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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

MAGGIE BLAND, on behalf of herself and all others similarly situated, Plaintiff, vs. MARIN AIRPORTER, a California corporation, and DOES 1-100, inclusive, Defendants.	CASE NO. CIV 2003640 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** [Filed concurrently with Notice of Motion and Motion; Declaration of Zachary M. Crosner; [Proposed] Order] Date: TBD Time: 1:30 p.m. Dept.: E

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I. INTRODUCTION

Plaintiff Maggie Bland hereby moves the Court for an order granting preliminary approval to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of approximately 217 individuals employed by Defendant Marin Airporter ("Marin" or "Defendant") as non-exempt employees in California during the period of December 14, 2016 through April 15, 2022. The proposed $450,000 settlement will provide about $257,500 in cash payments to the class, with an average award currently estimated at about $1,185. The balance of approximately $192,500 will cover reasonable attorney's fees and actual litigation costs, settlement administration costs, an enhancement award to plaintiff, and civil penalties to the State. The settlement is the product of Plaintiff's pre-filing investigation, formal discovery and a pre-mediation exchange of information, and arms-length negotiations overseen by experienced mediator Cynthia Remmers, Esq.

The proposed settlement is within the "range of reasonableness" for approval and Plaintiff's counsel submit the settlement is a fair result given the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court enter an order: (1) granting preliminary approval to the proposed class action settlement; (2) conditionally certifying the settlement class as defined below; (3) appointing Zachary M. Crosner, Blake R. Jones, and Chad Saunders of Crosner Legal, P.C. as Class Counsel; (4) appointing Plaintiff Maggie Bland as the Class Representative; (5) appointing ILYM Group, Inc. as the Settlement Administrator; (6) approving the form of notice to the class and the notice procedure; and (7) scheduling a final fairness hearing.

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant Marin Airporter primarily provides shuttle service to and from San Francisco Airport and various locations in Marin County, transit bus services in Marin County, and also operates a charter bus service. Plaintiff Maggie Bland was employed by Marin as a cashier, and typically worked 10 hours per shift. Plaintiff contends Marin failed to pay her and other class members for their overtime wages, even though they regularly worked daily and/or weekly overtime hours, for a substantial part of the class period. She also contends Marin did not maintain a compliant meal and rest break policy, and that the class members did not receive all required breaks. As a result of these violations, Plaintiff further contends Marin failed to provide accurate wage statements, failed to timely pay wages due on separation of employment, and engaged in unfair business practices. Lastly, Plaintiff also alleges violation of PAGA based on the same Labor Code violations discussed above, as well as an allegation under PAGA that Marin failed to provide suitable seating for certain job positions, including cashiers. [Declaration of Zachary M. Crosner ("Crosner Decl."), ¶ 4.]

Marin has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California and federal law, that it paid the class member wages due, and provided them with required meal and rest breaks. Additionally, Marin strongly contends certain aspects of the case are preempted under Federal law, and that the case cannot be maintained as a class action, arguing for example that to the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be anecdotal, and therefore individualized issues would predominate. [Crosner Decl., ¶ 5.]

Plaintiff filed her class action complaint in this Court on December 14, 2020. After Defendant removed the complaint to the Northern District of California on March 10, 2021, Plaintiff filed a first amended complaint ("FAC") on April 28, 2021 that dismissed Plaintiff's meal and rest period claims and paid sick leave claim. On May 12, 2021, individual defendant Lawrence Laporte was dismissed without prejudice by stipulation and order. The District Court then granted Plaintiff's motion to remand the case to state court on July 2, 2021. Following remand, the Parties stipulated to filing Plaintiff's Second Amended Complaint. [Crosner Decl., ¶ 6.]

After the remand from federal court, and after undertaking lengthy discovery meet and confer sessions and discussions about the merits of the case, the Parties ultimately agreed to attempt early mediation. The Parties also agreed on a protocol for an exchange of substantial documents and information before the mediation to facilitate the settlement discussions.

Consequently, Plaintiff's counsel reviewed payroll records, compensation plans, personnel policies/handbooks, meal and rest break policies, personnel files, and a random of sampling of paystubs and time records for about 20% of the class. Plaintiff then had those records analyzed by Berger Consulting Group to look for, inter alia, violation rates for missed, late and/or short meal breaks, potential damages from unpaid overtime, etc. Defendant also provided data regarding the total number of putative class members, the estimated total amount of workweeks and pay periods they worked, and average pay rates, among other relevant data. [Crosner Decl., ¶ 7; Exh 2.]

The Parties then engaged Cynthia Remmers, Esq., a respected professional neutral with substantial wage and hour and class action experience and, in January 2022, the Parties participated in a full day mediation with Ms. Remmers. Throughout the day, the arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive information on their legal and factual positions, and made numerous offers and counter-offers. After a full day of negotiations, the Parties ultimately reached agreement on all major issues. The Parties then collaboratively drafted the Joint Stipulation and Class Action Settlement Agreement ("Settlement Agreement") setting forth the settlement terms now before the Court for approval. A true and correct copy of the Settlement Agreement is attached to the Crosner Declaration as Exhibit 1. Also, in order to effectuate the settlement, the Parties agreed Plaintiff will file a third amended complaint to re-allege the meal and rest break claims, and paid sick leave claim, as well as a claim for unpaid overtime under the Fair Labor Standards Act. [Crosner Decl., ¶ 8.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Marin will pay $450,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $150,000 (one-third of the GSA), litigation costs of up to $20,000, settlement administration costs of no more than $10,000, and a service award to Plaintiff of no more than $5,000, and $7,500.00 to the California Labor & Workforce Development Agency ("LWDA") for the State's share of civil penalties, all will be paid from the GSA. The remainder of around $257,500 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Marin. [Crosner Decl., ¶ 9]

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A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all individuals employed by Marin as a non-exempt employee in the State of California during the period December 14, 2016 through April 15, 2022. The Settlement Class consists of approximately 217 individuals. [Crosner Decl., ¶ 10.]

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Marin to pay $450,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $257,500,000 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty-five percent of each settlement share will be allocated to wages and the remaining seventy-five percent will be allocated to non-wage premiums, penalties, and interest, which allocation is consistent with Marin's potential liability as discussed below. Marin will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to Legal Aid of Marin as the proposed *cy pres* beneficiary. [Crosner Decl., ¶ 11.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a non-exempt employee during the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a settlement award corresponding to the relative value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Marin and the amount unpaid wages, etc. The average gross award is estimated to be around $1,185. [Crosner Decl., ¶ 12.]

As discussed below, the overall settlement amount is reasonable in light of the considerable risks associated with Plaintiff's claims, and the delay and risk posed by continuing to litigate such disputed allegations. In counsel's judgment, the total value recovered for the class is substantial and within the range of reasonableness.

C. Settlement Administration

Subject to the Court's approval, the Parties have agreed on ILYM Group, Inc. ("ILYM") as the Settlement Administrator. ILYM is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. ILYM's fees and costs will not exceed $10,000.00. If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Crosner Decl., ¶ 13; Exh. 3.]

D. The Class Notice

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

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

Class Members will have sixty (60) days to dispute the information in their Notice used to calculate their settlement award, and also have 60 days to submit any objections to the settlement or to request exclusion. If a Class Member disputes their individual information, the Settlement

Administrator will review the Class Member's records and any other information submitted, and make a final determination. [Crosner Decl., ¶ 15.]

F. Release of Claims

All Participating Class Members will release Marin from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint during the Class Period. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. [Crosner Decl., ¶ 16.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

The first step is a motion for preliminary approval, through which the parties present the court with the proposed settlement and seek a determination that it is sufficiently fair and reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the "range of reasonableness" and if notice should be provided to the class regarding the settlement's proposed terms and conditions, and whether a final fairness hearing should be scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass'n, Inc. v.

Touchstone Ins. Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class actions, courts generally apply a presumption of fairness to class action settlements when (1) the settlement results from arms-length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

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

B. The Proposed Settlement Class Should Be Conditionally Certified

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

In the present matter, conditional certification is proper since this matter satisfies all requirements for class certification under Code of Civil Procedure section 382. First, the class is both sufficiently numerous, consisting of approximately 217 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Crosner Decl., ¶ 17.] Next, Plaintiff is an adequate class representative, as her claims do not conflict with and are not antagonistic to the claims of other class members. [Crosner Decl., ¶ 18.] Further, her claims are typical given she is a member of the class and her claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [Id.] Lastly, her counsel is experienced and adequate class counsel. [Crosner Decl., ¶¶ 31-36.]

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were paid via substantially similar compensation plans that underpaid them for overtime hours worked, and subject to the same policies that resulted in missed/non-compliant meal and rest periods. Since the focus of the claims against Marin concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Marin's compensation plans either properly paid the class members for overtime hours worked or they did not, and they further either are preempted by federal law or they are not. Regardless of these determinations, they will decide liability for all Class Members one way or another. [Crosner Decl., ¶ 19.]

By now it is well-settled a theory of recovery asserting the existence of a uniform policy violating California law is sufficient to satisfy the requirements for class certification. Jones v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment"); Williams v. Superior Court (2013) 221 Cal.App.4th 1353 ("A company-wide practice can sustain a common question fact or law that supports commonality for class certification"). Lastly, a class action is superior to other means for the fair and efficient adjudication of this controversy. [Crosner Decl., ¶ 20.]

C. The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator, Cynthia Remmers Esq., who has considerable experience mediating wage and hour class action cases. [Crosner Decl., ¶ 8.] Plaintiffs' counsel Zachary M. Crosner, Blake R. Jones, and Chad Saunders of Crosner Legal, P.C. have years of experience litigating wage and hour class actions. Plaintiff's counsel is well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Crosner Decl., ¶¶ 31-36.]

Next, California law recognizes several factors bearing on the fairness, adequacy, and reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128. These factors include: 1) the amount offered in settlement 2) the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further litigation; 4) the risk of maintaining class action status throughout trial; and 5) the experience and views of counsel. Id. As demonstrated below, the proposed settlement satisfies these requirements.

Prior to mediation, the parties engaged in informal discovery to facilitate settlement discussions. Thus, Plaintiff reviewed documents and information regarding Marin's payroll practices, a random sampling of pay stubs and time records from class members, applicable compensation plans, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a damages model. Plaintiff then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Crosner Decl., ¶¶ 7-8, 21.]

Next, the proposed settlement falls within the range of reasonableness warranting preliminary approval. The proposed settlement involves a significant sum that, when distributed, will confer direct monetary benefits on the class members. Each class member will be entitled to a monetary payment without having to file a claim and each payment will be relative to the value of his or her potential claims. Through the information exchanged and analysis undertaken, Plaintiff weighed the risks of continued litigation against the benefits of the proposed settlement and determined settlement to be the most reasonable option.

Using that data, Plaintiff ran various calculations and estimated Marin's theoretical maximum exposure on the class claims at about $4.611 million. More specifically, the theoretical maximum includes approximately $237,000 on the unpaid overtime claims, $3,148,000 on the meal and rest break claims, approximately $660,000 on the wage statement claims, and approximately $566,000 on the waiting time penalty claims. Plaintiff's counsel substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation, as Defendant raised numerous defenses and vigorously defended against these claims. [Crosner Decl., ¶¶ 22-23.]

On the overtime claims, there are two issues. First, Plaintiff alleges many of defendant's non-driver employees, such as Plaintiff, were not paid overtime at all until approximately April 2019, and accordingly are owed overtime wages under the Labor Code and Wage Order 9. As to the driver employees, Defendant alleged they are exempt from California overtime requirements since they drove commercial vehicles of a size/weight that rendered them subject to U.S. Department of Transportation regulations concerning hours of work and overtime for drivers. Plaintiff also alleges, however, the drivers <u>are not</u> exempt from federal overtime requirements since they drove entirely within California and therefore were not engaged in interstate commerce and as a result were entitled to overtime under the FLSA. In response, Defendant argued its drivers were fully exempt from overtime requirements under both state and federal law, and by virtue of transporting passengers to and from SFO, were engaged in more than a de minimus amount of interstate commerce. Further, as noted, Marin began pay its employees for overtime in April 2019. [Crosner Decl., ¶ 24.]

On the meal and rest break issue, Plaintiff argued Marin's written meal and rest policies are not compliant with California law, and further argued review of Defendant's time records suggest numerous de facto violations for missed, late, and short breaks. In response, Marin similarly argued such claims are preempted as to the driver employees since they engaged in interstate commerce and are exempt from state wage and hour laws under the Ninth Circuit's decision in <u>International Brotherhood of Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration</u> (9th Cir. 2021) 986 F.3d 841. Beyond that, Marin also argued its written policies are compliant and that to the extent there are potential de facto violations, if individuals did not take a meal, if a meal period was taken late in a shift, or lasted less than the required 30 minutes, it was in violation of company policy and a multitude of individual inquiries would be necessary to determine if the potential violation occurred due to an employee's personal choice or for some other reason. These defenses collectively justify a sharp compromise on the meal and rest period claim. [Crosner Decl., ¶ 25.]

The claims for penalties under Labor Code sections 203 and 226 are derivative of the underlying claims, and accordingly are subject to the same risks and uncertainties as the primary meal and rest break violations and unpaid wage violations, plus additional risks posed by the need to take into account the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses and accordingly Plaintiff likewise applied a significant risk discount. [Crosner Decl., ¶ 26.]

As far as potential PAGA liability, the theoretical penalties theoretically totaled around $1.3 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue for every single eligible pay period. [Crosner Decl., ¶ 27.] As with the class claims, Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by Defendant on the merits, and further discounted these claims since the Court possesses wide discretion to reduce such penalties even if Plaintiff ultimately prevailed. Labor Code § 2699(d)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXlS 154590, *8-9 (court reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just $5 per pay period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $10,000 to PAGA penalties, which amount is reasonable and in line with comparable settlements in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement").

Thus, Defendant raised various defenses to Plaintiff's claims that, if successful, could have negatively impacted Plaintiff's claims or potentially reduced potential damages, particularly with respect to the federal preemption issue. Accordingly, Plaintiff faced considerable risk going forward with this litigation and, given the need to secure class certification, try the case, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and her counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $450,000 recovery represents a significant percentage of Defendant's potential exposure, and is roughly 10% of the theoretical maximum value of the class claims. Given these risks, a total recovery for the class of $450,000, with an average award of over $1,185 per class member is a fair result within the range of reasonableness considering all potential outcomes. [Crosner Decl., ¶¶ 28-.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane

v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed settlement is non-reversionary and will provide benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and her counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

D. Attorney's Fees and Costs

The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of attorney's fees of up to one-third of the GSA, or $150,000 and reimbursement of actual costs and expenses of up to $20,000.00. Plaintiff's counsel will submit a separate motion for attorney's fees and actual litigation costs per the terms of the Settlement Agreement and applicable law, and will provide the Court with appropriate information and evidence regarding hourly rates, tasks performed, and time expended on the case. [Crosner Decl., ¶ 29.]

E. Plaintiffs' Enhancement Awards

A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000). She devoted time and resources to the litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in preparing for mediation. The service payment provided to Plaintiff as the class representatives is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."). Plaintiff will provide the Court with a declaration detailing her efforts in assisting counsel and the time she devoted to the case. [Crosner Decl., ¶ 30.]

V. CONCLUSION

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

Dated: May 20, 2022

CROSNER LEGAL, P.C.

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