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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**
11

12 **IN RE: UNITED AIRLINES WAGE**
13 **AND HOUR CASES**

14 Included Actions:

15 **BROWN v. UNITED AIRLINES, INC.**
San Diego County Superior Court
Case No. 37-2019-00008533-CU-OE-CTL
16 (Lead Case) (filed on February 14, 2019)

17 **ROBINSON vs. UNITED AIRLINES, INC.**
Alameda County Superior Court
18 Case No. RG19014578
(filed on April 11, 2019)

19 **SANTOS vs. UNITED AIRLINES, INC.**
San Francisco County Superior Court
20 Case No. CGC-20-585926
21 (filed on August 12, 2020)

22 **SANTOS vs. UNITED AIRLINES, INC.**
San Francisco County Superior Court
23 Case No. CGC-20-587208
24 (filed on October 19, 2020)

Case No. **JCCP 5187**

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

Date: August 4, 2023
Time: 1:30 p.m.
Judge: Hon. Katherine Bacal
25 Dept.: 69

Complaint filed: February 14, 2019
26 Trial date: None set

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1 **I. INTRODUCTION/SUMMARY OF ARGUMENT**

2 Plaintiffs Ella Brown, Roland Robinson, Samuel Umanzor, and Carlos Santos
3 (“Plaintiffs”)¹ and Defendant United Airlines, Inc. (“Defendant”) (collectively, “the Parties”),
4 seek preliminary approval of their proposed class action settlement (the “Settlement”).² Subject
5 to Court approval, Plaintiffs has settled the class and representative claims alleged in this Action
6 against Defendant for \$12,000,000. The Settlement resolves all of the claims of Plaintiffs and the
7 proposed Settling Class against Defendant.

8 The Settlement satisfies all of the criteria for preliminary settlement approval and falls
9 well within the range of possible approval. Accordingly, the parties request that the Court grant
10 preliminary approval of the Settlement; conditionally certify the proposed class for settlement
11 purposes only; appoint the class representative, class counsel, and settlement administrator;
12 approve and direct distribution of the Class Notice Packet; and schedule a final approval hearing.

13 **II. BACKGROUND**

14 The description of the case and claims, along with the procedural history, is set forth in
15 the Declaration of Kyle Nordrehaug at ¶¶ 13-18. The Parties engaged in thorough investigation
16 and the exchange of documents and information in connection with the Action which permitted
17 Class Counsel to perform a thorough analysis of the claims. Nordrehaug Decl., ¶17. The Parties
18 participated in mediation David A. Rotman on January 28, 2021, which did not result in a
19 settlement. The Parties then participated in a second day of mediation on December 6, 2022,
20 which after arm’s length negotiations, resulted in this Settlement. Nordrehaug Decl., ¶18.

21 Defendant denies all of Plaintiffs’ material allegations in the Action. Specifically,
22 Defendant contends, among other things, that Plaintiffs were paid all wages to which they were
23 entitled; provided all meal and rest periods; furnished accurate itemized wage statements; and
24

25 ¹ John Thomas was dismissed by Order dated April 4, 2022, and therefore is not part of this
26 settlement and will not be a Class Representative. The reference to John Thomas in the
27 Settlement was a typographical error.

28 ² A copy of the fully executed Class and Representative Action Settlement Agreement
 (“Settlement” or “Agreement”), including its exhibits, is attached as Exhibit 1 to the Declaration
 of Kyle Nordrehaug in Support of Motion for Preliminary Approval of Settlement (“Nordrehaug
 Decl.”).

1 timely paid all wages due upon separation. Defendant further contends that that there is no basis
2 to award penalties; that a class could not properly be certified and that Plaintiffs' claims could not
3 properly proceed on a class or representative basis; and that if a class were certified or Plaintiffs'
4 claims proceeded on a representative basis, Defendant's defenses to Plaintiffs' claims would be
5 applicable to the claims of the class or representative group.

6 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

7 **A. Principal Terms.**

8 1. Defendant will pay a total of \$12,000,000 (the "Gross Settlement Value" or
9 "GSV") to settle the Actions on a classwide basis. (Agreement at ¶ 10.) The "Settling Class" is
10 comprised of "Settling Class Members" defined as containing the following two subclasses:

11 California Subclass: All individuals who are or previously were
12 employed by United in California and classified as a non-exempt
13 Fleet Service Employees or Passenger Service Employees at any
time during the period February 14, 2015, to March 31, 2023.

14 FCRA Subclass: All prospective employees and/or current
15 employees employed by, or formerly employed by United in
16 California who, as a condition of employment, were required to
submit to a background check and/or consumer report at any time
during the period August 12, 2015, to March 31, 2023.

17 Accordingly, the "California Class Period" is defined as February 14, 2015, through March 31,
18 2023, and the "FCRA Class Period" is defined as August 12, 2015, to March 31, 2023.

19 (Agreement at ¶ 13.) It is estimated that there are approximately 13,135 Settling Class Members
20 (8,635 California Subclass Members and 4,500 FCRA Subclass Members).³

21 The GSV will cover compensation to the Settling Class, additional compensation to the
22 Named Plaintiffs as class representatives, the cost of settlement administration and notice, and
23 attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel (as defined in
24 Sections IV and IX), and all payments and disbursements under the Settlement including the
25 employer's share of payroll taxes (with respect to those disbursements hereunder that will be
26 treated as wages). This is a non-reversionary settlement, which means that once the Agreement is

27 _____
28 ³ This estimate is based on data provided to Plaintiffs for purposes of mediation and is subject to a
escalator clause to insure the final figures do not exceed this estimate. (Agreement at ¶ 11(b).)

1 final and effective, no part of the GSV shall revert to Defendant. (Agreement at ¶ 12.) None of
2 the Gross Settlement Value will revert to Defendant, and Defendant will separately pay its share
3 of payroll taxes applicable to Class Members' Settlement Shares. (*Id.*, ¶ 12.)

4 The Settlement Administrator shall calculate the Class Member Payments as follows: (i)
5 first, a flat payment of \$75 per person to each FCRA Subclass Member shall be paid from the
6 NSV; (ii) second, after deducting the FCRA Subclass payments from the NSV, the amount
7 remaining shall be allocated to the California Subclass Members as follows: (i) the Settlement
8 Administrator shall determine the weeks worked for each California Subclass Member during the
9 period February 14, 2015, to March 31, 2023 based upon the data provided by Defendant
10 pursuant to Paragraph 20 of this Agreement; (ii) the Settlement Administrator shall then divide
11 the amount remaining in the NSV by the total number of weeks for the California Subclass to
12 determine a dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall
13 then take the number of weeks worked by each California Subclass Member and multiply it by
14 the Weekly Rate to calculate their Settlement Share. (Agreement at ¶ 52.)

15 All members of the Settling Class, except those individuals (if any) who validly requested
16 exclusion, hereby release, discharge, and covenant not to sue United Airlines, Inc., including its
17 predecessors, successors, affiliates, parents, subsidiaries, related companies, employees, agents,
18 shareholders, officers, directors, attorneys, insurers, and any entity which could be jointly liable
19 with it, or any of them (individually and collectively "the United Releasees,") from and with
20 respect to the following actions, causes of action, suits, liabilities, claims, and demands, whether
21 known or unknown, which the Settling Class, or individual members thereof, has, or had against
22 the United Releasees, or any of them, as follows:

23 (a) With regard to the California Subclass during the California Class Period,
24 all wage and hour claims that were alleged, or reasonably could have been alleged, which
25 occurred during the California Class Period, excluding any background check claims,
26 including all claims for violation of: Labor Code §§ 201-203, 226, 226.7, 227.3, 245-249,
27 510, 512, 1194, 1197, and 1197.1; Wage Order 9-2001; 29 U.S.C. §§ 201 *et seq.*, and
28 expressly excluding all other claims, including claims for vested benefits, wrongful
termination, violation of the Fair Employment and Housing Act, unemployment
insurance, disability, social security, workers' compensation, and California wage and
hour class claims outside of the California Class Period;

1 (b) With regard to the FCRA Subclass during the FCRA Class Period, , all
2 background check and/or consumer report claims that were alleged, or reasonably could
3 have been alleged, which occurred during the FCRA Class Period, excluding any wage
4 and hour claims, including all claims for violation of: the Fair Credit Reporting Act, 15
5 U.S.C. §§ 1681, *et seq.*; the California Consumer Credit Reporting Agencies Act,
6 California Civil Code §§ 1785.1 *et seq.*; Labor Code § 1024.5, and the California
7 Investigative Consumer Reporting Agencies Act, California Civil Code §§ 1786 *et seq.*,
and expressly excluding all other claims, including claims for vested benefits, wrongful
8 termination, violation of the Fair Employment and Housing Act, unemployment
9 insurance, disability, social security, workers' compensation, and background check
10 claims outside of the FCRA Class Period;

11 (c) The claims set out in Paragraph 53(a) and Paragraph 53(b), along with
12 claims under California Labor Code §§ 2698 *et seq.* and California Business &
13 Professions Code § 17200 *et seq.* predicated thereon, shall be referred to collectively as
14 the “Released Claims.”

15 (Agreement at ¶ 55.)

16 **B. Additional Terms.**

17 Subject to Court approval, the Settling Parties agree that CPT Group will be appointed as
18 Settlement Administrator. The Settlement Administrator will be responsible for establishing and
19 maintaining a non-interest bearing account for the GSV; mailing the class notices; receiving and
20 logging adjustment forms and requests for exclusion; researching and updating addresses through
21 skip-traces and similar means; answering questions from the Settling Class members; reporting
22 on the status of the Settlement to the Settling Parties; preparing a declaration regarding its due
23 diligence in the claims administration process; providing the Settling Parties with data regarding
24 the filing of adjustment forms and requests for exclusion; calculating and distributing settlement
25 checks; calculating tax obligations; remitting any and all tax obligations, including (at United’s
26 sole election) the employer’s share of payroll taxes, to the appropriate taxing authorities;
27 processing the PAGA Allocation; and doing such other things as the Settling Parties may direct.
28 The fees and expenses of the Settlement Administrator (“Settlement Administration Expenses”) shall not exceed sixty thousand U.S. dollars and no cents (\$60,000.00). (Agreement at ¶16.)

Not later than fifteen (15) business days after receipt of notice of the Court’s entry of an
Order of Preliminary Approval, the Defendant shall provide the data for the Settling Class to the
Settlement Administrator. (Agreement at ¶20.) Not later than ten (10) business days after receipt
of the information described in Paragraph 20 of this Agreement, the Settlement Administrator

1 shall mail the Settlement Class Notice to all Settling Class Members whose address information is
2 known. This mailing will be sent by first-class U.S. mail. Before mailing the Settlement Class
3 Notice, the Settlement Administrator shall run the Class member addresses through the U.S.
4 Postal Service’s Change of Address Database. (Agreement at ¶21.) Settling Class Members shall
5 have sixty (60) days from the mailing of the Settlement Class Notice to submit written objections
6 or a request for exclusion. (Agreement at ¶¶ 25, 26.)

7 Defendant shall deposit the full GSV in a non-interest bearing account to be established by
8 the Settlement Administrator within fourteen (14) business days of receipt of notice of
9 preliminary approval of the Settlement. Should the Settlement Effective Date never be reached
10 for any reason, the Gross Settlement Amount shall be returned to Defendant. The GSV shall
11 remain in said account, pending occurrence of the Effective Date. (Agreement at ¶ 11(a).)

12 **IV. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY APPROVAL**

13 **A. Class Action Settlements Are Subject to Court Review and Approval Under** 14 **the California Rules of Court.**

15 California Rule of Court 3.769 requires court approval for class action settlements.⁴
16 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
17 settlement.” Cal. R. Ct. 3.769(g). Rule 3.769 further requires a noticed motion for preliminary
18 approval of class settlements:

- 19 (a) A settlement or compromise of an entire class action, or a cause of action
20 in a class action, or as to a party, requires the approval of the court after
21 hearing. . . .
- 22 (c) Any party to a settlement agreement may serve and file a written notice of
23 motion for preliminary approval of the settlement. The settlement
24 agreement and proposed notice to class members must be filed with the
25 motion, and the proposed order must be lodged with the motion.

26 Courts act within their discretion in approving settlements that are fair, not collusive, and
27 take into account “all the normal perils of litigation as well as the additional uncertainties inherent
28

26 ⁴ The California Supreme Court has authorized California’s trial courts to use Federal Rule of
27 Civil Procedure 23 and cases applying it for guidance in considering class issues. *See Vasquez v.*
28 *Superior Court*, 4 Cal. 3d 800, 821 (1971), *superseded on other grounds as stated in Flores v.*
Southcoast Auto. Liquidators, Inc., 17 Cal. App. 5th 841 (2017); *Green v. Obledo*, 29 Cal. 3d
126, 145-46 (1981). Where appropriate, therefore, the parties cite Federal Rule 23 and federal
case law in addition to California law.

1 in complex class action[s].” *In re Beef Industry Antitrust Litigation*, 607 F.2d 167, 179-80 (5th
2 Cir. 1979), *cert. denied sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*,
3 452 U.S. 905 (1981).

4 **B. The Settlement Is Fair, Adequate and Reasonable.**

5 In deciding whether to approve a proposed class action settlement under Code of Civil
6 Procedure section 382, a court must find that a proposed settlement is “fair, adequate and
7 reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for*
8 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)), *cert. denied*, 459 U.S. 1217
9 (1983). The court must consider all relevant factors, such as the following:

10 the strength of plaintiffs’ case, the risk, expense, complexity and likely duration
11 of further litigation, the risk of maintaining class action status through trial, the
12 amount offered in settlement, the extent of discovery completed and the stage of
13 the proceedings, the experience and views of counsel, the presence of a
governmental participant, and the reaction of the class members to the proposed
settlement.

14 *Id.* The court’s primary function is to determine that the settlement is not the product of fraud,
15 overreaching, or collusion, and taken as a whole, is fair, reasonable and adequate to all concerned.

16 *Id.*

17 A proposed class action settlement is *presumed* fair under the following circumstances:
18 (i) the parties reached settlement after arm’s-length negotiations; (ii) investigation and discovery
19 were sufficient to allow counsel and the court to act intelligently; (iii) counsel is experienced in
20 similar litigation; and (iv) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1802
21 (citation omitted). The Declaration of Nordrehaug filed with this motion demonstrates that (i) the
22 Settlement was the product of serious, informed, and non-collusive negotiations conducted at
23 arm’s length and facilitated by a respected and experienced neutral mediator; (ii) the parties have
24 exchanged a significant amount of information such that Plaintiff and his counsel are able to
25 make an informed recommendation about the Settlement; and (iii) the putative class is
26 represented by counsel experienced in wage-and-hour class actions.⁵

27 _____
28 ⁵ The fourth factor—the number of objectors—cannot be known until after the notice of the
Settlement has been disseminated to Class Members and they have had an opportunity to react to
it and respond.

1 Thus, the Settlement, at this time, is entitled to the presumption that it is fair and in all
2 other respects proper and should be preliminarily approved.

3 **1. The Settlement Is the Result of Serious, Informed, Non-Collusive**
4 **Negotiations.**

5 The Settlement was reached as a result of the extensive arm's-length negotiations
6 facilitated by David A. Rotman, a well-respected and experienced wage-and-hour class action
7 mediator. (Nordrehaug Decl., ¶ 18.) Though cordial and professional, the settlement negotiations
8 have been adversarial and non-collusive in nature, and the Settlement reached is the product of
9 substantial effort by the parties and their counsel, which included two mediation sessions and
10 further negotiations which again involved the mediator to reach the final terms of the Settlement.
11 (*Id.*, ¶ 19) While Plaintiffs believe in the chance of success of certifying the class claims, they
12 also recognize the inherent risks of litigation and understands the benefit of the Class Members
13 receiving Settlement Shares immediately rather than risking unfavorable decisions on class
14 certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that
15 could take several more years to litigate. (*Id.*, ¶ 20.) Further, litigating Plaintiffs' claims, which
16 involve thousands of Class Members during the relevant period, would have required substantial
17 additional preparation and discovery and ultimately would involve the deposition and
18 presentation of numerous witnesses (including expert witnesses), as well as the consideration,
19 preparation and analysis of expert reports. (*Id.*) Therefore, should litigation have progressed any
20 further, each side would have incurred significant expense. (*Id.*)

21 **2. The Extent of Discovery and the Early Stage of the Proceedings**
22 **Support Settlement.**

23 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
24 this case before reaching the Settlement and engaged in sufficient investigation and informal
25 exchange of discovery to support the Settlement. (Nordrehaug Decl., ¶ 21.) The Settlement was
26 reached after extensive factual and legal investigation and research; significant written discovery
27 along with depositions; review and analysis of documents and information, including payroll and
28 timekeeping data pertaining to all Class Members; numerous discussions and exchanges between

1 counsel; and extensive review of case law, pleadings and rulings in similar actions. (Nordrehaug
2 Decl., ¶ 21.) The settlement amount is, of course, a compromise figure. It took into account risks
3 related to liability, damages, and all of the defenses asserted by Defendant. (Nordrehaug Decl.,
4 ¶ 21.) Thus, the Settlement came only after the case was investigated by counsel, as set forth
5 above. This litigation, therefore, has reached the stage where the parties “certainly have a clear
6 view of the strengths and weaknesses of their cases” sufficient to support the Settlement. *In re*
7 *Warner Commc’ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985).

8 **3. Counsel Are Experienced in Similar Litigation.**

9 Both Plaintiffs’ counsel and Defendant’s counsel, O’Melveny & Myers LLP, have
10 significant experience litigating wage-and-hour class actions. (Nordrehaug Decl., ¶22.) Having
11 prosecuted numerous cases on behalf of employees for California Labor Code violations,
12 Plaintiffs’ counsel represent that they are qualified to evaluate the class and representative claims
13 and the viability of the defenses asserted herein by experienced defense counsel and to evaluate
14 settlement versus trial on a fully informed basis. (*Id.*; see also Declaration of Nourmand at ¶¶ 3-
15 5; Declaration of George at ¶8; Declaration of Hawkins at ¶¶ 10-13; Declaration of Zakay at ¶3.)

16 Counsel on both sides share the view that this is a fair and reasonable settlement in light of
17 the complexities of the actions, the state of the law, and uncertainties of class certification and
18 litigation. (Nordrehaug Decl., ¶ 23.) Given the risks inherent in litigation and the defenses
19 asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the Class and
20 should be preliminarily approved. (Nordrehaug Decl., ¶ 23; Declaration of George at ¶9;
21 Declaration of Hawkins at ¶8.)

22 Experienced counsel, have weighed the strengths and weaknesses of the case, fully
23 examined the issues and risks of litigation, and endorse the proposed Settlement. The view of the
24 attorneys conducting the litigation is entitled to significant weight in deciding whether to approve
25 a settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661
26 F.2d 939 (9th Cir. 1981); *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal.
27 2012).

28 Accordingly, the parties submit the Settlement, having satisfied the three requirements of

1 *Dunk* at this stage, sufficient for the Court to grant preliminary approval.

2 **4. The Settlement is Fair and Reasonable Based on the Risks and Costs of**
3 **Further Litigation.**

4 Plaintiffs and their counsel have concluded it was reasonable to enter into the Settlement.
5 (Nordrehaug Decl., ¶ 23.) Defendant has vigorously contested and continues to contest any
6 liability for the claims asserted in the Actions. (*Id.*, ¶ 24.) Although Defendant believes that
7 class certification would be unlikely, it nevertheless agreed to attempt resolution of the Actions to
8 avoid the expense, distraction and uncertainty of protracted litigation. (*Id.*, ¶ 24.)

9 There are significant legal uncertainties associated with cases such as the Actions, as they
10 can be factually complex and require protracted litigation to resolve. On the one hand, Plaintiffs
11 contend their claims are suitable for class certification and representative treatment because
12 Defendant's relevant policies are applied uniformly to all Class Members. Plaintiffs further
13 contend that their claims involve common questions of law and fact and common proof. On the
14 other hand, Defendant maintains that its policies and practices are lawful and, in any event,
15 resolution of each claim would require highly individualized analysis of the facts and
16 circumstances of each Class Member's employment. Defendant maintains that because
17 individualized issues would predominate over common facts, class certification and
18 representative treatment likely would be deemed inappropriate. Accordingly, while Plaintiffs
19 continue to believe this is a strong case for certification, there is always risk and significant
20 expense associated with class certification proceedings. (*Id.*, ¶ 24.)

21 Legal uncertainties also abound. As the California Supreme Court held in *Sav-On Drug*
22 *Stores, Inc. v. Superior Court*, 34 Cal. 4th 319 (2004), class certification always is a matter of the
23 trial court's sound discretion. Decertification motions and reversals after trial also are legitimate
24 risks. These uncertainties bore heavily on the negotiations leading to the Settlement, and in the
25 face of these legal uncertainties, the parties agreed to a compromise settlement of \$12,000,000. A
26 settlement is not judged solely against what might have been recovered had a plaintiff prevailed at
27 trial, nor does a settlement have to provide 100% of the damages sought to be fair and reasonable.
28 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246, 250 (2001), *disapproved on other*

1 grounds, *Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018); *Rebney v. Wells Fargo*
2 *Bank*, 220 Cal. App. 3d 1117, 1139 (1990). “Compromise is inherent and necessary in the
3 settlement process . . . [E]ven if the relief afforded by the proposed settlement is substantially
4 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
5 settlement because the public interest may indeed be served by a voluntary settlement in which
6 each side gives ground in the interest of avoiding litigation.” *Wershba*, 91 Cal. App. 4th at 250
7 (citations and internal quotation marks omitted); *Officers for Justice*, 688 F.2d at 628 (“It is well-
8 settled law that a cash settlement amounting to only a fraction of the potential recovery will
9 not . . . render the settlement inadequate or unfair”).

10 **5. The Settlement Is a Reasonable Compromise of Claims.**

11 **a. Plaintiffs’ Claims for Unpaid Minimum and Overtime Wages.**

12 Plaintiffs and their counsel have determined that it is prudent to compromise and settle the
13 Class Members’ unpaid wage claims. (Nordrehaug Decl., ¶ 25.) Plaintiffs alleged that Class
14 Members were not paid all wages owed because they performed off-the-clock work and because
15 Defendant engaged in rounding as to work time. (*Id.*) However, Defendant contended that it
16 maintains lawful policies, including policies strictly prohibiting off-the-clock work, and that it
17 properly recorded all time worked. (*Id.*) Moreover, Defendant contended that any overtime
18 claim was preempted and barred by Labor Code §514 for these unionized employees. (*Id.*)

19 **b. Plaintiffs’ Meal- and Rest-Period Claims.**

20 Plaintiffs’ meal- and rest-period claims also were in dispute. Defendant contended that its
21 handbooks, policies, trainings, and timekeeping and payroll data demonstrated that Defendant
22 observed compliant meal- and rest-period policies and practices, including payment of premiums.
23 (Nordrehaug Decl., ¶ 26.) Plaintiff contended that Class Member timekeeping records, which
24 often reflected deficient meal periods, created a presumption of noncompliant meal periods.
25 Defendant vigorously disputed that contention, because throughout the Class Period, employees
26 have entered their hours worked and meal period start and end times, and Defendant has
27 maintained policies informing Class Members of their entitlement to take duty-free meal periods
28 of at least 30 minutes. (*Id.*, ¶ 26.) Defendant also contended that it has always provided rest

1 periods to its employees. Defendant produced written policies that it alleged supported these
2 contentions. (*Id.*)

3 **c. Plaintiffs' Expense Reimbursement Claim.**

4 Plaintiffs' expense reimbursement claims claim also was in dispute. Plaintiffs contended
5 that Class Members were required to use their personal cellphones in order to perform their work
6 duties. (Nordrehaug Decl., ¶ 27.) Defendant maintained that it provided walkie-talkies and
7 company phones to employees that needed them, and that any use of personal cellphones was
8 voluntary and merely convenient to the employees, which therefore did not result in a duty to
9 provide reimbursement under Labor Code ¶2802. (*Id.*, at ¶ 27.)

10 **d. Plaintiff's Derivative Claims.**

11 Plaintiff's claims for failure to provide accurate itemized wage statements pursuant to
12 Labor Code section 226; failure to pay all wages due upon termination under Labor Code section
13 203; unfair business practices in violation of California Business & Professions Code section
14 17200 *et seq.*; and for civil penalties pursuant to PAGA are derivative of his other claims.⁶
15 (Nordrehaug Decl., ¶ 29.) Because the claims are derivative, they entail the same risks as the
16 claims outlined above. Furthermore, even if one of those claims were to survive or be certified as
17 a class, the wage statement and waiting-time claims would fail if Defendant prevailed on its
18 defenses that, even if some wages were owed, it did not "knowingly and intentionally" issue
19 inaccurate wage statements or "willfully" fail to pay all wages due upon termination or fail to
20 maintain required records. *See* Cal. Lab. Code §§ 226(e); 203(a); 1174.5.

21 **e. The Valuation of These Claims.**

22 All of the claims were highly disputed, and the settlement amount reflects a compromise
23 by both Parties. Plaintiffs have calculated the Class's maximum potential damages, exclusive of
24 interest and derivative penalties, to be approximately \$57,284,452. (Nordrehaug Decl., ¶ 28.)
25 Taking into account the risks and uncertainties of further litigation, including the risk that the
26 Court may not certify all or some of Plaintiffs' claims and the risk of an adverse judgment, the
27 \$12,000,000 Settlement is a reasonable compromise, and after deducting the amount allocated to

28 ⁶ The valuation of the PAGA claim is addressed in the Nordrehaug Decl. at ¶32.

1 the FCRA class, the settlement represents approximately 20% of the estimated maximum
2 damages. (*Id.*, ¶ 28.) Plaintiffs’ counsel are convinced that the Settlement is in the best interest
3 of the Class based on the negotiations and a detailed knowledge of the issues present in the
4 actions. The length and risks of trial and other normal perils of litigation were all weighed in
5 reaching the Settlement. In addition, the affirmative defenses asserted by Defendant, the prospect
6 of potential adverse summary judgment rulings, the uncertainty of class certification, the
7 difficulties of complex litigation, the lengthy process of establishing specific damages and various
8 possible delays and appeals, were also carefully considered by Class Counsel in agreeing to the
9 Settlement. (*Id.*, ¶ 30.) In light of the above, the Settlement is well within the “ballpark” of
10 reasonableness and should be granted preliminary approval. (*Id.*, ¶ 30.)

11 **V. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

12 A. The California Standard for Class Certification

13 Class actions are statutorily authorized “when the question is one of common or general interest,
14 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
15 court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
16 certification is appropriate when there is an “ascertainable class and a well-defined community of interest
17 among class members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class
18 treatment is appropriate even if class members at some point may be required to make an individual
19 showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207
20 (2008); *Sav-On*, 34 Cal. 4th at 333.

21 Conditional certification of the proposed Settlement Class is particularly warranted here given the
22 relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*,
23 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
24 settlement cases).⁷ In *Dunk*, the California Court of Appeal specifically rejected the argument that the

25 ⁷ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class
26 certification as a prerequisite for preliminary approval and undertak[e] a more cursory class
27 certification analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV-
28 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme
Court’s cautions in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train
Derailment in Philadelphia, Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa.

1 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
2 class for purposes of litigation:

3 Geer argues the court must use the same standard under Federal Rules of Civil Procedure,
4 rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class
5 certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for*
6 *Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading
7 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser
8 standard of scrutiny for settlement cases . . . We agree with the latter. The two basic
9 purposes for the Rule 23 certification requirements, as they relate to questions of a
10 nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the
11 interests of the non-representative class members. The first purpose is inapposite in the
12 settlement context, and the second, as it relates to commonality of issues, only makes a
13 difference if the non-representative class members would do much better by litigating on
14 their own or in their own jurisdiction. The second category concerns are protected by the
15 trial court’s fairness review of the settlement.

16 *Id.* at n19.

17 1. The Proposed Settlement Class Is Ascertainable and There Is a Well-
18 Defined Community of Interest Among Class Members

19 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
20 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for
21 identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they
22 may be readily identified without unreasonable expense or time by reference to official records. *Id.*

23 The community of interest requirement embodies three factors: (1) predominant common
24 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a
25 class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

26 In April of 2012, the California Supreme Court expounded on the element of predominance:

27 The “ultimate question” the element of predominance presents is whether “the
28 issues which may be jointly tried, when compared with those requiring separate
adjudication, are so numerous or substantial that the maintenance of a class action
would be advantageous to the judicial process and to the litigants.”

Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

Apr. 6, 2016) (“[A] settlement class can be preliminarily certified based on a less rigorous
analysis than that necessary for final certification.”); *In re Processed Egg Prod. Antitrust Litig.*,
No. 08-MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28, 2014) (at the preliminary approval
stage, “the Court must determine whether the proposed class should be conditionally certified,
and leave the final certification decision for the Fairness Hearing.”).

1 The proposed Settlement Class consists of thousands of non-exempt employees who worked for
2 Defendant in California during the Class Period. Because all Class Members are either current or former
3 employees of Defendant, the class is readily ascertainable from Defendant’s regular business records.
4 (Nordrehaug Decl. at ¶ 31).

5 Here, common issues of fact and law predominate because the California statutes relating to each
6 of Plaintiffs’ claims, and Defendant’s defenses thereto, apply with equal force and effect to all Class
7 Members. Factually, Plaintiffs contend that Defendant’s policies and practices apply class-wide and
8 Defendant’s liability can be determined by facts common to all members of the class. The wage and hour
9 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
10 with the claims of the Settling Class Members. (*Id.*)

11 Plaintiffs’ wage and hour claims are typical of the proposed Settling Class because they arise from
12 the same factual bases and are based on the same legal theories applicable to the other Class Members.
13 Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Class. Plaintiffs maintain
14 that Plaintiffs were injured by the same company-wide practices to which the proposed Settling Class was
15 subject and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the
16 interests of the Class by initiating this litigation, undertaking discovery, and evaluating the proposed
17 settlement to assure that it is fair. (*Id.*)

18 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in
19 litigating wage and hour class action cases. (Nordrehaug Decl. ¶¶ 22-23; Declaration of Nourmand at ¶¶
20 3-5; Declaration of George at ¶8; Declaration of Hawkins at ¶¶ 10-13; Declaration of Zakay at
21 ¶3.) Plaintiffs’ Counsel has successfully briefed, argued, certified, and gained state and federal court
22 settlement approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiffs’
23 Counsel’s wage and hour class action expertise establishes that they are well qualified to represent the
24 interests of this Settling Class.

25 A class action is superior to a multitude of individual lawsuits. Given the size and amount of each
26 individual Settling Class Member’s claim, Settling Class Members likely have little incentive to litigate
27 their claims on an individual basis because the out-of-pocket expense and personal commitment necessary
28

1 Class as it is fair, adequate, and reasonable, and one which could ultimately be granted final
2 approval. Under the applicable class action criteria and guidelines, the Settlement should be
3 preliminarily approved; the Settling Class should be conditionally certified for purposes of
4 settlement only; the Settlement Class Notice should be approved and distributed; the Class
5 Representatives, Class Counsel, and the Settlement Administrator should be appointed, and the
6 final approval hearing should be confirmed for December 8, 2023, which date Plaintiffs have
7 already reserved.

8 DATED: July 13, 2023

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