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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

RONALD BROWNING, as an individual and on behalf of all others similarly situated, Plaintiff, v. TEC Equipment, Inc., an Oregon Corporation; TEC OF CALIFORNIA, INC., a California Corporation; and DOES 1-100, inclusive, Defendants.	Case No. CIVSB2202461 Assigned for All Purposes to: Hon. Joseph B. Widman Dept. S36 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: March 5, 2026 Time: 9:00 a.m. Dept.: S36

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I. INTRODUCTION

Plaintiff Ronald Browning 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 48 individuals who are Defendants TEC Equipment, Inc. and TEC of California, Inc. (together "TEC" or "Defendants") former non-exempt employees that worked at any location in California at any time during the Class Period (January 31, 2018, through April 23, 2025) and had unpaid sick pay as a result of a miscalculation of their regular rate of pay. The proposed $175,000 settlement will provide at least $82,167 in estimated combined cash payments to the settlement class, with an average payment of about $1,295. The balance of approximately $112,833, subject to Court approval, will cover a modest enhancement award to the named Plaintiff, reasonable attorney's fees and actual litigation costs, settlement administration costs, and payment of civil penalties to the State and PAGA Members. The settlement is the product of Plaintiff's pre- and post-filing investigation, extensive formal and informal discovery, and arms-length and adversarial negotiations overseen by experienced and well-regarded mediators the Hon. Steven Denton (Ret.) and Daniel Turner, Esq.

As demonstrated below, the settlement is within the "range of reasonableness" for preliminary approval, and is fair, reasonable and adequate. Plaintiff's counsel believe the settlement is a significant result for the class 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 Crosner Legal, PC as Class Counsel; (4) appointing plaintiff Ronald Browning as the Class Representative; (5) appointing Phoenix Settlement Administrators as the Settlement Administrator; (6) approving the form of notice to the class and the procedure for providing such notice; and (7) scheduling a final fairness hearing.

II. BACKGROUND/LITIGATION HISTORY

Defendants own and operate a full-service heavy-duty truck dealership. Defendants lease, rent, and sell trucks and trailers, and also provide parts and service/repairs. TEC operates in Oregon, Washington, Nevada, Arizona, Nebraska, Iowa, South Dakota, and has 11 California locations.

Plaintiff worked for TEC in a "Parts Counter Sales" position at TEC's Fontana, California location. He worked for TEC for about 7 years, from 2014 to July 2021. [Declaration of Chad Saunders ("Saunders Decl."), ¶ 4.]

Plaintiff alleged TEC violated California wage and hour law in several respects. First, he alleged Defendants failed to pay for sick pay at the correct regular rate of pay. Next, Plaintiff alleged TEC failed to provide compliant rest periods as rest periods frequently were not fully compliant due to various "de facto" violations and that rest breaks regularly were missed, untimely, or cut short. He also claimed Defendants did not reimburse business expenses incurred by Class Members for the use of their personal cellular phones or personal vehicles. Lastly, he alleged Defendants failed to provide accurate, itemized wage statements and failed to pay all wages owed upon the separation of employment. Based on these general allegations, Plaintiff filed a class action complaint against TEC on January 31, 2022. After notice to the LWDA and Defendants, and exhausting administrative remedies, Plaintiff amended his complaint on May 17, 2022 to add a cause of action under PAGA. [Saunders Decl., ¶ 5; Exh. 3.]

TEC has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, and that it provided the class members with the opportunity to take all required meal and rest breaks or paid the required premiums when necessary. Additionally, TEC contended its timekeeping and payroll policies accurately track and pay for all hours worked, and for sick pay, by its employees and at the correct rates of pay. TEC similarly argued that there was no need for employees to use their cell phones or personal vehicles for work purposes and accordingly no reimbursement is warranted. It also strongly contended the case cannot be maintained as any kind of class or representative action, arguing for example that to the extent class members missed rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and therefore individualized issues predominate and trial on a representative basis would be unmanageable. [Saunders Decl., ¶ 6.]

Once the case was at issue, the Parties initiated discovery, and after various meet and confer discussions regarding discovery, potential law and motion, and case management, ultimately agreed to attempt mediation. The Parties further agreed to extensive informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. Consequently, Plaintiff's counsel reviewed payroll records, personnel policies/handbooks, meal and rest break policies, personnel files, and paystubs and time records for around 20% of the putative class members. Defendants also provided documents reflecting its wage and hour policies and practices, and data regarding the total number of current and former employees, the estimated total amount of workweeks and pay periods they worked, and average hourly pay rates, among other relevant data. Plaintiff had that information reviewed and analyzed by Berger Consulting Group to assist with evaluating things such as time allegedly lost to due rounding, meal period violation rates, etc., and to prepare a damages model. [Saunders Decl., ¶ 7.]

The Parties then engaged the Hon. Steven Denton (Ret.) and mediated with Judge Denton in August 2023, which mediation proved unsuccessful. The Parties continued litigating and the Court set a deadline for Plaintiff to file his class certification motion. The Parties eventually agreed to continue settlement discussions and participated in a second mediation in April 2025 with Daniel Turner, Esq., another highly respected neutral with extensive wage and hour and class action experience. 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 were able to reach an agreement and thereafter jointly prepared the Settlement Agreement now before the Court for approval. [Saunders Decl., ¶ 8.]

III. <u>THE PROPOSED SETTLEMENT TERMS</u>

Under the settlement, TEC will pay the Gross Settlement Amount of $175,000 into a common fund. Reasonable attorney's fees of up to $58,333.33 (1/3 of the GSA), litigation costs of up to $30,000, a modest enhancement award to Plaintiff of up to $10,000, settlement administration costs of no more than $4,500, and $10,000 for civil penalties under PAGA (of which 75%, or $7,500, will go to the Labor & Workforce Development Agency, and 25%, or $2,500 will go to the PAGA Members) all will be paid from the Gross Settlement Amount. The remainder of approximately $82,167 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the Gross Settlement Amount will revert to TEC. [Saunders Decl., ¶ 9.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all former non-exempt employees that worked for Defendants at any location in California at any time during the Class Period (January 31, 2018, through April 23, 2025) and had unpaid sick pay as a result of a miscalculation of their regular rate of pay.[1] The Settlement Class consists of at least 48 individuals.[2] [Saunders Decl., ¶ 10.]

B. The Benefit Conferred on the Settlement Class

This is a cash settlement that does not 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 percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses reimbursement, penalties and interest. TEC will pay any and all applicable employer-side payroll taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Saunders Decl., ¶ 11.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for TEC during the Class Period while employed in a non-exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid sick wages and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her

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[1] Defendants settled a prior class action (Los Angeles County Superior Court Case No. 19STCV01591) that released most of the claims alleged in Plaintiff's complaint through October 31, 2020.

[2] The "PAGA Members" for purposes of PAGA include all persons who were employed by Defendants in the State of California as non-exempt, hourly employees and who's employment ended during the PAGA Period of May 17, 2021, to April 23, 2025. [Saunders Decl., ¶ 10.]

potential claims. The average class settlement award will be approximately $1,295, and the average PAGA award will be about $52. [Saunders Decl., ¶ 12.]

C. Settlement Administration

Subject to the Court's approval the Parties agreed on Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator. [Saunders Decl., ¶ 13.] Phoenix is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Phoenix has agreed to cap its fees and costs at $4,500. 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. [Declaration of Michael Moore, ¶¶ 2-16; Exhs. A-B.]

D. The Class Notice

The proposed Notice (Exhibit 2 to the Saunders Declaration) sets out information about this case and explains the basic settlement terms in plain language, and meets all requirements under California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the individualized information used to calculate 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, for submitting an objection to the Settlement, and to request exclusion. In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement and provides fair opportunity to participate in, opt out of, or object to the proposed Settlement. Coupled with the notice procedure, the proposed Notice provides the Class with the best notice practicable. [Saunders Decl., ¶ 14.]

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

Class Members will have 45 days to dispute the information in their Notice used to calculate their settlement award, and also have 45 days to submit any objections to the settlement or to request exclusion. In the event a Class Member disputes their individual information, the Settlement Administrator will review the Class Member's records as well as any additional information submitted, and make a final determination. [Saunders Decl., ¶ 15.]

F**. Release of Claims**

All Participating Class Members will release TEC 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. Plaintiff and the LWDA will release those PAGA claims alleged in the PAGA notice to the extent alleged in the operative complaint. The Class and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint, and PAGA notice for the PAGA claims. Only Plaintiff is entering into a full general release of all claims and waiver of Civil Code § 1542. [Saunders Decl., ¶ 16.]

G. Attorney's Fees and Costs, and Plaintiff's Enhancement Awards

The settlement provides Defendant will not oppose a request for attorney's fees not to exceed 1/3 of the Gross Settlement Amount, or $58,333.33, nor will it oppose a request for reimbursement of litigation costs and expenses of up to $30,000. Defendants also will not oppose a request for an enhancement award to Plaintiff of not more than $10,000.00 in recognition of his time spent on this matter, the risks he undertook on behalf of the class, the benefit conferred to the class, and his agreement to provide a broad general release of all claims against Defendants, as set forth in their respective declarations filed herewith. Plaintiff's counsel will provide the Court with appropriate summaries and evidence of their efforts and time records in anticipation of the Final Approval Hearing. If the Court approves less than the above amounts, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Saunders Decl., ¶ 17.]

H. PAGA Penalties and Notice to the LWDA

As noted, the Parties allocated $10,000 from the GSA to resolution of Plaintiff's alleged claims for PAGA civil penalties, and Plaintiff submits that amount is fair, reasonable and adequate, and furthers PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and the preliminary approval hearing to the LWDA via its online portal. [Saunders Decl., ¶ 18; Exh. 4.]

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 if 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, and any enhancement for the class representative(s), 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. <u>The Proposed Settlement Class Should Be Conditionally Certified</u>

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. <u>Dunk</u>, 48 Cal.App.4th at 1807, n.19; <u>Global Minerals & Metals Corp. v. Superior Court</u> (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 at least 48 individuals, and ascertainable by reference to TEC's personnel and payroll records. [Saunders Decl., ¶ 19.]

Next, Plaintiff is an adequate class representative, as his claims do not conflict with and are not antagonistic to the claims of other class members. For these reasons, Plaintiff contends he is an adequate class representative. [Saunders Decl., ¶ 20; Declaration of Ronald Browning, ¶¶ 2-9.] Further, his claims are typical given he is a member of the class and his claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [<u>Id.</u>; Saunders Decl., ¶ 21;] His counsel are experienced and adequate class counsel. [Saunders Decl., ¶¶ 34-42.]

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the alleged failure to pay for sick pay at the correct "regular rate." Since the focus of the claims against TEC concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, TEC's policy of paying for sick pay at the base hourly rate instead of the regular rate is company-wide policy applied equally and consistently to all class members, and this policy is either compliant with California law or it is not. Regardless of that determination, it will decide liability for the class one way or another.

[Saunders Decl., ¶ 22.]

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 of 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. [Saunders Decl., ¶ 23.]

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediators the Hon. Steven Denton (Ret) and Daniel Turner, Esq., both of whom have extensive experience mediating wage and hour class actions. [Saunders Decl., ¶ 8.] Plaintiff's counsel Chad Saunders, Brandon Brouillette, and Zach Crosner all have years of experience litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Saunders Decl., ¶¶ 34-42.]

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; 5) the experience and views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated below, the proposed settlement satisfies these requirements.

Prior to mediation, the parties engaged in informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding TEC's payroll practices, a sampling of pay stubs and time records for about 20% of the putative class, meal and rest break policies, employee handbooks, etc., and information from Defendants regarding class size and breakdown, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Saunders Decl., ¶¶ 7, 24.]

Using that data, Plaintiff ran various calculations under different theories of liability and estimated TEC's maximum exposure on the class claims at approximately $1,252,900, including approximately $46,650 on the underpaid sick time/regular rate claims, $662,320 on the rest break claims, $47,460 on the expense reimbursement claims, $192,000 on the wage statement claims, and $304,475 on the waiting time penalty claims. [Saunders Decl., ¶¶ 25-26.] Plaintiff substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation.

First, on the unpaid wage claims, Plaintiff alleged TEC failed to pay for sick time pay at the employees' "regular rate of pay" as required under California law. Labor Code § 246(l)(1) ("Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."). Here, Class Members received various forms of extra compensation such as performance-based bonuses and, during pay periods where additional compensation was paid and sick pay was used, and Plaintiff alleged Defendants failed to factor in the non-discretionary remuneration into the regular rate of pay. Flores v. Dart Container Corp. (E.D. Cal. May 28, 2020) No. 219CV00083WBSEFB, 2020 WL 2770073, at *3 (holding plaintiff stated a claim for unpaid wages where the complaint alleged she was not paid the regular rate for sick leave taken). Accordingly, per Plaintiff, this resulted in Class Members being underpaid for their sick pay. [Saunders Decl., ¶ 27.]

Plaintiff next alleged TEC failed to provide required rest breaks on a fully compliant basis.[3] Here, Plaintiff argued that Defendants' "de facto" violations where rest breaks were missed

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[3] While Plaintiff's complaint alleged meal break violations, discovery and investigation suggested minimal violations, and further that Defendants paid thousands in premium pay for any violations that may have occurred. Accordingly Plaintiff allocated only nominal value to this claim for settlement purposes. [Saunders Decl., ¶ 28.]

completely or otherwise non-compliant. Defendants denied Plaintiff's contentions, claiming it made rest breaks available to Class Members in compliance with California law. Defendants contended their meal and rest break policies are lawful, that Class Members were frequently reminded they were required to take all meal and rest breaks and that were able to do so, Defendants argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks. Further, per Defendants, in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make a trial unmanageable since each alleged missed rest break would have to be tested on a case by case basis to determine compliance. [Saunders Decl., ¶ 28.]

On the expense reimbursement claim, Plaintiff alleged that employees were required to use their personal cell phones in order to communicate with supervisors and other employees during work hours. However, Defendants did not reimburse Plaintiff and the class members for this expense. <u>Cochran v. Schwan's Home Serv., Inc</u>. (2014) 228 Cal.App.4th 113. Plaintiff also contended class members occasionally had to drive their personal vehicles on company business, such as picking up truck parts for service/repair orders, without reimbursement. <u>Gattuso v. Harte-Hanks Shoppers, Inc.</u> (2007) 42 Cal.4th 554. On the other hand, Defendants argued there would be no conceivable need for employees to use either their phones or vehicles for work purposes, and that any use of employee phones, or personal vehicles, was purely for personal convenience and therefore not reimbursable as a "reasonable and necessary" expense. [Saunders Decl., ¶ 29.]

Plaintiff also alleged derivatively that, as a result of the above alleged violations, Defendants failed to provide accurate wage statements and failed to timely pay all wages that were due and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff's derivative claims would also fail. Defendants also contended they would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of past wages. <u>Amaral v. Cintas Corp. No. 2</u> (2008) 163 Cal.App.4th 1157, 1201. Further, Defendants contended Plaintiff would have to prove that Defendants "willfully" failed to pay Class Members appropriate wages due upon separation of employment. Defendants argued that any failure to pay wages upon separation was not willful. [Saunders Decl., ¶ 30.]

As far as potential PAGA liability, the PAGA Members theoretically are entitled to penalties totaling upwards of $1.3 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code violations alleged for every single pay period at issue. [Saunders Decl., ¶ 31.] As with the class claims, Plaintiff discounted the potential PAGA penalties since the Court possesses wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, 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 $5,000 to PAGA penalties, which amount Plaintiff submits is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, 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.

The settlement obviates the significant risk that this Court may find any kind of class resolution unachievable or might deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation would be expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would substantially delay any recovery by the class with no assurance of recovering significantly more than the proposed settlement. While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes proving the amount of wages and penalties due each Class Member would be an expensive and uncertain proposition. [Saunders Decl., ¶ 32.]

Plaintiff and counsel 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 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 $175,000 recovery represents a significant percentage of Defendants' potential exposure and, given the risks addressed above, a total recovery for the class of $175,000, which will result in average award of some $1,295 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Saunders Decl., ¶ 33.]

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 ("Compromise is inherent and necessary in the settlement process…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"); Lane v. Facebook, Inc., 696 F.3d 811, 819 (9th Cir. 2012) ("[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"); 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"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary and will provide immediate 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 http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

IV. 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: February 4, 2026

CROSNER LEGAL, P.C.

By: ______________________

Chad Saunders
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