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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **FOR THE COUNTY OF SAN FRANCISCO**

23 EVAN REED, as an individual on behalf of
24 himself and on behalf of all others similarly
25 situated and Aggrieved Employees;
26 CHRISTINE SOUCI, individually and on
27 behalf of all other Aggrieved Employees,

28 Plaintiff,

vs.

WILLIAMS-SONOMA STORES, INC., a
California corporation; WILLIAMS-
SONOMA, INC., a Delaware corporation,
and DOES 1 - 100, inclusive,

Defendants.

Case No.: CGC-22-598118

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

[Filed concurrently with Memorandum of Points
and Authorities; Declarations of Zachary M.
Crosner and Haig B. Kazandjian; [Proposed]
Order]

Date: _____, 2023
Hon. Richard B. Ulmer, Jr.
Time: 9:30 am
Dept.: 302

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND.....	1
III.	PROPOSED SETTLEMENT TERMS	5
A.	Certification of the Settlement Class	5
B.	The Benefit Conferred on the Settlement Class	5
C.	Settlement Administration.....	6
D.	The Class Notice.....	6
E.	Right to Correct Information, Opt Out, or Object	7
F.	Release of Claims.....	7
G.	Class Counsel’s Attorneys’ Fees and Costs, and the Named Plaintiff Awards.....	8
H.	PAGA and Notice to the LWDA	8
IV.	ARGUMENT	8
A.	Standard of Review for a Class Action Settlement	8
B.	The Proposed Settlement Class Should Be Conditionally Certified	10
C.	The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of Reasonableness.....	11
V.	CONCLUSION	16

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150..... 16

4 Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 14

5 Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504..... 14

6 Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953 9

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8 Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801..... 9, 10

9

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11

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13 Global Minerals & Metals Corp. v. Superior Court (2003) 113 Cal.App.4th 836, 839..... 10

14 In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557... 14

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16 15

17

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22 1089-90..... 9

23 Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602..... 9

24 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303

25 14

26

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28 14

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28

STATUTES

California Rule of Court. 3.769..... 9

California Rules of Court 3.769 (c)..... 1, 9

California Rules of Court 3.769 (c) and (d) 1

Code of Civil Procedure section 382..... 10

Labor Code § 201 13

Labor Code § 203 13, 14

Labor Code section 2698..... 1

Labor Code section 2699(l)(2) 8

Labor Code section 2802..... 13

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court 3.769 (c) and (d), Plaintiffs Evan Reed and Christine
3 Souci (“Plaintiffs”) hereby move the Court for an order granting preliminary approval to a
4 proposed non-reversionary class and representative action settlement of wage and hour claims
5 brought against Defendants Williams-Sonoma Stores, Inc. and Williams-Sonoma, Inc. (“Williams-
6 Sonoma” or collectively, “Defendants”), including claims under the California Private Attorneys
7 General Act of 2004, codified at Labor Code section 2698 et seq. (“PAGA”). The putative class
8 consists of approximately 4,831 individuals employed by Defendant Williams-Sonoma Stores,
9 Inc. as hourly non-exempt retail store employees in California (individually “Class Member”;
10 collectively the “Class”) during the period of February 1, 2020 through October 26, 2022 (“Class
11 Period.”) Pursuant to the basic terms of the Stipulation of Class and Representative Action
12 Settlement and Release (“Settlement” or “Settlement Agreement:), the proposed non-reversionary
13 \$850,000 Settlement will result in an estimated Net Settlement Sum of about \$401,667, with an
14 estimated average award of approximately \$83 per Class Member. The Settlement is the product
15 of Plaintiffs’ pre- and post-filing investigation, a pre-mediation exchange of information, and
16 arms-length and adversarial negotiations overseen by experienced and well-regarded mediator
17 Louis Marlin, Esq.

18 As demonstrated below, the Settlement is within the “range of reasonableness” for
19 preliminary approval. Plaintiffs’ counsel believes the Settlement is a significant result for the
20 class given the substantial risks inherent in this matter. Accordingly, Plaintiffs request the Court
21 enter an order: (1) granting preliminary approval to the proposed class and representative action
22 Settlement; (2) conditionally certifying the Settlement class as defined below; (3) appointing
23 Crosner Legal, P.C., and Haig B. Kazandjian Lawyers, APC, as Class Counsel; (4) appointing
24 Plaintiffs Evan Reed and Christine Souci as the Class Representatives; (5) appointing ILYM
25 Group, Inc. as the Settlement Administrator; (6) approving the form of notice to the class and the
26 procedure for providing such notice; and (7) scheduling a final fairness hearing.

27 **II. BACKGROUND**

28 Williams-Sonoma is a well-known owner/operator of retail luxury home goods stores such

1 as Williams-Sonoma, Pottery Barn, Pottery Barn Kids, Pottery Barn Teens, West Elm,
2 Rejuvenation, and associated outlet stores. Plaintiff Evan Reed worked for Defendant Williams-
3 Sonoma Stores, Inc. as an hourly paid, non-exempt employee at the Williams Sonoma retail store
4 in San Luis Obispo from December 2020 through May 2021. He was a stock associate tasked with
5 maintaining the stock room, maintaining inventory records and assisting the sales team. Plaintiff
6 Christine Souci worked for Defendant Williams-Sonoma Stores, Inc. as an hourly-paid, non-
7 exempt Design Specialist from October 2017 through September 2021. [Declaration of Zachary
8 M. Crosner (“Crosner Decl.”), ¶ 3.]

9 On February 14, 2022, Plaintiff Reed, on behalf of himself and all others similarly situated,
10 filed a class action complaint against Defendants in this Court seeking damages for several alleged
11 violations of the Labor Code and IWC Wage Orders. First, he contended that Defendants failed to
12 pay for all hours worked, including minimum and overtime wages, with resulting unpaid wage
13 violations. Plaintiff alleges that during the COVID-19 pandemic, Defendants required non-exempt
14 employees to undergo a “wellness check” before starting work, which involved answering several
15 questions and having their temperature checked. Reed alleged that this occurred before clocking
16 in for the day and took approximately 3 minutes per wellness check that went uncompensated.
17 Next, Reed alleged meal and rest break violations, and contended that Defendants did not always
18 compensate him and other non-exempt employees for documented meal and rest break violations,
19 and further that other violations occurred as well for missed, short, and late breaks. Plaintiff Reed
20 also alleged that he and other non-exempt employees had to use their personal cell phones for
21 business purposes but did not receive any reimbursement. Plaintiff also alleged that Defendants
22 did not timely pay final wages upon separation of employment. Lastly, Reed contended that
23 Defendants failed to provide Plaintiff and other non-exempt employees with accurate wage
24 statements, including that the wage statements did not correctly identify the correct legal entity
25 that actually employed the Class Members, in addition to derivative violations based on alleged
26 off the clock work. [Crosner Decl., ¶ 4.]

27 Based on these allegations, Reed’s initial class action complaint against Defendants
28 asserted causes of action for: (1) failure to pay all minimum and overtime wages due; (2) failure to

1 provide all required meal periods or compensation in lieu thereof; (3) failure to provide all
2 required rest periods or compensation in lieu thereof; (4) failure to provide accurate, itemized
3 wage statements; (5) failure to pay all wages due upon termination of employment; (6) failure to
4 reimburse business expenses, and (7) violation of the Unfair Competition Law, Bus. & Prof. Code
5 sections 17200, *et seq.* On May 16, 2022, Reed filed a First Amended Class Action Complaint
6 adding a claim under the Private Attorneys General Act of 2004 (“PAGA”) based on the same
7 underlying alleged Labor Code violations. [Crosner Decl., ¶ 5.]

8 On April 26, 2022, Plaintiff Souci filed a representative action complaint against Defendants in
9 Los Angeles County Superior Court, Case No. 22SMCV00589 (“Souci Action”), alleging a single
10 cause of action under PAGA predicated on alleged wage and hour violations for (1) failure to provide
11 employment records; (2) failure to pay overtime and double time wages; (3) failure to provide meal
12 and rest breaks; (4) failure to pay minimum wages; (5) failure to keep and provide itemized wage
13 statements; (6) failure to pay reporting time; (7) failure to pay split shift premiums; (8) failure to pay
14 wages during employment; (8) failure to timely pay wages upon termination; and (9) failure to
15 reimburse necessary business-related expenses. The parties subsequently agreed to consolidate both
16 matters before this Court by filing a Second Amended Complaint in this matter that added Souci as a
17 party-Plaintiff and added all claims Plaintiff Souci had alleged in the Souci Action. On September 13,
18 2022, the Los Angeles Superior Court issued an Order Staying the Souci Action pending preliminary
19 approval of the Settlement in this action. Accordingly, on October 21, 2022, Plaintiffs filed their
20 consolidated Second Amended Complaint (“Operative Complaint”) in this action. [Crosner Decl., ¶
21 6.]

22 Williams-Sonoma has at all times denied Plaintiffs’ collective allegations and maintained
23 its meal and rest break and payroll policies and procedures comply with California law, that it
24 provided the Class Members with required meal and rest breaks, that it paid Plaintiffs and the
25 Class Members all wages due, that it strictly prohibits “off the clock” work, and that any use of
26 personal cell phones was not required or necessary. Additionally, Williams-Sonoma strongly
27 contends that this case cannot be maintained as any kind of class or representative action, arguing
28 that to the extent Class Members missed, took late or short meal and/or rest breaks they did so

1 voluntarily and failed to report their non-compliant meal and rest breaks, that to the extent any
2 Class Member worked “off the clock,” they did so in violation of company policy and failed to
3 report all hours worked, that to the extent any Class Member used their personal cell phones for
4 work purposes that they did so against company policy and without the Company’s knowledge,
5 and that intermittent or infrequent evidence of any alleged violations would be purely anecdotal.
6 Thus, Defendants contend that individual issues predominate and class certification would be
7 inappropriate. [Crosner Decl., ¶ 7.]

8 Once the matter was at issue, the Parties engaged in meet and confer discussions regarding
9 potential discovery issues, potential law and motion matters, the merits of the claims, and
10 ultimately agreed to attempt early mediation. They then engaged in significant informal discovery
11 to facilitate an exchange of information necessary to evaluate the claims and engage in a
12 meaningful mediation. Consequently, Plaintiffs’ counsel reviewed payroll records, personnel
13 policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and
14 time records produced by Defendants. Defendants also provided documents and information
15 reflecting the estimated total amount of workweeks and pay periods non-exempt employees
16 worked during the relevant time period, and average hourly pay rates, among other relevant class
17 data. Plaintiffs had this information reviewed and analyzed by consulting expert Berger
18 Consulting Group to assist with, inter alia, determining potential meal/rest period violation rates,
19 the amount of potential “off the clock” work, etc., and formulating a damages model. [Crosner
20 Decl., ¶ 8.]

21 The Parties then engaged Louis Marlin, Esq., a respected mediator with extensive wage
22 and hour class action experience and on June 28, 2022 participated in a full day mediation with
23 Mr. Marlin. Throughout the day, the arms-length negotiations were hard-fought and adversarial as
24 the Parties exchanged extensive information on their legal and factual positions, and made
25 numerous offers and counter-offers. Near the end of the day, the Parties reached an agreement on
26 all major issues and then collaboratively drafted the Settlement Agreement setting forth the full
27 and final Settlement terms. [Crosner Decl., ¶ 9.]

28 /////

1 **III. PROPOSED SETTLEMENT TERMS**

2 Under the Settlement, Defendants will pay \$850,000.00 into a common fund, the Total
3 Maximum Settlement Amount or TMSA. [Crosner Decl., Exh. 1, at ¶ 34.] Class Counsel's
4 Attorneys' Fees of up to one-third of the TMSA (\$283,333.33) and actual litigation costs of up to
5 \$25,000, Named Plaintiff Awards of \$5,000 each for the named Plaintiffs (*i.e.*, \$10,000 total),
6 Settlement Administration Costs of no more than \$30,000, and \$100,000 PAGA Payment for
7 alleged civil penalties under PAGA,¹ will be paid from the Total Maximum Settlement Amount.
8 [Crosner Decl., Ex. 1, at ¶¶ 2, 4, 14, and 19.] The remainder of approximately \$401,666.67 will be
9 allocated among the Participating Class Members (defined as Class Members who do not submit a
10 timely and valid Request for Exclusion) based on their total workweeks worked during the Class
11 Period. No portion of the TMSA will revert to Defendants. [Crosner Decl. ¶ 10; Ex. 1, ¶ 15.]

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

13 The Settlement provides for conditional certification of a Settlement Class consisting of all
14 current and former hourly non-exempt retail store employees employed by Williams-Sonoma
15 Stores, Inc. in California during the Class Period, which runs from February 1, 2020 through
16 October 26, 2022. The Settlement Class, as of June 28, 2020, consisted of approximately 4,831
17 individuals.² [Crosner Decl., ¶ 11.]

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

19 As noted, the Settlement obligates Defendants to pay \$850,000 to resolve the Settlement
20 Class' claims, inclusive of Class Counsel's Attorneys' Fees and Costs Payment, Named Plaintiff
21 Awards, PAGA Payment to the LWDA and PAGA Group, and the Administrator Payment.
22 Approximately \$401,666.67 from the TMSA will be distributed to the Participating Class
23 Members. This is a cash Settlement that does not require Participating Class Members to submit a
24 claim form to receive their Individual Settlement Payment. Participating Class Members will
25 receive checks for their Individual Settlement Payments automatically via First Class U.S. Mail.
26 One-third of each Individual Settlement Payment will be allocated to wages and the remaining

27 ¹ Consistent with PAGA, \$75,000 of the PAGA Payment will go to the Labor & Workforce Development
28 Agency, and the remaining \$25,000 will be distributed pro rata to the PAGA Group.

² As of the mediation, there were approximately 2,667 individuals in the PAGA Group.

1 two-thirds will be allocated to penalties and interest. Defendants will pay any and all applicable
2 employer-side payroll taxes separately and in addition to the TMSA. Subject to the Court's
3 approval, any amounts not claimed (because a Participating Class Member does not cash his or her
4 Individual Settlement Payment), will be forwarded to the California State Controller's Unclaimed
5 Property Fund. [Crosner Decl., ¶ 12, Ex. 1, ¶ 58.]

6 Each Participating Class Member will receive a share of the Net Settlement Sum based on
7 his or her total workweeks worked for Williams Sonoma in California during the Class Period
8 while employed in a non-exempt position. Thus, each Class Member's Individual Settlement
9 Payment will be calculated using criteria typically used in determining appropriate amounts of
10 unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory
11 penalties under applicable law. These methods are intended to ensure each Class Member receives
12 a portion of the available settlement funds corresponding to the relative value of his or her
13 potential claims. The proposed allocation provides a reasonable way to compensate Class
14 Members based on the amount of time they worked for Williams Sonoma and the number of
15 instances they missed a meal and/or rest break, were not provided compensation in lieu of such
16 missed breaks, or lost wages due to the alleged off the clock work, regular rate miscalculation, etc.
17 The average overall award currently is estimated to be approximately \$83, with the average award
18 to the PAGA Group members at about \$9.37. [Crosner Decl., ¶ 13.]

19 **C. Settlement Administration**

20 Subject to the Court's approval, the Parties have agreed on ILYM Group, Inc. ("ILYM") as
21 the Settlement Administrator. [Crosner Decl., Ex. 1, ¶ 30.] ILYM is qualified and has significant
22 experience administering class action settlements, including numerous wage and hour matters.
23 ILYM has agreed to cap its fees and costs at \$30,000.00. If the Court approves less than the above
24 amount, the difference will remain in the Net Settlement Sum for distribution to the Participating
25 Class Members. [Crosner Decl., ¶ 14; Exh. 3.]

26 **D. The Class Notice**

27 The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about
28 this case and explains the basic Settlement terms in plain language. The Notice also sets forth the

1 individualized information used to calculate Class Members' Individual Settlement Payments and
2 the PAGA Payment to the PAGA Group Members and each Class Member's estimated Individual
3 Settlement Payment. The Notice likewise details the procedures for Class Members to dispute
4 their individual information, the procedure for submitting an objection to the Settlement, and the
5 procedure to request exclusion. In sum, the Notice provides the Class Members with the
6 information necessary to evaluate the Settlement and provides fair opportunity to participate in,
7 opt out of, or object to the proposed Settlement. Coupled with the notice procedure, the proposed
8 Notice provides the Settlement Class with the best notice practicable. [Crosner Decl., ¶ 15.]

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

10 Class Members will have 45 days to dispute the information in their Notice used to
11 calculate their Individual Settlement Payment, and also have 45 days to submit any objections to
12 the Settlement or to submit a Request for Exclusion. In the event a Class Member disputes their
13 individual information, the Settlement Administrator will review the Class Member's records as
14 well as any additional information submitted, and make a final determination. [Crosner Decl., ¶
15 16.]

16 **F. Release of Claims**

17 All Participating Class Members will be deemed to have released and/or waived all
18 Released Claims (as defined below) against Defendants Williams-Sonoma Stores, Inc. and
19 Williams-Sonoma, Inc., including their past or present successors and predecessors in interest,
20 acquirers, subsidiaries, affiliates, parents, officers, directors, shareholders, employees, agents,
21 principals, representatives, accountants, auditors, consultants, insurers and reinsurers ("Released
22 Parties") from February 1, 2020 through October 26, 2022, as follows:

23 Released Claims: all claims, demands, rights, liabilities, and causes of action during
24 the Class Period against the Released Parties, whether known or unknown, that were
25 or could have been asserted (whether statutory, tort, contract, or otherwise) for
26 violations of law arising out of, or relating to, the facts and allegations pled in the
27 operative complaint, including that Defendants failed to pay all wages due (including
28 minimum, straight and overtime wages), failed to provide legally-compliant meal
breaks, failed to pay meal premium pay, failed to provide legally-compliant rest
breaks, failed to pay rest premium pay, failed to provide timely and/or accurate final
paychecks, failed to provide accurate itemized wage statements, failed to reimburse
for business expenses, and engaged in unfair competition and business practices as
alleged in the operative Second Amended Complaint, and for penalties under the

1 Private Attorneys General Act as alleged in the operative Second Amended
2 Complaint. The PAGA claims and allegations released include that Defendants failed
3 to pay all wages due (including minimum, straight and overtime wages), failed to
4 provide legally-compliant meal breaks, failed to pay meal premium pay, failed to
5 provide legally-compliant rest breaks, failed to pay rest premium pay, failed to
6 provide timely and/or accurate final paychecks, failed to provide accurate itemized
wage statements, failed to reimburse for business expenses, committed recordkeeping
violations, failed to provide suitable resting facilities, failed to provide suitable
seating, refused to make payment, engaged in statutory wage violations, failed to
provide standard conditions under the wage orders, engaged in unlawful agreements
and unlawful criminal history inquiries, failed to comply with the California paid sick
leave laws, failed to pay reporting time pay and failed to pay split shift premiums.

7 [Crosner Decl., ¶ 17, Exh. 1, ¶ 26.]

8 Additionally, Plaintiffs Reed and Souci agree to a general release of any and all claims,
9 whether known or unknown, which exist or may exist on their behalf as of the date of the
10 settlement, and a waiver of California Civil Code section 1542. [*Id.* at ¶ 14.]

11 **G. Class Counsel's Attorneys' Fees and Costs, and the Named Plaintiff Awards**

12 The Settlement provides that Defendants will not oppose a request for Class Counsel's
13 Attorneys' Fees not to exceed one-third of the TMSA, or \$283,333.33, nor will it oppose a request
14 for reimbursement of actual litigation costs and expenses of up to \$25,000.00. Defendants also
15 will not oppose a request for Named Plaintiff Awards to Plaintiffs Reed and Souci of not more
16 than \$5,000 each in recognition of their time spent on this matter, the risks they undertook on
17 behalf of the class, the benefit conferred to the class, and in exchange for a general release and
18 section 1542 waiver. Plaintiffs and Plaintiffs' counsel will provide the Court with appropriate
19 summaries and evidence of their efforts and time records in anticipation of the Final Approval
20 Hearing. If the Court approves less than the above amounts, the difference will remain in the Net
21 Settlement Sum for distribution to the Participating Class Members. [Crosner Decl., ¶ 18.]

22 **H. PAGA and Notice to the LWDA**

23 As noted, the Parties allocated \$100,000 from the TMSA to resolution of Plaintiffs' claims
24 under PAGA. As required by Labor Code section 2699(l)(2), Plaintiffs gave notice of the Settlement
25 and the approval hearing to the LWDA via its online portal. [Crosner Decl., ¶ 19; Exh. 4.]

26 **IV. ARGUMENT**

27 **A. Standard of Review for a Class Action Settlement**

28 The law favors settlement, particularly in class actions where substantial resources can be

1 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
2 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir.
3 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951)
4 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
5 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
6 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
7 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion and ensures
8 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs
9 via a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
10 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

11 The first step is a motion for preliminary approval, through which the parties present the
12 court with the proposed settlement and seek a determination if it is sufficiently fair and reasonable
13 to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of
14 Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the
15 “range of reasonableness” and if notice should be provided to the class regarding the settlement’s
16 proposed terms and conditions, and whether a final fairness hearing should be scheduled.
17 Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins.
18 Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring
19 settlement of class actions, courts generally apply a presumption of fairness to class action
20 settlements when (1) the settlement results from arms-length bargaining, (2) investigation and
21 discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is
22 experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48
23 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

24 If the court grants preliminary approval, it then orders the class be given notice in an
25 appropriate manner, establishes a schedule and procedures for class members to request exclusion
26 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s fees
27 and costs, and any enhancement for the class representative(s), is filed subsequent to preliminary
28 approval and heard with the motion for final approval, as part of the second step of the two-step

1 approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

2 The proposed Settlement in this matter warrants preliminary approval under the liberal
3 standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and
4 represents a favorable result for the class.

5 **B. The Proposed Settlement Class Should Be Conditionally Certified**

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

12 In the present matter, conditional certification is proper since this matter satisfies all
13 requirements for class certification under Code of Civil Procedure section 382. First, the class is
14 both sufficiently numerous, consisting of approximately 4,831 individuals, and ascertainable by
15 reference to William-Sonoma’s personnel and payroll records. [Crosner Decl., ¶ 20.] Next,
16 Plaintiffs are adequate class representatives, as their claims do not conflict with and are not
17 antagonistic to the claims of other Class Members. Further, their claims are typical given both are
18 members of the class and their claims arise from the same employment practices and course of
19 conduct giving rise to the claims of the other Class Members. [Crosner Decl., ¶ 21.] Lastly, their
20 counsel is experienced and adequate class counsel. [Crosner Decl., ¶¶ 36-39; Declaration of Haig
21 B. Kazandjian (“Kazandjian Decl.”), ¶¶ 2-5.]

22 Next, common questions of law and fact predominate – particularly for purposes of a
23 settlement class – as the Class Members all were subject to the same meal and rest break policies,
24 were subject to the same COVID-19 “wellness check” policy, and received the same wage
25 statements. Since the focus of the claims against Williams-Sonoma concern the legality of
26 common policies applied uniformly to the entire class, common issues predominate over
27 individualized inquiries concerning liability. Whether Williams-Sonoma’s wellness check policy
28 resulted in “off the clock” work raises common questions applicable to all Class Members.

1 Regardless of the outcome, determining these questions will decide liability for all Class Members
2 one way or another. Similarly, whether Defendants properly tracked and paid for all documented
3 meal and rest break violations raises questions common to all Class Members. [Crosner Decl., ¶
4 22.]

5 By now it is well-settled that a theory of recovery asserting the existence of a uniform
6 policy violating California law is sufficient to satisfy the requirements for class certification. Jones
7 v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
8 consistently applied to a group of employees is in violation of the wage and hour laws are of the
9 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
10 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
11 or law that supports commonality for class certification”). Lastly, a class action is superior to
12 other means for the fair and efficient adjudication of this controversy. [Crosner Decl., ¶ 23.]

13 **C. The Proposed Settlement Meets the Dunk and Kullar Factors and is within the**
14 **Range of Reasonableness**

15 The proposed Settlement resulted from serious, arms-length negotiations facilitated by
16 respected mediator Louis Marlin, Esq., who has extensive experience mediating wage and hour class
17 actions. [Crosner Decl., ¶ 9.] Plaintiffs’ counsel Zachary M. Crosner and Crosner Legal, P.C., and
18 Haig B. Kazandjian of Haig B. Kazandjian Lawyers, APC, have years of litigation experience,
19 including litigating wage and hour class actions. Plaintiffs’ counsel is well-qualified to evaluate the
20 risks and benefits of pursuing further litigation or settling the matter. [Crosner Decl., ¶¶ 36-39;
21 Kazandjian Decl., ¶¶ 2-5.]

22 Next, California law recognizes several factors bearing on the fairness, adequacy, and
23 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
24 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2)
25 the strength of plaintiff’s case; 3) the risk, expense, complexity, and likely duration of further
26 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views
27 of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated
28 below, the proposed settlement satisfies these requirements.

1 Prior to Settlement, the parties engaged in extensive informal discovery to facilitate
2 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding
3 Defendants' payroll practices, pay stubs and time records for a sampling of Class Members, meal
4 and rest break policies, etc., and information from Defendants regarding the class size and
5 breakdown, workweeks, rates of pay, and other information used to formulate a damages model
6 with the assistance of a consulting expert. Plaintiffs' counsel is confident they obtained sufficient
7 information to enable them to understand the law and facts of this case and make an informed
8 decision regarding the proposed settlement and whether it is in the best interests of the class.
9 [Crosner Decl., ¶¶ 8, 24.]

10 Using that data Defendants produced, Plaintiffs ran various calculations and estimated
11 Defendants' likely maximum exposure on the class claims at approximately \$4,639,000 on the
12 primary "damages" claims, including \$416,000 on the unpaid wage/off the clock claims, \$840,000
13 on the meal break claim, \$2,943,000 on the rest break claim, and \$440,000 on the expense
14 reimbursement claim. The "penalty" claims then another \$16,901,000 in theoretical liability,
15 including \$4,662,000 on the wage statement claim and \$12,239,000 on the waiting time penalty
16 claim. [Crosner Decl., ¶¶ 25-26.] Plaintiffs' counsel substantially discounted the value of these
17 claims, however, in light of the multiple and considerable risks posed by proceeding with the
18 litigation.

19 On the unpaid wage claims, Plaintiffs argued that Defendants' managers required
20 employees to undergo COVID-19 "wellness checks" before they clocked in for a shift, which
21 procedures took about 3 minutes on average and should have been compensated. Defendants
22 argued that its written policies specified the wellness checks were to be done after employees
23 clocked in and that employees performed the checks on the clock. Thus, per Defendants, if there
24 were any failures to follow the policy, at a minimum, individualized inquiries would predominate,
25 thereby rendering class certification impossible. [Crosner Decl., ¶ 27.]

26 For meal period violations, Plaintiffs argued Defendant's own records showed that it only
27 paid meal period premiums for about one-half of documented violations, and further that
28 employees' lunch periods frequently lasted less than 30 minutes due to issues with Defendants'

1 electronic time keeping system. In response, Defendants argued its meal break policies were fully
2 compliant with California law, that it provided required meal periods on a compliant basis, and
3 thereby met its obligations under the Labor Code and Wage Order, and paid meal period
4 premiums when required. [Crosner Decl., ¶ 28.]

5 For the rest break claim, Plaintiffs argued that Defendants frequently provided non-
6 compliant rest breaks, as the Class Members often had to skip rest breaks or received shortened
7 rest breaks due to the hectic nature of the work. As with meal breaks, Defendants argued its rest
8 break policies complied with California law and that Defendants authorized and permitted
9 employees to take all required rest breaks. Defendants further contended that, in light of the fact
10 that it is not required to maintain a record of rest breaks, any evidence of failure to authorize and
11 permit rest breaks and/or discouragement from taking rest breaks would be purely anecdotal and
12 individual issues would predominate on liability. [Crosner Decl., ¶ 29.]

13 Plaintiffs' based their expense reimbursement claim on employees' need to use their
14 personal mobile devices for company business, such as helping customers look up items or
15 checking advertised prices for which they were not reimbursed as required by Labor Code section
16 2802 and Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014) ("We hold that
17 when employees must use their personal cell phones for work-related calls, Labor Code section 2802
18 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited
19 minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone
20 bills."). Per Plaintiffs, this was necessary because Defendants' computer systems were extremely
21 slow and unreliable. On the other hand, Defendants argued that they provided employees with all
22 electronics needed to assist customers and that employees were not required to use their phones for
23 work and that any use of employee phones was purely for personal convenience and therefore not
24 reimbursable. [Crosner Decl., ¶ 30.]

25 Finally, Plaintiffs also alleged claims under Labor Code § 226 (alleged inaccurate wage
26 statement violations) and §§ 201-203 (waiting time penalties). On the wage statement claim,
27 Plaintiffs alleged that Defendants' pay stubs did not correctly identify their actual employer, as
28 they listed "Williams Sonoma Stores, Inc." as the employer when, per Plaintiffs, they were hired

1 by “Williams Sonoma, Inc.” Further, the wage statements failed to accurately reflect hours
2 worked and pay earned due to the “off the clock” work described above. Thus, these claims
3 partially are based on the “off the clock” unpaid wage claim and will rise or fall along with that
4 primary claim, in addition to being subject to “good faith” and other defenses available to
5 Defendants. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding
6 employer did not willfully fail to pay wages under Labor Code § 203 even though the class
7 prevailed on the merits on the underlying claim for failing to pay living wages). Defendants
8 argued that the wage statements accurately stated the employer and accurately contained all
9 required information. Accordingly, Plaintiffs discounted the derivative claims significantly in light
10 of these multiple potential defenses. [Crosner Decl., ¶ 31.]

11 As far as potential PAGA liability, the theoretical penalties totaled around \$20 million
12 should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code sections
13 at issue for every single eligible pay period. [Crosner Decl., ¶ 32.] As with the class claims,
14 Plaintiffs discounted the potential PAGA penalties for the multi-layered defenses proffered by
15 Defendants on the merits, and further discounted these claims since the Court possesses wide
16 discretion to reduce such penalties even if Plaintiffs ultimately prevailed. Fleming v. Covidien
17 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by
18 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
19 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
20 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
21 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Accordingly, the Parties
22 allocated \$100,000 to PAGA Payment for PAGA penalties, which amount is reasonable and in
23 line with comparable settlements in other class actions in California. Van Kempen v. Matheson
24 Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of
25 \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v.
26 First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a
27 \$7,500 PAGA payment reasonable when measured against the overall settlement of \$345,000 and
28 the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the

1 LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to
2 weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist.
3 LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs
4 [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the
5 settlement").

6 The Settlement obviates the significant risk that this Court may find any kind of class or
7 representative resolution unachievable or deny certification of all or some of Plaintiffs' claims.
8 Furthermore, even if Plaintiffs certify of all or some of the claims, continued litigation would be
9 lengthy and expensive as the parties pursued merits discovery, a probable motion to decertify, as
10 well as trial and possible appeals, and would substantially delay any recovery by the class with no
11 assurance of recovering significantly more than the proposed Settlement. While Plaintiffs are
12 confident in the merits of their claims, legitimate controversies exist regarding Plaintiffs' claims.
13 Plaintiffs also recognize proving the amount of wages and penalties due each Class Member
14 would be an expensive, time-consuming, and uncertain proposition. [Crosner Decl., ¶¶ 33-34.]

15 Plaintiffs and their counsel discounted the value of the class and representative claims
16 consistent with the risks discussed above, and carefully weighed the likelihood of the class
17 receiving substantially greater benefit if the litigation continued. Plaintiffs and counsel concluded
18 that – in light of these very real and substantial risks – settlement on the proposed terms and
19 without prolonged and costly litigation was in the best interests of the class. The overall \$850,000
20 recovery represents a significant percentage of Defendants' potential exposure on the class and
21 representative claims, especially with respect to the primary claims for damages such as the
22 alleged off the clock work and meal/rest period violations. Given these risks, a total recovery for
23 the class of \$850,000, which will result in average award of \$83 per Class Member is a significant
24 result well within the range of reasonableness considering all potential outcomes, and it will
25 provide direct monetary awards to all Class Members without further delay. [Crosner Decl., ¶¶
26 35; Kazandjian Decl., ¶¶ 2, 4.]

27 Importantly, the mere fact that a settlement does not provide the same recovery as might be
28 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. (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”); 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 timely 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). Plaintiffs and their counsel submit the Settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

V. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request 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: December 20, 2022

CROSNER LEGAL, P.C.

By: 

Zach Crosner

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