7 In the class action context, California courts recognize a “strong public policy
8 favoring settlement.” *Aviation Data, Inc. v. American Express Travel Related Services*
9 *Co., Inc.*, 152 Cal. App. 4th 1522, 1539 (2007). “Offers to settle, like arbitration, are to
10 be favored, as they encourage the amicable and quick settlement of suits outside the
11 judicial system.” *Id.* Mindful of the general preference for negotiated settlements of
12 class actions, California courts follow the two-step approval process established by CRC
13 3.769: 1) an early (preliminary) review by the trial court; and 2) a final review after
14 notice has been distributed to the Class Members for their comment or objections. The
15 *Manual for Complex Litigation, Second* states at §30.44:

16 If the proposed settlement appears to be the product of serious,
17 informed, non-collusive negotiations, has no obvious deficiencies,
18 does not improperly grant preferential treatment to class
19 representatives or segments of the class, and falls within the range
of possible approval, then the court should direct that notice be
given to the Class Members of a formal fairness hearing.

20 Thus, preliminary approval is simply a conditional finding that the settlement
21 appears to be within the range of acceptable settlements. Consistent with the general
22 policy favoring negotiated resolution, a settlement “within the range of reasonableness
23 required for a settlement offer, is presumptively valid subject only to any objections that
24 may be raised at a final hearing.” *Newburg on Class Actions*, 3rd. Ed., §11.26.

25 While the recommendations of counsel proposing the settlement are not
26 conclusive, the Court can properly take such recommendations into account, particularly
27 where, as here, counsel have been involved in litigation for some period of time, are
28 competent, have experience with this type of litigation, and have obtained substantial data

1 from the opposing party. *See Newburg* §11.47. In this case, Class Counsel has
2 substantial experience with wage and hour class actions and PAGA cases like the one at
3 issue here. Graves Decl. ¶56. Given the risks and benefits of litigation, Class Counsel
4 believe that this settlement is in the best interests of the class. *Id.* ¶¶57-58.

5 **B. The Settlement is Fair and Reasonable**

6 This is an excellent settlement. It delivers \$4,500,000, and in light of the risks
7 inherent in any class action, this is clearly fair and reasonable.

8 Procedurally, the settlement was reached after more than four years of litigation
9 and discovery that can only be described as comprehensive. The valuation of the cases
10 involved independent analysis from an expert as well as extensive and detailed work by
11 counsel for Plaintiff Collins.

12 The parties engaged in two separate full-day mediations. Graves Decl. ¶¶23; 28.
13 It was only months after the second mediation that the parties reached agreement, and
14 even then, settlement was reached only after extended negotiations. Graves Decl. ¶¶33-
15 36.

16 **XII. CONCLUSION**

17 After carefully parsing the data and exhaustively researching the current state of
18 law, Class Counsel and Plaintiffs are certain that accepting the settlement was best for the
19 Class. Graves Decl. ¶58; Hawkins Decl. ¶20, Rose Decl. ¶7, Collins Decl. ¶8; Frank
20 Decl. ¶10; Gonzalez Decl. ¶¶14-15. In light of the strong policy favoring settlement, the
21 extensive discovery and analysis that supported the instant settlement, and the excellent
22 value that it offers to the Class, this Court should grant preliminary approval.

23
24 DATED: May 9, 2023

THE GRAVES FIRM

25
26 By: 

27 ALLEN GRAVES

28 Attorney for Plaintiff Ethan Collins

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DATED: May 9, 2023

JAMES HAWKINS, APLC

By: /s/ Gregory Mauro

GREGORY MAURO

Attorney for Plaintiff

Maurice Frank

DATED: May 9, 2023

FRONTIER LAW CENTER

By: /s/ Adam Rose

ADAM ROSE

Attorney for Plaintiff

Robert Anthony Gonzalez

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 122 N. Baldwin Ave., Main Floor, Sierra Madre, CA 91024.

On May 9, 2023, I served the following document(s) described as:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR AN ORDER: (1) PRELIMINARILY APPROVING CLASS
ACTION AND PAGA SETTLEMENT; (2) DIRECTING DISTRIBUTION OF
NOTICE OF SETTLEMENT; AND (3) SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**

on the interested parties by transmitting a true and correct copy thereof addressed as follows:

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☒ **VIA EMAIL:** I personally sent such document(s) via email to the known email address of the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on May 9, 2023 at Sierra Madre, California.

Justine Gray

Type or Print Name

Signature 