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9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF RIVERSIDE**

12 ADRIAN AGUILAR, on behalf of himself and
13 all others similarly situated,

14 Plaintiffs,

15 vs.

16 FISHER RANCH CORPORATION, a
17 California corporation; and DOES 1-50,
inclusive,

18 Defendants.

CASE NO. CVRI2201059

Assigned for All Purposes to:
Hon. Harold Hopp
Dept. 1

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

[Filed Concurrently with Notice of Motion
and Motion; Declarations of Sepideh
Ardestani, Mehrdad Bokhour, Adrian
Aguilar, Julie Green, Bart Fisher, and Seth
Mehrten; [Proposed] Order]

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1 **I. INTRODUCTION**

2 Plaintiff Adrian Aguilar hereby moves the Court for an order granting preliminary
3 approval to a proposed non-reversionary class action settlement to resolve wage and hour claims
4 on behalf of approximately 323 individuals who are or were employed by Defendant Fisher
5 Ranch Corporation (“Fisher Ranch” or “Defendant”) in California and classified as a non-exempt
6 employee during the Class Period of March 14, 2018 through June 14, 2023. The proposed
7 \$600,000 settlement will provide about \$346,000 in cash payments to the class, with an average
8 award of about \$1,071. The balance of approximately \$254,000 will cover a modest enhancement
9 award to Plaintiff, reasonable attorney’s fees and actual litigation costs, settlement administration
10 costs, and payment of civil penalties to the State. The settlement is the product of Plaintiff’s pre-
11 and post-filing investigation, a pre-mediation exchange of information, and lengthy arms-length
12 negotiations overseen by experienced mediator Daniel Turner, Esq.

13 As demonstrated below, the settlement is within the “range of reasonableness” for
14 preliminary approval. Plaintiff’s counsel believes the settlement is a fair result for the class given
15 the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court enter an
16 order: (1) granting preliminary approval to the proposed class action settlement and the Class
17 Action and PAGA Settlement Agreement (“Settlement Agreement”); (2) conditionally certifying the
18 settlement class as defined below; (3) appointing Zachary M. Crosner, Jamie K. Serb, and
19 Sepideh Ardestani of Crosner Legal, P.C., Mehrdad Bokhour of Bokhour Law Group, P.C., and
20 Joshua Falakassa of Falakassa Law, P.C. as Class Counsel; (4) appointing plaintiff Adrian
21 Aguilar as the Class Representative; (5) appointing ILYM Group, Inc. as the Settlement
22 Administrator; (6) approving the form of notice to the class and the procedure for providing such
23 notice; and (7) scheduling a final fairness hearing.

24 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

25 Defendant Fisher Ranch is a grower and shipper of premium fruits and vegetables based
26 in Blythe, California since 1917. Plaintiff was employed by Defendant as a non-exempt
27 equipment operator from August 2020 through January 2022. Plaintiff’s duties included driving
28 machinery through Defendant’s fruit and vegetable fields to spray pesticides, cut plants, and pick

1 fruits and vegetables. [Declaration of Sepideh Ardestani (“Ardestani Decl.”), ¶ 3.]

2 Plaintiff alleges Fisher Ranch violated California wage and hour law in several respects.
3 First, he alleges a failure to pay all minimum and overtime wages by (1) utilizing an unlawful
4 rounding policy resulting in the underpayment of wages (2) requiring Class Members to arrive 15
5 minutes early per shift to attend daily meetings before clocking in, and to clock out and continue to
6 work at the end of a shift; and (3) requiring Class Members to receive work-related text messages and
7 phone calls made to their personal resulting while on break. Next, Plaintiff alleges Fisher Ranch also
8 failed to provide compliant meal periods as meal periods were either interrupted or started late due
9 to job demands. He also alleges Defendant failed to provide legally compliant rest periods, as rest
10 periods were required to be taken on Defendant’s premises, and were oftentimes interrupted or late.
11 He further claims Defendant did not reimburse business expenses incurred by Class Members for the
12 use of their personal cellular phones and the purchase of tools needed to perform maintenance on
13 Defendant’s farm equipment. Lastly, he alleges Defendant failed to provide accurate, itemized
14 wage statements and failed to pay all wages owed upon the separation of employment. [Ardestani
15 Decl.), ¶ 4.]

16 Based on these allegations, on March 7, 2022, Plaintiff filed the underlying class action
17 complaint on behalf of himself and the Class Members, asserting claims for (1) failure to pay
18 minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to
19 provide rest periods; (5) failure to provide itemized wage statements; (6) failure to reimburse
20 business expenses, (7) failure to pay all wages due at termination; and (8) unfair competition.
21 After exhausting his administrative remedies, Plaintiff filed a First Amended Complaint adding
22 claims under PAGA based on the same alleged Labor Code violations. [Ardestani Decl., ¶ 5.]

23 Fisher Ranch has at all times denied Plaintiff’s allegations and maintained its meal and
24 rest break and payroll policies and procedures comply with California law, and that it provided
25 the class members with required meal and rest breaks. Additionally, Fisher Ranch contends its
26 timekeeping and payroll policies accurately track and pay for all hours worked by its employees
27 and at the correct rates of pay. It also strongly contends the case cannot be maintained as any kind
28 of class or representative action, arguing for example that to the extent class members missed

1 meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and
2 infrequent and evidence of such missed breaks would be purely anecdotal, and therefore
3 individualized issues predominate and trial on a representative basis would be unmanageable.
4 [Ardestani Decl., ¶ 6.]

5 Since Plaintiff filled the initial complaint, and after agreeing to participate in early
6 mediation, the Parties engaged in formal and informal discovery to facilitate an exchange of
7 information necessary to engage in a meaningful mediation. Consequently, Plaintiff's counsel
8 reviewed payroll records, personnel policies/handbooks, meal and rest break policies, personnel
9 files, and a random of sampling paystubs and time records for about 25% of the pay periods at
10 issue. Defendant also provided documents reflecting its wage and hour policies and practices,
11 and data regarding the total number of current and former employees, the estimated total amount
12 of workweeks and pay periods they worked, and average hourly pay rates, among other relevant
13 data. Plaintiff had that information reviewed and analyzed by Berger Consulting Group to assist
14 with evaluating things such as time allegedly lost to due rounding, meal period violation rates,
15 etc., and to prepare a damages model. [Ardestani Decl., ¶ 7.]

16 The Parties then engaged Daniel Turner, Esq., a highly respected mediator with extensive
17 wage and hour class action experience and, in February 2023, participated in a full day mediation
18 with Mr. Turner. Throughout the day, the arms-length negotiations were hard-fought and
19 adversarial as the Parties exchanged extensive information on their legal and factual positions,
20 and made numerous offers and counter-offers. Although the Parties did not settle that day, they
21 continued to negotiate with Mr. Turner's assistance and, following a mediator's proposal, the
22 Parties reached agreement on all major issues and thereafter prepared the Settlement Agreement
23 now before the Court for approval. [Ardestani Decl., ¶ 8.]

24 **III. THE PROPOSED SETTLEMENT TERMS**

25 Under the settlement, Fisher Ranch will pay \$600,000.00 into a common fund, the Gross
26 Settlement Amount.¹ Reasonable attorney's fees of up to \$200,000.00 (1/3 of the GSA), litigation

27
28 ¹ Unless otherwise stated, all capitalized terms have the same meaning as those defined in the Settlement Agreement.

1 costs of up to \$9,000, an enhancement award to Plaintiff of up to \$12,000, settlement
2 administration costs of no more than \$8,000, and \$25,000 for civil penalties under PAGA (of
3 which 75%, or \$18,750, will go to the Labor & Workforce Development Agency, and 25%, or
4 \$6,250 will go to the Aggrieved Employees) all will be paid from the Gross Settlement Amount.
5 The remainder of approximately \$346,000 will be allocated among the Participating Class
6 Members based on their total pay periods worked during the Class Period. No portion of the
7 Gross Settlement Amount will revert to Fisher Ranch. [Ardestani Decl., ¶ 9.]

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

9 The settlement provides for conditional certification of a settlement class including all
10 persons who are or were employed by Defendant in California and classified as a non-exempt
11 employee during the Class Period of March 14, 2018 through June 14, 2023. The Settlement
12 Class consists of approximately 323 individuals.² [Ardestani Decl., ¶ 10.]

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

14 This is a cash settlement that does not require Participating Class Members to submit a
15 claim form to receive their settlement share. Participating Class Members will receive their
16 settlement checks automatically via First Class U.S. Mail. Eighty percent of each settlement share
17 will be allocated to wages and the remaining twenty percent will be allocated to expenses
18 reimbursement, penalties and interest. Fisher Ranch will pay any and all applicable employer-side
19 payroll taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's
20 approval, any amounts not claimed (because a class member doesn't their settlement check) will
21 be forwarded to the State Controller's Unclaimed Property Fund. [Ardestani Decl., ¶¶ 11-12.]

22 Each Participating Class Member will receive a share of the Net Settlement Amount based
23 on his or her total weeks worked for Fisher Ranch during the Class Period while employed in a
24 non-exempt position. Thus, each Class Member's Individual Settlement Payment will be
25 calculated using criteria typically used in determining appropriate amounts of unpaid wages,

26
27 ² The "PAGA Employees" for purposes of PAGA include all persons who are or were previously
28 employed by Defendant in California and classified as a non-exempt or hourly employee at any time from
March 7, 2021 through June 14, 2023. There are approximately 189 PAGA Employees. [Ardestani Decl.,
¶ 10.]

1 unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under
2 applicable law. These methods are intended to ensure each Class Member receives a portion of
3 the available settlement funds corresponding to the relative value of his or her potential claims.
4 The proposed allocation provides a reasonable way to compensate Class Members based on the
5 amount of time they worked for Fisher Ranch and the number of instances they missed a meal
6 break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost
7 pay due to the alleged rounding and regular rate issues. [Ardestani Decl., ¶ 13.]

8 The average class settlement award will be approximately \$1,071, and the Parties
9 currently estimate the class awards will range from about \$13 on the low end to over \$3,660 on
10 the high end. The average PAGA award will be about \$33.07. [Ardestani Decl., ¶ 14.]

11 **C. Settlement Administration**

12 Subject to the Court's approval, and after obtaining multiple bids, the Parties agreed on
13 CPT Group, Inc. ("CPT") as the Settlement Administrator. [Ardestani Decl., ¶ 15.] CPT is
14 qualified and has significant experience administering class action settlements, including
15 numerous wage and hour matters. CPT has agreed to cap its fees and costs at \$8,000.00. If the
16 Court approves less than the above amount, the difference will remain in the Net Settlement
17 Amount for distribution to the Participating Class Members. [Declaration of Julie Green, ¶¶ 2-10;
18 Exhs. A-B.]

19 **D. The Class Notice**

20 The proposed Notice (Exhibit 2 to the Ardestani Declaration) sets out information about
21 this case and explains the basic settlement terms in plain language, and meets all requirements
22 under California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the
23 individualized information used to calculate Individual Settlement Payments and each Class
24 Member's estimated settlement award. The Notice likewise details the procedures for Class
25 Members to dispute their individual information, for submitting an objection to the Settlement,
26 and to request exclusion. Further, each notice packet will include a Request for Exclusion form
27 and Objection Form (Exhibits 3 and 4 to the Ardestani Declaration). In sum, the Notice provides
28 the Class Members with the information necessary to evaluate the Settlement and provides fair

1 opportunity to participate in, opt out of, or object to the proposed Settlement. Many Class
2 Members are more comfortable in Spanish and accordingly the notice documents will be
3 translated into Spanish in addition to English. [Declaration of Bart Fisher, ¶ 2.] Coupled with the
4 notice procedure, the proposed Notice provides the Class with the best notice practicable.
5 [Ardestani Decl., ¶ 16.]

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

7 Class Members will have forty-five (45) days to dispute the information in their Notice
8 used to calculate their settlement award, and also have 45 days to submit any objections to the
9 settlement or to request exclusion. In the event a Class Member disputes their individual
10 information, the Settlement Administrator will review the Class Member's records as well as any
11 additional information submitted, and make a final determination. [Ardestani Decl., ¶ 17.]

12 **F. Release of Claims**

13 All Participating Class Members will release Fisher Ranch from all claims alleged in the
14 operative FAC, or that could have been brought based on the factual allegations in the FAC
15 during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the
16 PAGA notice to the extent alleged in the FAC. The Class and PAGA releases are limited to the
17 claims that were actually pleaded or could have been pleaded based on the alleged facts in the
18 FAC, and PAGA notice for the PAGA claims. Only Plaintiff is entering into a full general
19 release of all claims and waiver of Civil Code section 1542. [Ardestani Decl., ¶ 18.]

20 **G. Attorney's Fees and Costs, and Plaintiff's Enhancement Award**

21 The settlement provides Defendant will not oppose a request for attorney's fees not to
22 exceed 1/3 of the Gross Settlement Amount, or \$200,000.00, nor will it oppose a request for
23 reimbursement of litigation costs and expenses of up to \$9,000.00. Defendant also will not oppose
24 a request for an enhancement award to Plaintiff of not more than \$12,000.00 in recognition of his
25 time spent on this matter, the risks he undertook on behalf of the class, and the benefit conferred
26 to the class, as set forth in his declaration filed herewith. Plaintiff's counsel will provide the
27 Court with appropriate summaries and evidence of their efforts and time records in anticipation of
28 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.
[Ardestani Decl., ¶ 19.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

The first step is a motion for preliminary approval, through which the parties present the court with the proposed settlement and seek a determination that it is sufficiently fair and reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the “range of reasonableness” and if notice should be provided to the class regarding the settlement’s proposed terms and conditions, and whether a final fairness hearing should be scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class actions, courts 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.

1 If the court grants preliminary approval, it then orders the class be given notice in an
2 appropriate manner, establishes a schedule and procedures for class members to request exclusion
3 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney's
4 fees and costs, and any enhancement for the class representative(s), is filed subsequent to
5 preliminary approval and heard with the motion for final approval, as part of the second step of
6 the two-step approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

7 The proposed settlement in this matter warrants preliminary approval under the liberal
8 standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and
9 represents a favorable result for the class.

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

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

17 In the present matter, conditional certification is proper since this matter satisfies all
18 requirements for class certification under Code of Civil Procedure section 382. First, the class is
19 both sufficiently numerous, consisting of approximately 323 individuals, and ascertainable by
20 reference to Defendant's personnel and payroll records. [Ardestani Decl., ¶ 20.] Next, Plaintiff is
21 an adequate class representative, as his claims do not conflict with and are not antagonistic to the
22 claims of other class members. Further, his claims are typical given he is a member of the class
23 and their claims arise from the same employment practices and course of conduct giving rise to
24 the claims of the other class members.³ [Declaration of Adrian Aguilar, ¶¶ 3-7; Ardestani Decl., ¶
25 21.] Lastly, Plaintiff's counsel are experienced and adequate class counsel. [Ardestani Decl., ¶¶
26 36-41; Declaration of Mehrdad Bokhour ("Bokhour Decl."), ¶¶ 12-17.]

27 Next, common questions of law and fact predominate – particularly for purposes of a

28 ³ Mr. Falakassa is presently unavailable and will provide his declaration prior to or at the hearing.

1 settlement class – as the Class Members all were subject to the same meal and rest break policy,
2 and likewise were subject to the same time rounding policies. Since the focus of the claims
3 against Fisher Ranch concerns the legality of common policies applied uniformly to the entire
4 class, common issues predominate over individualized inquiries concerning liability. For
5 instance, Fisher Ranch’s meal and rest break policy is company-wide policy applied equally and
6 consistently to all class members, and this policy is either compliant with California law or it is
7 not. Regardless of that determination, it will decide liability for all class members one way or
8 another. Similarly, whether class member’s lost compensable time due to Fisher Ranch’s alleged
9 time rounding policy raises a question common to all class members. [Ardestani Decl., ¶ 22.]

10 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
11 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
12 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
13 consistently applied to a group of employees is in violation of the wage and hour laws are of the
14 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
15 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
16 or law that supports commonality for class certification”). Lastly, a class action is superior to
17 other means for the fair and efficient adjudication of this controversy. [Ardestani Decl., ¶ 23.]

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

20 The proposed settlement resulted from serious, arms-length negotiations facilitated by
21 respected mediator, Daniel Turner, Esq., who has extensive experience mediating wage and hour
22 class actions. [Ardestani Decl., ¶ 8.] Plaintiffs’ counsel Zachary M. Crosner, Jamie Serb, Sepideh
23 Ardestani, Mehrdad Bokhour, and Joshua Falakassa, all have years of experience litigating wage
24 and hour class actions. Plaintiffs’ counsel are well-qualified to evaluate the risks and benefits of
25 pursuing further litigation or settling the matter. [Ardestani Decl., ¶¶ 36-41; Bokhour Decl., ¶¶
26 12-17.]

27 Next, California law recognizes several factors bearing on the fairness, adequacy, and
28 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168

1 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement
2 2) the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further
3 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and
4 views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As
5 demonstrated below, the proposed settlement satisfies these requirements.

6 Prior to mediation, the parties engaged in both formal and informal discovery to facilitate
7 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
8 Fisher Ranch's payroll practices, a representative sampling of pay stubs and time records for
9 about 25% of the class members, applicable compensation plans, meal and rest break policies,
10 etc., and information from Defendant regarding class size and breakdown, number of work
11 weeks/pay periods, average rates of pay, and other information used to formulate a damages
12 model. Plaintiff then had that information reviewed with the assistance of a consulting expert.
13 Plaintiff's counsel are confident they obtained sufficient information to understand the law and
14 facts of this case and make an informed decision regarding the proposed settlement and whether it
15 is fair and reasonable. [Ardestani Decl., ¶¶ 7, 24.]

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

23 Using the data obtained from Defendant, Plaintiff ran various calculations and estimated
24 Fisher Ranch's likely maximum exposure on the class claims at approximately **\$6.642** million,
25 including about \$1,497,975 on the unpaid wage/rounding claim, \$3,631,460 on the meal and rest
26 break claims, \$148,300 on the unreimbursed expense claim, \$752,000 on the wage statement
27 claims, and \$612,500 on the waiting time penalty claims. [Ardestani Decl., ¶ 25.]

28 First, on their unpaid wage claims, Plaintiffs allege Fisher Ranch failed to pay for all

1 hours worked because it required employees to arrive up to 15 minutes before their shift for a pre-
2 shift meeting, and then further required employees to continue working past the scheduled end of
3 a shift to finish up whatever they were working on. Per Plaintiff, Defendant had employees round
4 off this time spent working off the clock and record they worked the exact amount of time
5 scheduled for a shift. As a result, Plaintiff and the class members lost as much as 90 minutes of
6 compensable time each week due to this off the clock work. Plaintiff's experts calculated this
7 resulted in a loss of some 70,826 compensable hours worked, resulting in some **\$1,497,975** in
8 unpaid wages over the Class Period. In response, Defendant argued its timekeeping and payroll
9 policies accurately tracked and paid for all employee time and, to the extent there was rounding,
10 it was neutral in its overall effect and thus permissible under California law. It also argued that its
11 policies forbade any "off the clock" work and, accordingly, if any off the clock work occurred it
12 was intermittent and infrequent, against company policy, and done without the employer's
13 knowledge or consent. For these reasons, per Fisher Ranch, class certification of this issue would
14 be impossible because innumerable individual inquires would be required to determine whether
15 any compensable "off the clock" work occurred. [Ardestani Decl., ¶ 26.]

16 On the meal period claims, Plaintiff alleged several violations. First, he argued that meal
17 periods frequently were started late and/or interrupted and cut short by work circumstances, even
18 though employees were required to write down that they had received a timely, full 30-minute
19 meal period regardless. Further, Plaintiff contends he and the class members had to be available
20 to respond to work-related texts and phone calls while on their meal periods, and thus never really
21 were fully relieved of all duties. Assuming a 100% violation rate, Plaintiff calculated Defendant's
22 meal period exposure at about **\$1,815,730** in meal period premiums. [Ardestani Decl., ¶ 27.]

23 In response, Defendant argued its break policies were fully compliant with California law,
24 and that it provided all required meal periods and thereby met its obligations under the Labor
25 Code and applicable Wage Order. Further, Defendant argued to the extent employees missed a
26 break or took a non-compliant break, any such discrepancies were aberrational and against
27 company policy and a myriad of individual issues would be required to determine whether the
28 potential violation resulted from employee choice or some other reason. Consequently, per

1 Defendant, individualized inquiries would dominate on this issue and render class certification
2 inappropriate. [Ardestani Decl., ¶ 28.]

3 For the rest break claim, Plaintiff similarly argued that Defendant frequently provided
4 non-compliant rest breaks, as the Class Members often had to skip rest breaks or received
5 shortened rest breaks due to the hectic nature of the work, had to be available to respond to
6 texts/phone calls, and further were not permitted to leave company premises in violation of
7 Augustus v. ABM Sec. Servs., Inc. (2016) 2 Cal.5th 257. As with meal breaks, Defendant argued
8 its rest break policies complied with California law and that it authorized and permitted
9 employees to take all required rest breaks. Defendant 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. Assuming a 100% violation rate, Defendant's exposure
13 here was estimated at about **\$1,815,730**. [Ardestani Decl., ¶ 29.]

14 On the expense reimbursement claim, Plaintiff alleges that purchasing tools, including
15 wrenches, hammers, and screwdrivers, and use of his personal cellular phone was necessary and
16 consequential to his employment duties for purposes of group messaging, and receiving work-
17 related calls and texts. Defendant did not reimburse employees for the cost associated with the
18 use of the personal cellular phones for Defendant's benefit. Cochran v. Schwan's Home Serv.
19 (2014) 228 Cal.App.4th 1137, 1144. In response, Fisher Ranch argued it provided employees
20 with all tools and equipment necessary to perform their job duties and, to the extent employees
21 used their own phones, it was purely for personal convenience, was not necessary to their
22 employment, and therefore was not reimbursable. Without taking into consideration any of
23 Defendant's defenses to certification or on the merits, Plaintiffs' experts calculated Defendant's
24 maximum exposure for this claim at about **\$148,300**, based on \$20/month per class member in
25 unreimbursed expenses. [Ardestani Decl., ¶ 30.]

26 Finally, Plaintiff also alleged derivative claims under Labor Code § 226 (alleged
27 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims are
28 based on the unpaid wage claims and will rise or fall along with those primary claims, in addition

1 to being subject to “good faith” and other defenses available to Defendant. E.g., Amaral v. Cintas
2 Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to
3 pay wages under Labor Code § 203 even though the class prevailed on the merits on the
4 underlying claim for failing to pay living wages). Defendant argued further that the wage
5 statements accurately contained all required information, and that acted in good faith all times
6 with respect to payment of wages. Plaintiff estimated the exposure on these claims at about
7 Accordingly, Plaintiff discounted the derivative claims significantly in light of these multiple
8 potential defenses. Plaintiff’s experts estimated the exposure here at about **\$752,000** on the wage
9 statement claims, and **\$612,500** on the waiting time penalty claims. [Ardestani Decl., ¶ 31.]

10 As far as potential PAGA liability, the alleged aggrieved employees theoretically are
11 entitled to penalties totaling about \$5,120,000 should Plaintiff prevail on all claims, establish
12 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all
13 issues. [Ardestani Decl., ¶ 32.] As with the class claims, Plaintiff discounted the potential PAGA
14 penalties based on Defendant’s various defenses on the merits and also accounted for the Court’s
15 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
16 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded
17 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re
18 Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557
19 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$25,000 to PAGA
20 penalties. [Ardestani Decl., ¶ 33.]

21 Plaintiff submits this amount is reasonable under the circumstances and in line with
22 comparable settlements in other wage and hour class actions in California. *E.g., Van Kempen v.*
23 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
24 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
25 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
26 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
27 settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total
28 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the

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

5 Taking into account all of the above-discussed risk factors, Plaintiff calculated
6 Defendant's exposure on the class claims at around **\$1,300,000** on a risk-discounted basis and,
7 accordingly, the settlement represents a little under 50% of the estimated recovery after trial.
8 Given Defendant's multi-layered defenses and all other potential risks of continued litigation, a
9 total recovery for the class of \$600,000, which will result in average award of over \$1,070 per
10 class member, is a significant result well within the range of reasonableness considering all
11 potential outcomes, and it will provide direct monetary awards to all Class Members without
12 further delay. [Ardestani Decl., ¶¶ 34-35; Bokhour Decl., ¶¶ 18-28.]

13 Importantly, the mere fact that a settlement does not provide the same recovery as might
14 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
15 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
16 settlement process...even if the relief afforded by the proposed settlement is substantially
17 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
18 settlement because the public interest may indeed be served by a voluntary settlement in which
19 each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair
20 Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed
21 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
22 that the proposed settlement is grossly inadequate and should be disapproved"); White v.
23 Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
24 contention settlement was not fair and reasonable even though it represented 99% discount off the
25 maximum value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he
26 question whether a settlement is fundamentally fair . . . is different from the question whether the
27 settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed
28 settlement is non-reversionary and will provide immediate benefits to the Class Members without

1 a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class
2 Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
3 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
4 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
5 within the “range of reasonableness,” and is fair and adequate for the Class.

6 **D. Notice to the LWDA**

7 As required by Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and
8 the approval hearing to the LWDA via its online portal. [Ardestani Decl., ¶ 42; Exh. 6.]

9 **V. CONCLUSION**

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

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14 Dated: July 10, 2023

CROSNER LEGAL, P.C.

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