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19
20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF SAN BERNARDINO**

22 ROBERT DE LA HOYA, on behalf of
23 himself and others similarly situated,

24 Plaintiff,

25 vs.

26 SIERRA WEST FINISH, INC., a Delaware
27 corporation; and DOES 1 to 50, Inclusive,

28 Defendants.

Case No.: CIVSB2107351

Assigned for all Purposes to:
Hon. David Cohn
Dept. S-26

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Zachary M. Crosner,
David S. Winston, Madely Nava, Robert De La
Hoya, and Marisal Dobbins; [Proposed] Order]

Date: July 11, 2022
Time: 10:00 a.m.
Dept.: S-26

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	PROPOSED SETTLEMENT TERMS	3
A.	Certification of the Settlement Class.....	3
B.	The Benefit Conferred on the Settlement Class	4
C.	Settlement Administration.....	5
D.	Release of Claims.....	5
E.	Attorney's Fees and Costs.....	5
F.	PAGA Claims.....	6
IV.	ARGUMENT	6
A.	The Settlement Is the Product of Arm's-Length, Informed Negotiations.....	7
B.	The Class Reacted Favorably to the Settlement.....	8
C.	The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks	8
D.	Plaintiffs' Enhancement Awards.....	13
V.	SETTLEMENT ADMINISTRATION COSTS.....	14
VI.	CONCLUSION	14

TABLE OF AUTHORITIES

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150	
.....	13
Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4	11
American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001)	8
Behrens v. Wometco Enterprises, Inc. (S.D. Fla. 1988) 118 F.R.D. 534, 542	13
Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504	11
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953	6
Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014)	10
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Rodriguez v. W Publ'g Corp., 563 F.3d 948, 958-59 (9th Cir. 2009)	13
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Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	11

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4	Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245	6
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9		

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STATUTES

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1 **I. INTRODUCTION**

2 Plaintiffs and Class Representatives Marisal Dobbins and Robert De La Hoya seek
3 final approval of a non-reversionary class action settlement resolving wage and hour claims
4 on behalf of approximately 294 individuals who worked for Defendant Sierra West Finish,
5 Inc. (“Sierra” or “Defendant”) as non-exempt employees in California from March 16, 2017
6 to January 31, 2022. The proposed \$625,000 total settlement provides just under \$352,000 in
7 cash payments to the Class, with the remaining balance covering modest service awards to
8 Plaintiffs, settlement administration costs, civil penalties to the state, and reasonable
9 attorney’s fees and costs. The parties and their counsel finalized the settlement after extensive
10 and difficult arms-length negotiations overseen by an experienced and highly-regarded
11 mediator. The Court conditionally certified the Class and preliminarily approved the
12 settlement on February 28, 2022.

13 Since then, the Court-approved notice form was mailed to the Class Members, who
14 reacted very favorably to the settlement. Only one single Class Member requested exclusion,
15 and there are no objections. Accordingly, on behalf of themselves and the Class, Plaintiffs
16 respectfully request the Court grant this motion, give full and final approval to the settlement,
17 and enter judgment accordingly

18 **II. BACKGROUND**

19 The details of the procedural and factual background of this matter were outlined in
20 the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed February 2,
21 2022). To re-familiarize the Court with this litigation, on March 16, 2021, Plaintiff De La Hoya,
22 on behalf of himself and all others similarly situated, filed a class action complaint in this Court
23 seeking damages against Defendant for several alleged violations of the Labor Code and IWC
24 Wage Orders. A few weeks later, on April 13, 2021, Plaintiff Dobbins filed her original class action
25 complaint in Riverside County Superior Court. The Parties subsequently agreed to consolidate both
26 matters before this Court by filing a first amended complaint in the De La Hoya action that added
27 Dobbins as a party-plaintiff. [Declaration of Zachary M. Crosner (“Crosner Decl.”), ¶ 2.]

28 Plaintiffs asserted their class claims on behalf of individuals who worked for Defendant as

1 non-exempt employees in California during the relevant time frame. Defendant Sierra is a
2 specialty subcontractor providing material and installation of doors, hardware, trim and
3 accessories located in Norco, California. During the Class Period, Plaintiff De La Hoya was
4 employed as a non-exempt warehouse employee while Plaintiff Dobbins worked for Defendant as
5 an installer until approximately June 2020, when she went on medical leave and eventually
6 resigned. [Crosner Decl., ¶ 3.]

7 Plaintiffs assert multiple wage and hour claims against Defendant. First, Plaintiffs contend
8 they and the class members did not receive all required meal and rest breaks, or did not receive
9 them on a compliant basis, and never received an extra hour of premium pay in lieu of a missed or
10 non-compliant break. Next, based on review of time sheets and other records produced by Sierra,
11 Plaintiffs also alleged Sierra failed to pay for all hours worked for multiple reasons – one, Sierra
12 had an “auto-deduct” policy whereby 30 minutes were deducted from employee time regardless of
13 whether a lunch was taken or how long it lasted, two, Sierra rounded employee time punches off,
14 particularly at the start of a shift, as employees were allowed if not encouraged to clock in up to 10
15 minutes early but were only paid based on their scheduled start time, and third, Sierra failed to
16 incorporate various forms of non-discretionary, non-hourly pay in employee regular rates of pay,
17 and thus underpaid for overtime. Plaintiffs also allege they and the class members had to use their
18 personal cell phones for business purposes, but did not receive any reimbursement. [Crosner
19 Decl., ¶ 4.]

20 Based on these allegations, Plaintiffs’ action complaint asserts claims for: (1) failure to pay
21 all minimum and overtime wages due; (2) failure to provide all required meal and rest breaks or
22 compensation in lieu thereof; (3) failure to provide accurate, itemized wage statements; (4) failure
23 to pay all wages due upon termination of employment; (5) failure to reimburse expenses, and (6)
24 violations of the Unfair Competition Law, Bus. & Prof. Code sections 17200, *et seq.* Plaintiffs
25 also allege a claim under the Private Attorneys General Act based on the same alleged Labor Code
26 violations. [Crosner Decl., ¶ 5.]

27 Sierra has at all times denied Plaintiffs’ allegations and maintained its meal break and
28 payroll policies and procedures comply with California law, that it provided the class members

1 with required meal and rest breaks, and that it paid Plaintiffs and the class members all wages due.
2 Additionally, Sierra strongly contends the case cannot be maintained as any kind of class or
3 representative action, arguing that to the extent class members missed breaks, that such breaks
4 were non-compliant, or that employees worked “off the clock,” it was against company policy,
5 and intermittent or infrequent and evidence of such violations would be purely anecdotal. Thus,
6 per Sierra, individual issues predominate and trial would be unmanageable. [Crosner Decl., ¶ 6.]

7 The settlement was reached in October 2021 after extensive investigation, discovery, and
8 negotiations. The negotiations were at arms-length, and facilitated by experienced and well-
9 respected mediator Laurie Quigley Saldana (Esq.) over the course of a full day mediation.
10 [Crosner Decl., ¶¶ 7-8.] This Court preliminarily approved the settlement on February 28,
11 2022. Class Notices initially were mailed to class members on March 17, 2022, with a 60-
12 day window (to May 16, 2022) for class members to opt out or object to the proposed
13 settlement. [Declaration of Madely Nava (“Nava Decl.”), ¶¶ 7, 12-13.]

14 **III. PROPOSED SETTLEMENT TERMS**

15 Under the settlement, Sierra will pay \$625,000.00 into a common fund, the Gross
16 Settlement Amount or GSA. Attorney’s fees of up to one-third of the GSA (\$208,333.33),
17 litigation costs of up to \$20,000, enhancement awards of \$8,000 each for the plaintiffs (i.e.,
18 \$16,000 total), settlement administration costs of no more than \$10,000, and a payment of \$18,750
19 to the Labor & Workforce Development Agency for its share of the PAGA penalties, all will be
20 paid from the Gross Settlement Amount. Out the remainder, approximately \$345,666.67 will be
21 allocated among the Participating Class Members based on their total weeks worked during the
22 Class Period, and additional \$6,250 will be distributed to those Class Members eligible to receive
23 a payment under PAGA. No portion of the GSA will revert to Sierra. [Crosner Decl., ¶ 9.]

24 **A. Certification of the Settlement Class**

25 The Court conditionally certified a settlement class defined as “All individuals employed
26 by Defendant Sierra Wes Finish, Inc. as a non-exempt employee from March 16, 2017 to January
27 31, 2022.” The Settlement Administrator ultimately mailed class notices to 294 individuals
28

1 identified as members of the Class. [Nava Decl., ¶¶ 5-7.] Nothing has changed to require
2 reconsideration of the Court's certification of the Settlement Class.

3 **B. The Benefit Conferred on the Settlement Class**

4 As noted, the settlement obligates Sierra to pay \$625,000 to resolve the Settlement Class's
5 claims, inclusive of attorney's fees and costs. Approximately \$351,916.67 from the GSA will be
6 distributed to the Participating Class Members and to those Class Members eligible for a PAGA
7 payment. This is a cash settlement that does not require Participating Class Members to submit a
8 claim form to receive their settlement share. Participating Class Members will receive their
9 settlement checks automatically via First Class U.S. Mail. Twenty percent of each class
10 settlement share will be allocated to wages and the remaining eighty percent will be allocated to
11 penalties and interest, while all PAGA payments will be treated as penalties for tax purposes.
12 Sierra will pay any and all applicable employer-side payroll taxes separately and in addition to the
13 GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not
14 cash his or her settlement check), plus interest, will be forwarded to CASA of San Bernardino
15 County as the agreed upon *cy pres* beneficiary. [Crosner Decl., ¶ 10.]

16 Each Participating Class Member will receive a share of the Net Settlement Amount based
17 on his or her total weeks worked for Sierra in California during the Class Period while employed
18 in a non-exempt position. Thus, each Class Member's Individual Settlement Share will be
19 calculated using criteria typically used in determining appropriate amounts of unpaid wages,
20 unpaid premium wages for missed meal breaks, and potential statutory penalties under applicable
21 law. These methods are intended to ensure each Class Member receives a portion of the available
22 settlement funds corresponding to the relative value of his or her potential claims. The proposed
23 allocation provides a reasonable way to compensate Class Members based on the amount of time
24 they worked for Sierra and the number of instances they missed a meal break, were not provided
25 compensation in lieu of such missed breaks, or lost wages due to the alleged off the clock work,
26 regular rate miscalculation, etc. [Crosner Decl., ¶ 11.]

27 The average class award will be approximately \$1,314.32, and the largest award will be
28 about \$5,993.68, based on a net per workweek amount of about \$23.14 (\$345,666.67 NSA divided

1 by 14,937 work weeks). The average PAGA payment will be about \$41.39, based on a per pay
2 period amount of \$0.87 (\$6,250.00 divided by 7,224 weekly pay periods). [Nava Decl., ¶ 15.]

3 **C. Settlement Administration**

4 ILYM Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
5 Packet to the Class members after making all reasonable effort to ascertain the best mailing
6 address, including running each address through the National Change of Address database
7 and "skip-tracing" any Notice Packets returned as undeliverable. [Nava Decl., ¶¶ 3-10.] The
8 Class Notice, previously approved by the Court, duly informed Class Members of the
9 settlement terms, including the estimated relief each Class Member will receive, the amounts
10 to be requested for attorney's fees and the class representative enhancement awards, and the
11 right to opt out of or object to the settlement. [Nava Decl., Exh. A.] ILYM mailed 294 Notice
12 Packets March 17, 2022. [Nava Decl., ¶ 7.] Ultimately, only 11 Notice Packets were deemed
13 undeliverable, representing a 96.3% success rate. [Nava Decl., ¶ 10.] The 60-day response
14 window for opting out or objecting to the settlement expired on May 16, 2022. [Nava Decl.,
15 ¶¶ 12-13.] As of the filing of this motion, ILYM received one request for exclusion (for a
16 99.66% participation rate), and zero objections to the settlement. [Nava Decl., ¶¶ 12-13.]
17 There were no disputes submitted regarding the information used to calculate class member
18 settlement shares. [Nava Decl., ¶ 11.]

19 **D. Release of Claims**

20 All Participating Class Members will be deemed to release defendant Sierra from all
21 claims alleged in the operative complaint, or that could have been brought based on the allegations
22 in the operative complaint, including PAGA claims, from March 16, 2017 through January 31,
23 2022. The release is limited to the claims that were actually pleaded or could have been pleaded
24 based on the alleged facts in the operative complaint. [Crosner Decl., ¶ 12.]

25 **E. Attorney's Fees and Costs**

26 The Settlement Agreement allows for an award of attorney's fees to Class Counsel of
27 upto one-third of the GSA, or \$208,333.33, as well as litigation costs expenses up to \$20,000.
28 Plaintiffs' counsel filed a separate motion for attorney's fees and costs, concurrently with this

1 motion, attesting to the nature and scope of the work performed as well as the costs and
2 expenses incurred. [Crosner Decl., ¶ 13.]

3 **F. PAGA Claims**

4 Finally, the settlement provides for \$25,000 to be allocated to civil penalties under
5 PAGA and Plaintiffs request the Court approve said amount. Consistent with PAGA,
6 \$18,750 of this amount will be paid to the LWDA as the state's share of the civil penalties,
7 with the remainder included in the Net Settlement Amount for distribution to those Class
8 Members eligible to receive a share of the PAGA payment. Further, the Settlement Agreement
9 and this motion have concurrently been submitted to the LWDA through its online portal.

10 [Crosner Decl., ¶ 14; Exh. 1.]

11 **IV. ARGUMENT**

12 The law favors settlement, particularly in class actions where substantial resources can
13 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
14 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
15 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
16 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
17 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
18 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
19 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
20 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
21 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
22 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
23 two-step process intended to determine whether, under the totality of circumstances, the
24 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
25 Cal.App.4th at 245.

26 On a motion for final approval, the trial court is charged with determining whether, in
27 light of the total circumstances of the action and the response of the class members to the
28 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at

1 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
2 determination and may consider a number of relevant factors, including: the strength of
3 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
4 further litigation; the amount offered in settlement; the extent of discovery and stage of the
5 proceedings; the experience and opinion of counsel; and the reaction of class members to the
6 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
7 courts generally apply a presumption of fairness to a proposed class action settlement when:
8 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
9 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
10 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
11 Wershba, 91 Cal.App.4th at 245.

12 The proposed settlement of this action warrants final approval under the standards
13 summarized above. The settlement is fair, reasonable and adequate, and represents a
14 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
15 approved by the class members, as there were no objections and only one class member
16 requested exclusion, for a 99.66% participation rate.

17 **A. The Settlement Is the Product of Arm's-Length, Informed Negotiations**

18 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
19 was reached following lengthy, arm's-length negotiations presided over by Laurie Quigley
20 Saldana, Esq., a highly respected and well-known mediator with extensive experience
21 mediating wage and hour class actions. [Crosner Decl., ¶ 8.] Moreover, Plaintiffs and their
22 counsel were well-informed about the facts and the law. [Crosner Decl., ¶¶ 7; Declaration of
23 David S. Winston ("Winston Decl."), ¶¶ 3-8]. Plaintiffs' counsel at Crosner Legal and Winston
24 Law Group all have years of extensive experience litigating wage and hour class actions and
25 representative actions.¹ [Winston Decl., ¶¶ 3-8.] Defendant Sierra likewise was represented by
26

27
28 ¹ Crosner Legal's experience and qualifications are set forth in detail in the Crosner Declaration in support of Plaintiffs' motion for attorney's fees, filed concurrently herewith.

1 highly-qualified and experienced defense counsel. Both sides advocated vigorously for their
2 clients and nothing was "left on the table."

3 Prior to mediation, Plaintiffs engaged in significant formal and informal discovery.
4 [Crosner Decl., ¶ 7.] Plaintiffs' counsel are confident they obtained sufficient information to enable
5 them to understand the law and facts of this case and make an informed decision regarding the
6 proposed settlement and whether it is in the best interests of the class.

7 **B. The Class Reacted Favorably to the Settlement**

8 The settlement was well-received by the class. No objections have been filed, and only
9 one individual requested exclusion out of 294 settlement class members. [Nava Decl., ¶ 12.] As
10 many courts recognize, class member reaction to the settlement is one of the most important factors
11 to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable
12 Prods., Inc. (9th Cir. 1976) 541 F.2d 832, 837 ; see also In re: American Bank Note Holographics
13 (S.D.N.Y. 2001) 127 F.Supp.2d 418, 425 ("It is well-settled that the reaction of the class to the
14 settlement is perhaps the most significant factor to be weighed in considering its adequacy.")
15 (internal quotation marks omitted).

16 **C. The Settlement Is Fair and Reasonable Considering the Benefits Conferred,**
17 **the Case Value, and Significant Litigation Risks**

18 The proposed settlement involves a substantial sum of money that, when distributed,
19 will confer meaningful monetary benefits on the Class members. As described above, each
20 individual award will be based on an allocation consistent with the nature of the claims
21 asserted and will fairly and equitably allocate the available funds in relation to the degree of
22 damage each Class member incurred. While Class members who worked for only a short
23 period of time will receive relatively small sums, those with longer tenures and who worked
24 more hours and shifts throughout the class period will receive appropriately larger settlement
25 shares.

26 Prior to mediation, the parties engaged in formal and informal discovery to facilitate
27 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding
28 Defendant's payroll practices, a representative sampling of pay stubs and time records, meal and

1 rest break policies, etc., and information from Defendant regarding class size and breakdown,
2 number of work weeks/pay periods, average rates of pay, and other information used to formulate
3 a damages model. Plaintiffs' counsel then had the payroll and time information analyzed by a
4 consulting expert to calculate potential violation rates, potential damages, etc. Plaintiffs' counsel
5 are confident they obtained sufficient information to understand the law and facts of this case and
6 make an informed decision regarding the proposed settlement and whether it is fair and
7 reasonable. [Crosner Decl., ¶¶ 7, 15.]

8 Using that data, Plaintiffs ran various calculations and estimated Sierra's likely maximum
9 exposure on the class claims at approximately \$3.291 million, including \$1,268,000 on the meal
10 break claims, \$1,268,000 on the rest break claims, \$192,000 on the wage statement claims,
11 \$35,000 on the waiting time penalty claims, \$35,000 on the expense reimbursement claims,
12 \$70,000 on the unpaid overtime/regular rate claims, and \$423,000 on the unpaid wage/off the
13 clock claims. Plaintiffs' counsel substantially discounted the value of these claims, however, in
14 light of the multiple and considerable risks posed by proceeding with the litigation. [Crosner
15 Decl., ¶ 16.]

16 On the unpaid wage claims, Plaintiffs argued Sierra had an "auto deduct" policy whereby
17 30 minutes were deducted from employee time for lunch periods regardless of whether the meal
18 period lasted a full 30 minutes or was taken at all. Plaintiffs also alleged Defendant had rounding
19 policy whereby employees clocked in up to 10 minutes early but only were paid based on the shift
20 start time and Plaintiffs contend this resulted in modest increments of off the clock work, as they
21 and the Class Members frequently worked several additional minutes either before after their
22 scheduled start/stop times. Lastly, Plaintiffs contend Sierra failed to properly calculate the class
23 members' regular of pay because it did not account for non-discretionary, non-hourly pay such as
24 bonuses and, as a result, did not use the correct rates of pay for purposes of paying overtime.
25 [Crosner Decl., ¶ 17.]

26 In response, Defendant took the position that its time keeping policies are legally
27 compliant, that it paid employees for all hours worked consistent with those policies, and that any
28 work done "off the clock" either on a meal period or before a shift was not sanctioned and done

1 without Sierra's knowledge. Sierra contends further it correctly calculated and paid for all
2 overtime. [Crosner Decl., ¶ 18.]

3 For the meal and rest break claims, Plaintiffs argued Defendant frequently provided late
4 meal breaks, including requiring Class Members to take their lunch at noon regardless of the start
5 time of their shift while working the day shift with similarly late first meal periods during the evening
6 shift as well. Defendant's understaffing policies and practices also pressured, coerced, and forced
7 Class Members to take untimely first meal periods. In fact, Plaintiffs' review of the sampling of time
8 records suggests substantial de facto violations for late and short meal periods. In response,
9 Defendant argued its break policies were fully compliant with California law, and that it provided
10 all required meal periods and thereby met its obligations under the Labor Code and Wage Order.
11 Further, Defendant argued to the extent employees missed a meal break or took a non-compliant
12 break, any such discrepancies were aberrational and against company policy and a myriad of
13 individual issues would be required to determine if the potential violation resulted from employee
14 choice or some other reason. Consequently, per the Defendant, individualized inquiries would
15 dominate on this issue and render class certification inappropriate. [Crosner Decl., ¶ 19.]

16 As with meal breaks, Defendant argued its rest break policies complied with California law
17 and authorized and permitted employees to take all required breaks. Defendant further contended
18 that, in light of the fact that it is not required to maintain a record of rest periods, any evidence of
19 failure to authorize rest periods and/or discouragement from taking rest periods would be purely
20 anecdotal and individual issues would predominate on liability. Defendant also may contend that it
21 is only liable if Plaintiff can prove, on a shift-by-shift basis, the aggrieved employees actually did
22 not receive a fully compliant rest break. This arguably would make a trial unmanageable since the
23 number of instances an employee missed a rest break would have to be tested on a case by case
24 basis to determine if there was compliance. [Crosner Decl., ¶ 20.]

25 Plaintiffs' based their expense reimbursement claim on the need to use their personal
26 mobile devices for company business, for which they were not reimbursed as required by Labor
27 Code section 2802 and Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014)
28 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code

1 section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans
2 with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
3 cell phone bills.”). On the other hand, Defendant argued it provided employees with company-owned
4 mobile devices and any use of personal phones was not necessary. [Crosner Decl., ¶ 21.]

5 Finally, Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged
6 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims were
7 based on the “off the clock” unpaid wage claim and the overtime regular rate claims, and will rise
8 or fall along with that primary claim, in addition to being subject to “good faith” and other
9 defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157,
10 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even
11 though the class prevailed on the merits on the underlying claim for failing to pay living wages).
12 Accordingly, Plaintiffs discounted the derivative claims significantly in light of these multiple
13 potential defenses. [Crosner Decl., ¶ 22.]

14 As far as potential PAGA liability, the theoretical penalties theoretically totaled around
15 \$3.8 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor
16 Code sections at issue for every single eligible pay period. [Crosner Decl., ¶ 23.] As with the class
17 claims, Plaintiffs discounted the potential PAGA penalties for the multi-layered defenses proffered
18 by Defendant on the merits, and further discounted these claims since the Court possesses wide
19 discretion to reduce such penalties even if Plaintiffs ultimately prevailed. Fleming v. Covidien
20 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by
21 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
22 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
23 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
24 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Accordingly, the Parties
25 allocated \$25,000 to PAGA penalties, which amount is reasonable and in line with comparable
26 settlements in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal.
27 Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA penalty
28 from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater

1 Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500 PAGA
2 payment reasonable when measured against the overall settlement of \$345,000 and the possible
3 weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has
4 been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as
5 necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS
6 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have]
7 submitted the settlement agreement to the LWDA, and the LWDA has not objected to the
8 settlement").

9 Although Plaintiffs maintain their claims are meritorious, they also acknowledge there are
10 substantial risks and uncertainties in proceeding with litigation. Sierra presented multiple defenses
11 to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while
12 Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial,
13 success was far from certain. Should the litigation continue and Plaintiffs not secure class
14 certification, or if any class claims are de-certified, or if they cannot prevail at trial, Class
15 Members would receive nothing. As with any case, a settlement discount was warranted to
16 account for the fact that continued litigation would have resulted in increased costs and attorney's
17 fees, and would have resulted in significant delay while the parties fought over class certification,
18 merits discovery and trial (assuming certification), and potential appeals, all of which would not
19 necessarily confer significant additional benefit to the Class Members. [Crosner Decl., ¶¶ 24-27.]

20 Plaintiffs and their counsel discounted the value of all claims consistent with these risks
21 and carefully weighed the likelihood of the class receiving substantially greater benefit if the
22 litigation continued. Plaintiffs concluded – in light of the very real risks discussed above –
23 settlement on the proposed terms, without further prolonged and costly litigation, was in the best
24 interests of the class. The proposed settlement amounts to at least about 20% of the maximum
25 value of primary claims for damages. However, the settlement amount will provide monetary
26 compensation to the Class Members for their unpaid wages and other damages in these
27 difficult times while eliminating the risks of losing class certification, obtaining a lower
28

1 amount at trial with greater costs, or losing altogether. [Crosner Decl., ¶¶ 24-27; Winston Decl.,
2 ¶ 8.]

3 Moreover, the fact that a settlement is less than what might be achieved at trial is not a
4 proper indicator of whether the settlement is fair and reasonable. 7-Eleven Owners for Fair
5 Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed
6 settlement may only amount to a fraction of the potential recovery does not, in and of itself,
7 mean that the proposed settlement is grossly inadequate and should be disapproved"); White
8 v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
9 contention that settlement is not fair and reasonable even though it was asserted the settlement
10 amounted to a 99% discount over full value of claims); Lane v. Facebook, Inc. (9th Cir. 2012)
11 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from
12 the question whether the settlement is perfect in the estimation of the reviewing court."); Behrens
13 v. Wometco Enterprises, Inc. (S.D. Fla. 1988) 118 F.R.D. 534, 542 ("A settlement can be
14 satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the
15 potential recovery.").

16 It is also significant that the settlement funds do not revert back to Sierra, and provide
17 immediate benefit to a class of workers without a lengthy claims process. White, 803
18 F.Supp.2d at 1086; Kakani v. Oracle Corp. (N.D. Cal. June 19, 2007) 2007 WL 1793774, at
19 *7; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges
20 (3d ed. 2010) at 20, at <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary
21 provisions and/or cumbersome claims process may indicate lack of fairness). In sum, Plaintiffs
22 and their counsel have concluded the settlement, which assures Class Members prompt
23 compensation, is in the best interests of the class.

24 **D. Plaintiffs' Enhancement Awards**

25 A modest incentive award for Plaintiffs is appropriate under applicable law. Rodriguez v.
26 W Publ'g Corp., 563 F.3d 948, 958-59 (9th Cir. 2009) (incentive awards are "intended to
27 compensate class representatives for work done on behalf of the class, to make up for financial or
28 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness

1 to act as a private attorney general”). As described in their respective declarations submitted with
2 the preliminary approval motion, both Plaintiffs devoted time and resources to the litigation,
3 provided documents, assisted Class Counsel with investigating the claims asserted and in
4 preparing for mediation, and assisted with the litigation. [Crosner Decl., ¶ 28; Declaration of
5 Marisal Dobbins, ¶¶ 2-9; Declaration of Robert De La Hoya, ¶¶ 2-9.]

6 The service payments provided to Plaintiffs as the class representatives are typical in class
7 action cases and the amounts requested, \$8,000 for each Class Representative, are reasonable and
8 in line with amounts awarded in other cases. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977
9 (collecting cases awarding class representatives service and incentive payments ranging from
10 \$2,000 to \$25,000). Accordingly, it is respectfully requested that the Court approve the service
11 payments as provided for in the Settlement Agreement.

12 **V. SETTLEMENT ADMINISTRATION COSTS**

13 The settlement provides for a payment to CPT of no more than \$35,000 for its services as
14 the Settlement Administrator. As set forth in the Declaration of Madely Nava, CPT has performed
15 and will continue to perform its required duties through final distribution of the settlement funds,
16 and incurred \$10,000.00 in fees and expenses on a flat fee basis. [Nava Decl., ¶ 16.] Accordingly,
17 Plaintiffs respectfully request the Court approve payment of \$10,000.00 to CPT from the GSA.
18 [Crosner Decl., ¶ 29.]

19 **VI. CONCLUSION**

20 For all the foregoing reasons, Plaintiffs Marisal Dobbins and Robert De La Hoya respectfully
21 request that the Court grant this motion and grant final approval of the proposed class action
22 settlement and approve the payment of PAGA penalties to the State. Plaintiffs further request the
23 Court approve payment of the Settlement Administrator’s fees and expenses, approve the requested
24 class representative enhancement payments, and approve the award of attorney’s fees and costs as
25 requested in Plaintiffs’ Motion for Attorney’s Fees and Costs, and enter judgment in this

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1 action. Finally, Plaintiff requests the Court set a final compliance hearing for July 11, 2023, or a
2 later date convenient for the Court.

3
4 Dated: June 16, 2022

CROSNER LEGAL, P.C.

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7 By: 
8 Zach Crosner
9 Attorneys for Plaintiff Marisal Dobbins
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