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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CRUZ

REYNALDO BAJO-ISLAS, individually, and on behalf of all others similarly situated and aggrieved, Plaintiff, vs. ROSSETTAS ENTERPRISES, INC. dba ROSSETTAS ROOFING, a California corporation, and DOES 1 through 50, inclusive, Defendants.	CASE NO. 25CV04159 MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT Date: July 13, 2026 Time: 8:30 a.m. Dept.: 5

I. INTRODUCTION

Plaintiff Reynaldo Bajo-Islas 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 63 individuals employed by Defendant Rossettas Enterprises, Inc. dba Rossettas Roofing ("Rossettas" or "Defendant") as non-exempt employees in California during the Class Period of September 1, 2021 to February 13, 2026. The proposed $100,000 settlement will provide at least $41,677 in cash payments to the settlement class, with an average award of about $683. The balance of approximately $58,323 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 and Aggrieved Employees. The settlement is the product of Plaintiff's pre-filing investigation, a cure conference with the Labor & Workforce Development Agency ("LWDA"), informal discovery, and arms-length and adversarial negotiations overseen by experienced and well-regarded mediator Scott Radovich, Esq.

As demonstrated below, the settlement is within the "range of reasonableness" for preliminary approval. Plaintiff's counsel believe the settlement is a significant result for the class given the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court enter an order: (1) granting preliminary approval to the proposed class action settlement; (2) conditionally certifying the settlement class as defined below; (3) appointing the Law Offices of J. Kirk Donnelly, APC as Class Counsel; (4) appointing plaintiff Reynaldo Bajo-Islas 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 Rossettas is a commercial and residential roofing contractor operating throughout South Bay and surrounding counties. Plaintiff worked for Defendant as a roofer for approximately 7 years, from 2018 to May 2025. At all times he was a full-time employee and frequently worked over 40 hours per week. Depending on the nature of the work he was paid both an hourly wage and via piece rate based on the number of roof "squares" installed, or via a combination of both hourly and piece rate pay. [Declaration of J. Kirk Donnelly ("Donnelly Decl."), ¶ 4.]

Plaintiff alleges a number of wage and hour violations by Defendant. First, he alleges Rossettas of failing to pay all wages due, including minimum and overtime wages, and he contends Defendant failed to properly record and pay for all hours worked and on occasion failed pay daily overtime wages when employees worked over 8 hours in a shift. He further alleges Defendant failed to separately pay for rest breaks and non-productive time for employees paid on a piece rate basis. Per Plaintiff, this policy resulted in a significant net loss of compensable time for the class members. Next, Plaintiff alleges Rossettas failed to provide timely and uninterrupted duty free meal and rest periods. Plaintiff also argues that, in addition to maintaining non-compliant written meal and rest break policies, review of the time and payroll data provided by Defendant suggests significant de facto break violations for late, short, or missed meal breaks. Plaintiff also alleged he and the class members were required to use their personal cell phones and personal vehicles for work purposes without any reimbursement. Finally, Plaintiff alleges derivative violations for failing to provide accurate itemized wage statements and failing to timely pay wages upon separation of employment. [Donnelly Decl., ¶ 5.]

Based on these allegations, Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice on or about June 6, 2025. After Plaintiff submitted the PAGA Notice, Defendant submitted a cure proposal to the LWDA, and the Parties participated in a PAGA cure conference with the LWDA on August 20, 2025. As part of the cure conference process, Defendant provided information regarding the number of aggrieved employees, timekeeping policies, payroll policies, meal and rest break policies, and time and payroll records. Following the cure conference, the LWDA issued a cure plan, which Defendant did not sign, and the LWDA deemed the cure process exhausted. The Parties thereafter entered into an agreement to toll the applicable statutes of limitation and engaged in pre-litigation discussions and negotiations regarding the merits of Plaintiff's alleged claims and the potential resolution of those claims. Following these pre-litigation discussions, the Parties ultimately agreed to mediate Plaintiff's alleged claims on both a class-basis and under PAGA. [Donnelly Decl., ¶ 6; Exhs. 3-4.]

The Parties then engaged Scott Radovich, Esq., a highly respected mediator with extensive wage and hour class action experience and, in December 2025, participated in a full-day mediation with Mr. Radovich. Prior to the mediation, the Parties engaged in additional informal discovery to supplement the materials previously produced by Defendant for the LWDA cure conference. At the mediation, throughout the day, the arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive information on their legal and factual positions, and made numerous offers and counter-offers. After a full day of negotiations, the Parties reached agreement on all major issues. They then collaboratively drafted the Class Action and PAGA Settlement Agreement ("Settlement Agreement") setting forth the full and final settlement terms, and a true and correct, fully-executed copy of the Settlement Agreement is attached to the Donnelly Declaration as Exhibit 1. [Donnelly Decl., ¶ 7.]

Finally, in order secure Court approval for the proposed settlement, Plaintiff filed his class action and PAGA representative complaint on December 29, 2025, alleging causes of action for unpaid minimum wages, unpaid overtime wages, unpaid rest break and non-productive time, failure to provide meal and rest breaks, wage statement violations, waiting time penalties, failure to reimburse business expenses, and unfair competition., and civil penalties under the Private Attorneys General Act ("PAGA"). [Donnelly Decl., ¶ 8.]

III. THE PROPOSED SETTLEMENT TERMS

Under the proposed settlement, Rossettas will pay $100,000.00 into a common fund, the Gross Settlement Amount ("GSA"). Reasonable attorney's fees of up to one-third of the GSA, or $33,333.33, actual litigation costs of up to $7,500, a reasonable enhancement award to Plaintiff of up to $10,000, settlement administration costs of no more than $5,000, and $2,500 for alleged civil penalties under PAGA,[1] all will be paid from the GSA. The remainder of about $41,677 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to Defendant. [Donnelly Decl., ¶ 10.]

[1] Consistent with PAGA, $1,625 of that amount will go the LWDA for the State's share of the civil penalties, and the remaining $875 will be distributed pro rata to the PAGA Group (defined as all individuals employed by Rossettas as non-exempt employees during the PAGA Period of June 27, 2024 to February 13, 2026).

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all individuals employed by Defendant in California as a non-exempt employee during the Class Period, which runs from September 1, 2021 to February 13, 2026. Rossettas estimates the Settlement Class consists of approximately 63 individuals. [Donnelly Decl., ¶ 11.]

B. The Benefit Conferred on the Settlement Class

As noted, at least $41,677 from the GSA will be distributed to the Participating Class Members. 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. One-third of each settlement share will be allocated to wages and the remaining two-thirds will be allocated to penalties, unreimbursed expenses, and interest. Rossettas will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. 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 California State Controller's Unclaimed Property Fund. [Donnelly Decl., ¶ 12.]

Each Participating Class Member will receive a share of the Net Settlement Sum based on his or her position held and total weeks worked for Rossettas during the Class Period while employed as a non-exempt employee. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid wages, unpaid premium wages for missed meal 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. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Defendant, and the number of instances they missed a break, were not provided compensation in lieu of such missed breaks, or lost wages due to Defendant's alleged improper payroll practices. The average class settlement award is estimated to be around $683. Per Rossettas, there are approximately 29 Aggrieved Employees, and their average PAGA award will be about $30. [Donnelly Decl., ¶ 13.]

C. Settlement Administration

Subject to the Court's approval, the Parties have agreed on Apex Class Action, LLC as the Settlement Administrator. Apex is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Apex's fees will not exceed $4,990.00. [Donnelly Decl., ¶ 14; Declaration of Michael Sutherland, ¶¶ 3-6, Exhs. A-C.]

D. The Class Notice

The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language. The Notice also sets forth the individualized information used to calculate Class Members' 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, the procedure for submitting an objection to the Settlement, and the procedure to request exclusion. In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement, provides fair opportunity to participate in, opt out of, or object to the proposed Settlement, and otherwise complies with California Rules of Court 3.769(f) and 3.766(d). Coupled with the notice procedure, the proposed Notice provides the Class with the best notice practicable. [Donnelly Decl., ¶ 15.]

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. [Donnelly Decl., ¶ 16.]

F. Release of Claims

All Participating Class Members will be deemed to release Defendant from all class claims alleged in the operative complaint, or that could have been brought based on the allegations in the operative complaint from September 1, 2021 to February 13, 2026, and the PAGA Group will release all claims under PAGA for the PAGA Period of June 27, 2024 to February 13. 2026. The releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. [Donnelly Decl., ¶ 17.]

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

The settlement provides Defendant will not oppose a request for reasonable attorney's fees not to exceed one-third of the GSA, or $33,333.33, nor will it oppose a request for reimbursement of actual litigation costs and expenses of up to $7,500.00. Defendant also will not oppose a request for an enhancement award to Plaintiff of not more than $10,000.00 in recognition of his time spent on this matter, the risks he undertook on behalf of the class, and the benefit conferred to the class. Plaintiff's counsel will provide the Court with appropriate summaries and evidence of their efforts and time records in anticipation of the Final Approval Hearing, and Plaintiff has submitted a declaration herewith. If the Court approves less than the above amounts, the difference will remain in the Net Settlement Sum for distribution to the Participating Class Members. [Donnelly Decl., ¶ 18.]

H. PAGA Claims and Notice to the LWDA

The Parties allocated $2,500 to payment of civil penalties under PAGA for such claims against Rossettas as addressed in more detail below, and which amount Plaintiff submits is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and preliminary approval hearing to the LWDA via its online portal. [Donnelly Decl., ¶ 19; Exh. 5.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

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

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

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

B. 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 60 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Donnelly Decl., ¶ 20.] Next, Plaintiff is an adequate class representative, as his claims do not conflict with and are not antagonistic to the claims of other class members. Here, the settlement of his separate individual claims arising out of his termination poses no obstacle as resolution of the independent dividual claims in no way impacted negotiation of the final class settlement, which was achieved only with the assistance of the mediator. In other words, the class/PAGA settlement amount represents a professional neutral's independent evaluation of the value of the case that was accepted by the Parties. Thus, Plaintiff has simply received fair value for his separate and independent claims non-wage and hour claims in addition to securing a positive result for the absent class members. Further, his claims are typical given he is a member of the class and his respective claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [Donnelly Decl., ¶ 21; Declaration of Reynaldo Bajo-Islas, ¶¶ 2-9.] Lastly, Plaintiff's counsel are experienced and adequate class counsel. [Donnelly Decl., ¶¶ 35-40.]

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 rest break policies, the same timekeeping and payroll policies that allegedly failed to fully compensate them for all hours worked, etc. Since the focus of the claims against Rossettas concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For example, Rossetta's alleged failure to properly pay for rest breaks for piece rate employees was 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 Rossettas was required to reimburse employees for use of their personal phones presents another common issue. [Donnelly Decl., ¶ 22.]

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

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator Scott Radovich, Esq., who has extensive experience mediating wage and hour class actions. [Donnelly Decl., ¶ 9.] Plaintiff's counsel J. Kirk Donnelly has years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel is well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Donnelly Decl., ¶¶ 35-40.]

California law recognizes several factors bearing on the fairness, adequacy, and reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128. 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 extensive informal discovery to facilitate settlement discussions, and further exchanged additional information and documents during the cure conference process. As a result, Plaintiff reviewed documents and information regarding Rossetta's payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Donnelly Decl., ¶¶ 8, 24.]

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.

Plaintiff's analysis was supported by the pre-mediation production described above, which permitted Plaintiff's counsel to estimate potential damages on various theories of liability. Using that data, Plaintiff ran various calculations and estimated Rossetta's likely maximum exposure on the class claims at approximately $1,306,140, including $125,835 on the unpaid wage/off the clock claims, $42,770 on the unpaid daily overtime claim, $89,220 on the piece rate claims, $576,000 on the meal break claims, $83,140 on the expense reimbursement claim, $89,150 on the wage statement claims, and $300,300 on the waiting time penalty claims. [Donnelly Decl., ¶¶ 25-26.] Plaintiff and his counsel substantially discounted the value of these claims, however, in light of Defendant's multi-layered defenses on both class certification and on the merits, and the multiple and considerable risks posed by proceeding with the litigation.

The unpaid wage claims focus primarily on Rossettas's alleged policy of requiring employees to meet at the company yard and then travel together to their respective job sites before clocking in. Per Plaintiff, once employee arrived at the company yard they were subject to employer control such that the subsequent travel time to the job site was compensable. <u>Morillion v Royal Packing Co.</u> (2000) 22 Cal.4th 575. Plaintiff further contended that Defendant failed to pay daily overtime wages in many instances where an employee worked less than 40 hour in a week but also worked at least one shift longer than 8 hours.

For the employees who received piece rate pay, Plaintiff alleges that review of the pay records showed Rossettas did not separately pay for rest periods taken by a piece rate employee. Lab. Code § 226.2; Gonzalez v Downtown LA Motors (2013) 215 Cal.App.4th 36. Under Labor Code § 226.2, rest and recovery periods must be paid at a regular hourly rate that is no less than the higher of an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or the applicable minimum wage, while other non-productive time must be paid a rate no less than the applicable minimum wage.

In response, Rossettas argued its payroll policies are fully compliant, that it properly tracked and paid for all hours worked at the appropriate hourly wage. Finally, Defendant argued the issue would not be certifiable since it would require individualized inquiries whether any compensable "off the clock" work occurred if an employee clocked in a few minutes early or late, and why it was or was not documented and paid for. On the piece rate issues, Defendant emphasized it no longer pays any employees by piece rate and ceased doing so during the class period, [Donnelly Decl., ¶ 27.]

On the meal and rest break claims, Plaintiff contends Defendant's written policies are not fully compliant, and Plaintiff's review of the time and payroll records provided suggested these deficiencies in the written policies affected employee breaks and resulted in substantial "de facto" violations. For example, Plaintiff argued that employees typically received only single one hour break each shift, i.e., that meal and rest breaks were combined into a single long bread. Not only is this impermissible under California law, but Defendant's records suggested that in many instances the meal break was untimely and no additional meal or rest breaks were provided on shifts longer than 10 hours, as required under Wage Order 16-2001, § 10. [Donnelly Decl., ¶ 28.]

In response, Rossettas argued its written meal and rest break policies are fully compliant, that it provided employees with the opportunity to receive all required breaks, and that many class members waived their second meal periods. Defendant further maintained that, in light of its compliant policies, whether a class member missed a meal period, received a late meal period, or missed a rest break would have been aberrational and against company policy. Thus, per Rossettas, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. [Donnelly Decl., ¶ 29.]

On the expense reimbursement claim, Plaintiff alleges use of personal cellular phones was necessary and consequential to employment duties for purposes of group messaging, and receiving work-related calls and texts while on duty. Plaintiff also alleged that during the class period Rossettas began requiring employees to download a timekeeping app on the phones for purposes of clocking in/out. Per Plaintiff, Rossettas was obligated to reimburse for such use of personal phones. Cochran v. Schwan's Home Services, Inc. (2014) 228 Cal.App.4th 1137, 1144. Plaintiff further alleged employees were required to drive their personal vehicles from the company yard to their respective job sites but did not receive any reimbursement for gas or mileage. Gattuso v Harte-Hanks Shoppers (2007) 42 Cal.4th 554. In response, Rossettas argued it provided employees with reimbursement for documented, reasonable and necessary expenses including use of cell phones and mileage, and provided information on amounts paid during the Class Period. Beyond that, Rossettas argued that use of personal phones or personal vehicles generally was unnecessary for performing the job, and that any such use largely would have been for personal preference or convenience and not reimbursable as a "necessary" business expense. Lab. Code § 2802. [Donnelly Decl., ¶ 30.]

The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to take into account the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses. [Donnelly Decl., ¶ 31.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling over $676,000 in civil penalties should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue. [Donnelly Decl., ¶ 32.] 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 $2,500 to PAGA penalties, and Plaintiffs submit 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.

The settlement obviates the significant risk that this Court may find any kind of class or representative resolution unachievable or deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation would be lengthy and expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would further and substantially delay any recovery by the class with no assurance of recovering significantly more than the proposed settlement. While Plaintiff is confident in the merits of these claims, legitimate controversies exist regarding each one of them. Plaintiff also recognizes proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Donnelly Decl., ¶ 33.]

Plaintiff and his counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class, and the overall $100,000 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $100,000, which will result in average award of some $683 per class member, plus additional amounts under PAGA, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Donnelly Decl., ¶ 34.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); Lane v. Facebook, Inc. (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, 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: April 24, 2026

LAW OFFICES OF J. KIRK DONNELLY, APC

J. Kirk Donnelly

J. Kirk Donnelly
Attorneys for Plaintiff REYNALDO BAJO-ISLAS