JAMIE K. SERB (SBN 289601)
jamie@crosnerlegal.com
NIKKI TRENNER (SBN 316007)
nikki@crosnerlegal.com
ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, P.C.
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
Tel. (866) 276-7637
Fac. (818) 700-9973

Attorneys for Plaintiff STEPHANY CLUCK

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

STEPHANY CLUCK, as an individual on behalf of herself and on behalf of all others similarly situated Plaintiff, v. CHILDHELP, INC., A CALIFORNIA NON-PROFIT CORPORATION; AND DOES 1-100, INCLUSIVE, Defendants.	Case No.: CVRI2202276 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 Nikki Trenner and Sean Hartranft; [Proposed] Order] Date: March 20, 2025 Time: 8:30 a.m. Dept.: 1 Reservation No.: 794918977781

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I. INTRODUCTION

Plaintiff Stephany Cluck 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 340 individuals employed by Defendant ChildHelp Inc. ("Childhelp" or "Defendant) and classified as an hourly paid, non-exempt employee during the Class Period of January 16, 2021 to the date the Court grants preliminary approval of this Settlement. The proposed $315,000 settlement will provide about $146,600 in cash payments to the class, with an average award of about $431. The balance of approximately $168,400 will cover a modest enhancement award to Plaintiff, reasonable attorney's fees and actual litigation costs, settlement administration costs, and payment of civil penalties to the State. The settlement is the product of Plaintiff's pre- and post-filing investigation, a pre-mediation exchange of information, and lengthy arms-length negotiations overseen by experienced mediator the Hon. Daniel Buckley (Ret.).

As demonstrated below, the settlement is within the "range of reasonableness" for preliminary approval. Plaintiff's counsel believes the settlement is a fair 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 and the Class Action and PAGA Settlement Agreement ("Settlement Agreement"); (2) conditionally certifying the settlement class as defined below; (3) appointing Zachary M. Crosner, Jamie K. Serb, and Nikki Trenner of Crosner Legal, P.C. as Class Counsel; (4) appointing plaintiff Stephany Cluck as the Class Representative; (5) appointing Apex Class Action, LLC 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. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant Childhelp is a non-profit organization dedicated to the prevention and treatment of child abuse throughout the United States, offering a variety of services including a national hotline, advocacy centers, treatments, and community outreach. Plaintiff was employed by ChildHelp as a nonexempt instructional aid and driver from August 5, 2019 to September 23, 2021 at ChildHelp's Beaumont location. [Declaration of Nikki Trenner ("Trenner Decl."), ¶ 4.]

Plaintiff alleges Childhelp violated California wage and hour law in several respects. First, she alleges a failure to pay all wages due, including failing to incorporate non-discretionary bonuses and shift differential pay into the regular rate of pay when calculating overtime wages and failed to pay employees for all hours worked by requiring "off the clock" work. Next, Plaintiff alleges Childhelp also failed to provide compliant meal and rest periods by requiring employees to perform work while clocked out for meal periods and not relieving employees of all employer control while on a break. Plaintiff also claims employees had to use their personal phones on company business and without reimbursement and, as a result of the above allegations, Plaintiff also alleges Defendant failed to provide accurate, itemized wage statements and failed to pay all wages owed upon separation of employment. [Trenner Decl., ¶ 5.]

Based on these allegations, on June 6, 2022, Plaintiff filed the underlying class action on behalf of himself and the Class Members, asserting claims for (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to reimburse expenses, (6) failure to provide itemized wage statements; (7) failure to pay all wages due at termination; and (8) unfair competition. After exhausting administrative remedies, Plaintiff later filed a First Amended Complaint adding a cause of action under the PAGA on October 4, 2022 [Trenner Decl., ¶ 6; Exh. 5.]

Childhelp 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 required meal and rest breaks. Additionally, Childhelp contends its timekeeping and payroll policies accurately track and pay for all hours worked by its employees and at the correct rates of pay. It also strongly contends the case cannot be maintained as any kind of class or representative action, arguing for example that to the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and therefore individualized issues predominate and trial on a representative basis would be unmanageable. [Trenner Decl., ¶ 7.]

Since Plaintiff filed the initial complaint, the Parties initiated formal discovery. After extensive meeting and conferring on discovery issues, case management, and potential law and motion, the Parties ultimately agreed to mediation, and further agreed to additional 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 a random of sampling paystubs and time records for about 20% of the class. Defendant 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 reviewed with the assistance of a consulting expert to help determine, inter alia, potential violation rates for meal breaks, potential unpaid wages, and to help formulate a damages model. [Trenner Decl., ¶ 8.]

The Parties then engaged the Hon. Daniel Buckley (Ret.), a highly respected mediator with extensive wage and hour class action experience and, in March 2024, participated in a full day mediation with Judge Buckley. 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. Near the end of the day, the Parties reached agreement on all major issues and thereafter jointly prepared the Settlement Agreement. [Trenner Decl., ¶ 9.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Childhelp will pay $315,000.00 into a common fund, the Gross Settlement Amount.[1] Reasonable attorney's fees of up to $105,000.00 (33.3% of the GSA), litigation costs of up to $25,000, an enhancement award to Plaintiff of up to $10,000, settlement administration costs of no more than $8,400.50, and $15,000 for civil penalties under PAGA (of which 75%, or $11,250, will go to the Labor & Workforce Development Agency, and 25%, or $3,750 will go to the Aggrieved Employees) all will be paid from the Gross Settlement Amount.

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

The remainder of approximately $146,600 will be allocated among the Participating Class Members based on their total workweeks worked during the Class Period. No portion of the Gross Settlement Amount will revert to Childhelp. [Trenner Decl., ¶ 10.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all individuals employed by Defendant and classified as an hourly paid, non-exempt employee during the Class Period of January 16, 2021 to the date the Court grants Preliminary Approval of this Settlement. The Settlement Class consists of approximately 340 individuals.[2] [Trenner Decl., ¶ 11.]

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. Eighty percent of each settlement share will be allocated to wages and the remaining twenty percent will be allocated to penalties and interest. Childhelp 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. [Trenner Decl., ¶¶ 12-13.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Childhelp 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 unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims.

[2] The "Aggrieved Employees" for purposes of PAGA include any and all persons employed by Defendant in California and classified as an hourly paid, non-exempt employee during the PAGA Period of April 2, 2021 to the date of preliminary approval. There are approximately 316 Aggrieved Employees. [Trenner Decl., ¶ 11.]

The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Childhelp and the number of instances they missed a meal break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost pay due to the alleged rounding. [Trenner Decl., ¶ 14.]

Plaintiff estimates the average class award will be approximately $431, and the awards will range from about $7.54 on the low end to about $1,620 on the high end. I estimate the average PAGA award will be about $11.86, and that PAGA awards will range from about $0.42 to about $44. [Trenner Decl., ¶ 15.]

C. Settlement Administration

Subject to the Court's approval, and after obtaining multiple bids, the Parties agreed on Apex Class Action, LLC ("Apex") as the Settlement Administrator. [Trenner Decl., ¶ 16.] Apex is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Apex has agreed to cap its fees and costs at $8,450. 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 Sean Hartranft, ¶¶ 2-7; Exhs. A-B.]

D. The Class Notice

The proposed Notice (Exhibit 2 to the Trenner 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. Further, each notice packet will include a Request for Exclusion form and Objection Form (Exhibits 3 and 4 to the Trenner Declaration). 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. Since the class members all conduct business in, and are comfortable in, English, the notice documents will not be translated into any other languages. Coupled with the notice procedure, the proposed Notice provides the Class with the best notice practicable. [Trenner Decl., ¶ 17.]

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

Class Members will have forty-five (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. [Trenner Decl., ¶ 18.]

F. Release of Claims

All Participating Class Members will release Childhelp from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the FAC during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the PAGA notice to the extent alleged in the FAC. 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 FAC, and PAGA notice for the PAGA claims. Only Plaintiff is entering into a full general release of all claims and waiver of Civil Code section 1542. [Trenner Decl., ¶ 19.]

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

The settlement provides Defendant will not oppose a request for attorney's fees not to exceed 33.3% of the Gross Settlement Amount, or $105,000.00, nor will they oppose a request for reimbursement of litigation costs and expenses of up to $25,000.00. Defendant also will not oppose a request for an enhancement award to Plaintiff of not more than $10,000.00 in recognition of her time spent on this matter, the risks she undertook on behalf of the class, and the benefit conferred to the class. Plaintiff's counsel and Plaintiff will provide the Court with appropriate declarations 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. [Trenner Decl., ¶ 20.]

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H. PAGA Penalties and Notice to the LWDA

As noted above, the Parties allocated $15,000 from the GSA to civil penalties under PAGA, and submit that amount is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. Per Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and the approval hearing to the LWDA via its online portal. [Trenner Decl., ¶ 43; Exh. 6.]

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.

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. The Proposed Settlement Class Should Be Conditionally Certified

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

In the present matter, conditional certification is proper since this matter satisfies all requirements for class certification under Code of Civil Procedure section 382. First, the class is both sufficiently numerous, consisting of approximately 340 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Trenner Decl., ¶ 22.] Next, Plaintiff is an adequate class representative, as her claims do not conflict with and are not antagonistic to the claims of other class members. Further, her claims are typical given she is a member of the class and her claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [Trenner Decl., ¶ 23.] Lastly, Plaintiff's counsel are experienced and adequate class counsel. [Trenner Decl., ¶¶ 36-42.]

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the same meal and rest break policy, and likewise were subject to the same regular rate calculation policies. Since the focus of the claims against Childhelp concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Childhelp's meal and rest break policy 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 all class members one way or another. Similarly, whether Childhelp correctly calculated the rate of overtime pay due raises a question common to all class members. [Trenner Decl., ¶ 24.]

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. <u>Jones v. Farmers Ins. Exch.</u> (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"); <u>Williams v. Superior Court</u> (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. [Trenner Decl., ¶ 25.]

C. <u>The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness</u>

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator, the Hon Daniel Buckley (Ret.), who has extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 9.] Plaintiff's counsel Zachary M. Crosner, Jamie Serb, and Nikki Trenner 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. [Trenner Decl., ¶¶ 36-42.]

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

Cal.App.4th 116, 128. In relevant part, 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 both formal and informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding Childhelp's payroll practices, a representative sampling of class member pay stubs and time records, applicable compensation plans, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown, number of work weeks/pay periods, average rates of pay, and other information used to formulate a damages model with the assistance of a consulting expert. Plaintiff's counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Trenner Decl., ¶¶ 8, 26.]

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

First, on their unpaid wage claims, Plaintiffs allege Childhelp failed to pay for all hours worked by requiring employees to work "off the clock." Here, Plaintiff alleged employees lost a few minutes of compensable time each shift getting from the facility entrance to/from the time clocks at the rear of facility, and further had to perform For example, if an employee was assisting with care at the end of their shift, they were forced to clock out at their scheduled time and then return to assisting with the task at hand. These tasks typically included supervising children, assisting with laundry, and preparing meals. According to Plaintiff's expert's analysis, this resulted in the loss of some **$257,600** in pay over the Class Period. Plaintiff and the Class Members also were paid nondiscretionary bonuses and shift differentials that were not incorporated into the regular rates of pay for purposes of calculating overtime wages and sick pay. Alvarado v. Dart Container Corp. (2018) 4 Cal.5th 542, 553; Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.5th 858. Per Plaintiffs' experts, this resulted in an underpayment of overtime and sick time wages to Class Members in the amount of about **$10,100**. On the other hand, Defendant argued its timekeeping and payroll policies accurately tracked and paid for all employee time at the correct hourly rate, and that is policies strictly prohibited "off the clock" work. Thus, per ChildHelp, if any off the clock work occurred it was in violation of company policy and done voluntarily by employees and without the company's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). [Trenner Decl., ¶¶ 27-28.]

On the meal period claims, Plaintiff argued employees were not relieved of all job duties while on a meal period and frequently had lunches interrupted by work. Per Plaintiff, understaffing and the nature of the work required employees to remain alert and to monitor the needs and actions of the children in the facilities, and employees frequently were only able to grab a quick bite during their shifts instead of receiving a full, uninterrupted meal break. Plaintiff contended these policies resulting in numerous "de facto" meal break violations for short, late and missed meal periods. Plaintiff further alleged other policies, such as prohibiting employees from napping or leaving the premises on a rest break, prevented employees using their break time as they saw fit and thus they were subject to employer control. Plaintiff's expert's analysis suggested about 81% of shifts had a least one unique meal violation, and estimated the potential exposure at about **$905,680** in meal period premiums. [Trenner Decl., ¶ 29.]

In response, Defendant argued the break policies were fully compliant with California law, and that it provided all required meal periods and thereby met its obligations under the Labor Code and applicable Wage Order. Further, Defendant argued to the extent employees missed a break or took a non-compliant break, any such discrepancies were aberrational and against company policy and a myriad of individual issues would be required to determine whether the potential violation resulted from employee choice or some other reason. Consequently, per the Defendant, individualized inquiries would dominate on this issue and render class certification inappropriate. [Trenner Decl., ¶ 30.]

For the rest break claim, Plaintiffs argued that Defendant frequently provided non-compliant rest breaks, as once again Class Members often had to skip rest breaks or received shortened rest breaks due to the hectic nature of the work and need to monitor the children. As with meal breaks, Defendant argued its rest break policies complied with California law and that it authorized and permitted employees to take all required rest breaks. Defendants further contended that, in light of the fact that it is not required to maintain a record of rest breaks, any evidence of failure to authorize and permit rest breaks and/or discouragement from taking rest breaks would be purely anecdotal and individual issues would predominate on liability. Assuming a 75% violation rate, Defendant's exposure here was estimated at about **$877,877**. [Trenner Decl., ¶ 31.]

On the expense reimbursement issue, Plaintiff alleged ChildHelp managers and representatives frequently contacted Plaintiff and the Class Members on their personal cell phones with various work-related reminders and memoranda, all without reimbursement. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137, 1140. Based on $5 per week in reimbursement, Plaintiff estimated the exposure at about $97,215. Here, Defendant argued its policies prohibited use of cell phones while working, and that there would be no real need for employees to use a cell phone while performing their duties. Thus, per Childhelp, any use of personal phones was not a necessary requirement of the job and therefore not reimbursable under Labor Code § 2802. [Trenner Decl., ¶ 32.]

Finally, Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims are based on the unpaid wage claims and will rise or fall along with those primary claims, in addition to being subject to "good faith" and other defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Defendant argued further that the wage statements accurately contained all required information, and that acted in good faith all times with respect to payment of wages. Although Plaintiff's experts estimated the exposure on these claims at about **$511,620** on the wage statement claims, and about **$730,825** on the waiting time penalties claim, Plaintiff also discounted the derivative claims significantly in light of these multiple potential defenses. [Trenner Decl., ¶ 33.]

As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled to penalties totaling about $1,900,000 should Plaintiff prevail on all claims, establish violations of the multiple Labor Code sections at issue, and secure the maximum allowable civil penalties. [Trenner Decl., ¶ 34.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's 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 $15,000 to PAGA penalties.

Plaintiff submits this amount 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.

Taking into account all of the above-discussed risk factors, Plaintiff calculated Defendant's exposure on the class claims at around **$402,850** on a risk-discounted basis and, accordingly, the settlement represents about 70% of the estimated recovery after trial after accounting for the multiple risks of continued litigation as addressed above. Given Defendant's multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $315,000, which will result in average award of over $420 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and will provide monetary awards to the Class without further delay. [Trenner Decl., ¶ 35.]

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"); 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); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed settlement is non-reversionary and will provide 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 her 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, 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 7, 2025

CROSNER LEGAL, P.C.

Zachary M. Crosner
Jamie K. Serb
Nikki Trenner
Attorneys for Plaintiff STEPHANY CLUCK