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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOHNNY GARCIA, as an individual on behalf of himself and on behalf of all others similarly situated, Plaintiff, v. WIN-DOR, INC., a California corporation; and DOES 1-100, inclusive, Defendants.	Case No.: 30-2022-01290278-CU-OE-CXC Assigned for All Purposes to: Hon. Peter Wilson Dept. CX-101 **MEMORANDUM OF POINTS AND AUTHORTIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** [Filed Concurrently with Notice of Motion and Motion; Declarations of Nikki Trenner and Jodey Lawrence; [Proposed] Order] **Date: December 14, 2023** **Time: 2:00 p.m.** **Dept.: CX-101**

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I. INTRODUCTION

Plaintiff Johnny Garcia 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 1,145 individuals employed by Defendant Win-Dor, Inc. ("WDI" or "Defendant") as non-exempt employees, either directly or via a staffing agency, in California during the period of November 4, 2018 through July 24, 2023. The proposed $1,025,000 settlement will provide approximately $605,833 in cash payments to the class, with an average award estimated at about $529. The balance of approximately $419,167 will cover reasonable attorney's fees and actual litigation costs, settlement administration costs, an enhancement award to the named plaintiff, and payment of civil penalties to the State. The settlement is the product of Plaintiff's pre-filing investigation, informal discovery and a pre-mediation exchange of information, and arms-length negotiations overseen by experienced mediator Steve Mehta, Esq.

The proposed settlement is within the "range of reasonableness" for approval and. 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; (2) conditionally certifying the settlement class as defined below; (3) appointing Zachary M. Crosner, Jamie Serb, and Nikki Trenner, and Crosner Legal, P.C. as Class Counsel; (4) appointing Plaintiff Johnny Garcia as the Class Representative; (5) appointing Phoenix Settlement Administrators as the Settlement Administrator; (6) approving the form of notice to the class and the notice procedure; and (7) scheduling a final fairness hearing.

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant WDI manufactures windows and doors for homes and businesses throughout Southern California, and is based in Brea. WDI employed Plaintiff Garcia as a non-exempt general warehouse worker from May 2022 to 2023. Plaintiff typically worked 8-11 hours per day, five days per week. [Declaration of Nikki Trenner ("Trenner Decl., ¶ 4.]

Plaintiff alleges WDI committed a number of Labor Code violations. First, he alleges WD rounds all time punches to nearest quarter hour, and that rounding favored WDI in its overall application and systematically deprived Plaintiff and the class members of compensable hours worked. Plaintiff also alleges WDI required employees to don and doff protective gear while off the clock, and that WDI "auto deducted" 30 minutes for employee meal breaks even though employees did not always receive a fully 30 minute lunch break. Plaintiff also alleges meal break violations based on an alleged failure to maintain a compliant written policy for at least part of the class period, and "de facto" violations for missed lunch breaks (especially 2nd meal periods), as well as short and late lunches. He also contends WDI's policies prevented employees from receiving their breaks completely free from all employer control, and they were prohibited from inter alia using social media, taking a nap, leaving the premises, etc., while clocked out on a lunch break. For these same reasons, Plaintiff also contends WDI did not provide proper rest breaks as well. Finally, he alleges he had to purchase his own protective equipment, and us his personal phone for work purposes, all without any reimbursement. [Trenner Decl., ¶ 5.]

Based on these allegations, on November 4, 2022, Plaintiff filed a class action complaint brining claims for (1) unpaid minimum and overtime wages, (2) meal and rest break violations, (3) failure to reimburse expenses, and (4) derivative claims for inaccurate wage statements, failure to pay wages due on separation of employment, and Unfair Competition. On February 16, 2023, Plaintiff filed a first amended complaint that added claims under PAGA based on the same alleged Labor Code violations. [Trenner Decl., ¶ 6; Exh. 2.]

WDI has at all times denied Plaintiff's allegations and maintained its payroll policies and procedures comply with California law, that it paid the class members all wages due and that its compensation policies properly compensate the class members for all hours worked. WDI further maintains its and meal/rest break policies likewise comply with California law, and that it provided its employees with all required breaks on a fully compliant basis. WDI likewise argues there was no need for any employee to use a cell phone for work purposes, and no reimbursement is owed for basic work equipment such as boots or gloves. Defendant also strongly contends the case cannot be maintained as any kind of class or representative action, arguing determining the number of potential off the clock hours worked by each class member, or the reasons for any alleged missed or non-compliant breaks, would result in individualized issues predominating and that a trial on a representative basis would be unmanageable. [Trenner Decl., ¶ 7.]

Once the case was at issue, the Parties engaged in meet and confer discussions about discovery and law and motion issues, as well as the merits of the case. Following these discussions, the Parties agreed to attempt early mediation, and further agreed on a protocol for an informal exchange of additional documents and information before the mediation. Consequently, Plaintiff's counsel reviewed payroll records, personnel policies/handbooks, personnel files, and a random of sampling paystubs and time records for about 12% of the class. Plaintiff had those records analyzed by Berger Consulting Group to look for, inter alia, violation rates and potential damages for the alleged off the clock work, violation rates for meal and rest break violations, etc. [Trenner Decl., ¶ 8.]

The Parties then engaged Steve Mehta, Esq., a highly respected mediator with substantial wage and hour and class action experience, and in April 2023, participated in a full day mediation with Mr. Mehta. 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. By the end of the day the Parties reached agreement on all major issues. [Trenner Decl., ¶ 9.] They then collaboratively drafted the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") setting forth the full and final settlement terms now before the Court for approval, and a true and correct copy of the Settlement Agreement is attached to the Trenner Declaration as Exhibit 1.

Furthermore, in order to fully effectuate the proposed settlement, the Parties agreed Plaintiff would amend his complaint to add additional claims to ensure the operative complaint comports fully with the allegations raised in Plaintiff's PAGA notice letter. After obtaining leave of court, Plaintiff accordingly filed his Second Amended Complaint on August 18, 2023, and the SAC is the operative pleading for purposes of settlement. [Trenner Decl., ¶ 10.]

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

Under the settlement, WDI will pay $1,025,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $341,666.67 (1/3 of the GSA), litigation costs of up to

$20,000, settlement administration costs of no more than $20,000, a service award to Plaintiff[1] of no more than $7,500, and $30,000 for alleged civil penalties under PAGA,[2] all will be paid from the GSA. The remainder of around $605,833 will be allocated pro rata among the Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to WDI. [Trenner Decl., ¶ 11.]

A. <u>Certification of the Settlement Class</u>

The settlement provides for conditional certification of a settlement class including all current and former non-exempt employees that worked either directly or via a staffing agency for WDI at any location in California at any time during the Class Period of November 4, 2018 through July 24, 2023. The Settlement Class consisted of approximately 1,145 individuals. [Trenner Decl., ¶ 12.]

B. <u>The Benefit Conferred on the Settlement Class</u>

As noted, the settlement obligates WDI to pay $1,025,000 to resolve the claims of the Settlement, inclusive of attorney's fees and costs. A minimum of approximately $605,833 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty Four (24%) percent of each settlement share will be allocated to wages and the remaining Seventy Six (76%) percent will be allocated to expenses, penalties, and interest, which allocation is consistent with WDI's potential liability as discussed below. WDI 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 a settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 13.]

Each participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for WDI during the Class Period while employed in a non-exempt

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[1] Plaintiff also entered into a separate, confidential Separation Agreement with Defendant, which can be made available for *in camera* review by the Court. [Trenner Decl., ¶ 11.]

[2] Per PAGA, this will be allocated $22,500 (75%) to the Labor & Workforce Development Agency, and the remaining $7,500 (25%) will go to the eligible Aggrieved Employee (as defined in the Settlement Agreement).

position. Thus, each individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, premium wages for meal/rest break violations, unreimbursed expenses, etc., under applicable law. These methods will ensure each Class Member receives a portion of the settlement funds relative to the value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for WDI and the potential hours worked lost due to off the clock work, the number of missed or non-compliant breaks, and so forth. The average gross award is estimated to be approximately $529, and the awards will range from approximately $15 to $3,880. The average PAGA award will be about $12.40. Plaintiff's individual settlement share is estimated at about $150. [Trenner Decl., ¶ 14.]

As discussed below, the overall settlement amount is reasonable in light of the considerable risks associated with Plaintiff's claims, and the delay and risk posed by continuing to litigate such disputed allegations. In counsel's judgment, the total value recovered for the class is substantial and within the range of reasonableness.

C. <u>Settlement Administration</u>

Subject to Court approval, the Parties have agreed on Phoenix Settlement Administrators as the Settlement Administrator. Phoenix is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Phoenix's fees and costs will not exceed $20,000.00. [Trenner Decl., ¶ 15; Declaration of Jodey Lawrence, ¶¶ 2-16.]

D. <u>The Class Notice</u>

The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language, and will go out in both English and Spanish. 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, the procedure to request exclusion, and the fact that any final judgment will bind all class members who do not op out. Cal. Rules of Court 3.769(f) and 3.766(d). In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement and decide to participate in, opt out of, or object, and meets all requirements imposed by the California Rules of Court. Coupled with the notice procedure, the Notice provides the best notice practicable. [Trenner Decl., ¶ 16.]

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. If a Class Member disputes their individual information, the Settlement Administrator will review the Class Member's records and any other information submitted, and make a final determination. The Class Notice will be accompanied by an exclusion form and workweek dispute form (Exhibits B and C to the Settlement Agreement), for use by the Class Members. [Trenner Decl., ¶ 17.]

F. Release of Claims

All Participating Class Members will release WDI from all claims alleged in the Operative Complaint, or that could have been brought based on the factual allegations in the operative complaint, including FLSA and PAGA claims, during the Class Period. The class and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the Operative Complaint. [Trenner Decl., ¶ 18.]

G. Plaintiff's Enhancement

A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000). He devoted time and resources to the litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in preparing for mediation. The service payment provided to Plaintiff as the class representative is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

Here, the Settlement Agreement provides for an enhancement of up to $7,500.00 to Plaintiff. This request is reasonable given the risks he undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. Among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. He will provide the Court with a detailed declaration for the Final Approval Hearing. [Trenner Decl., ¶ 19.]

H. Attorney's Fees and Costs

The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of attorney's fees of up to 1/3 of the GSA, or $341,666.67, and reimbursement of actual costs up to $20,000.00. In advance of the Final Approval Hearing, Plaintiff's counsel will submit a request for attorney's fees and actual litigation costs per the terms of the Settlement Agreement and applicable law, and will provide the Court with appropriate information and evidence regarding hourly rates, tasks performed, and time expended on the case. [Trenner Decl., ¶ 20.]

I. PAGA Claims and Notice to the LWDA

The Parties allocated $30,000 of the GSA to payment of civil penalties under PAGA, as addressed below. 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., ¶ 21; Exh. 3.]

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 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.

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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 at least 1,145 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Trenner Decl., ¶ 22.] 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. Further, his claims are typical given he is a member of the class and his claims arise from the same employment practices giving rise to the claims of the other class members. [Trenner Decl., ¶ 23.] Lastly, his counsel are experienced and adequate class counsel. [Trenner Decl., ¶¶ 38-43.]

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 payroll scheme and policies, same meal and rest break policies, etc., that Plaintiff contends violate California labor law. Since the focus of the claims against WDI concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, whether WDI's time rounding and "auto-deduct" policies raise common questions that will decide liability for all class members one way or another. Similarly, whether WDI had policies that unduly restricted how employees were able to spend their break time raises another common issue, determination of which will help decide liability for all Class Members one way or the other. [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. 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. [Trenner Decl., ¶ 25.]

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator, Steve Mehta, Esq., who has considerable experience mediating wage and hour class action cases. [Trenner Decl., ¶ 9.] Plaintiff's counsel Zachary M. Crosner, Jamie Serb, and Nikki Trnner of Crosner Legal, P.C. have years of experience litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of further litigation versus settling the matter. [Trenner Decl., ¶¶ 38-43.]

Next, 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; and 5) the experience and views of counsel. Id. Here, the proposed settlement satisfies these requirements.

Prior to mediation, the parties engaged in formal and informal discovery to facilitate settlement discussions. Thus, Plaintiff reviewed documents and information regarding GGUSD's payroll practices, a random sampling of pay stubs and time records for sampling of about 12% of the class members, applicable compensation plans, etc., and information from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other relevant information. Plaintiff then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. 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. [Trenner Decl., ¶¶ 8, 26.]

Using that data, Plaintiff's experts estimated WDI's likely maximum exposure approximately $9,775,500, including about $160,000 on the unpaid wage claims, about $1,868,000 on the meal break claims, about $2,940,000 for the rest break violations, around $186,500 for unreimbursed expenses, $1,505,000 for inaccurate wage statements, and about $3,116,000 in waiting time penalties. [Trenner Decl., ¶¶ 27-28.] Plaintiff and his counsel substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation, as Defendant raised numerous defenses and vigorously defended against these claims.

On the minimum wage issue, Plaintiff claims that he and class members were not paid for all hours worked because WDI's time rounding, donning and doffing, and other de facto policies resulted in "off the clock" work with a corresponding loss of pay. For example, Plaintiff's expert's analysis suggests the time rounding policy favored WDI around 66% of the time, resulting in the loss of over 3,200 compensable hours to the class. In response, WDI argued is timekeeping and payroll practices comply with California law and that any rounding was completely neutral in effect and thus permissible under the law. See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal.App.4th 889. It also argued any donning and doffing of safety equipment, consisting of gloves, goggles, and reflective vests, did not result in any compensable time, and that it otherwise properly paid all non-exempt employees for all hours worked consistent with California law. Per Defendant, any off the clock work the clock was against company policy and done without the WDI's knowledge. 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). WDI also argued, individualized inquiries would be required to determine if any such time was compensable, and class certification would be inappropriate and any PAGA trial would be unmanageable. [Trenner Decl., ¶ 29.]

On the meal break issue, prior to about September 2021, Plaintiff contends WDI's meal policy wasn't compliant and did not inform employees as to the number and timing of their meal periods, nor did it specify 30 minute uninterrupted meal periods. Even after WDI revised that policy, Plaintiff contends it remained problematic in that it still didn't advise employees of the duty-free nature of their meal periods. Coupled with WDI's policies restricting employees from accessing social media while at work, from taking a nap at any point in a shift, from leaving the premises, etc., Plaintiff contends he and the class members received non-compliant meal periods. Plaintiff's expert's analysis supported this conclusion and found approximately a 62-63% violation rate for meal periods. Thus, even if WDI's policies were compliant, it still faced significant exposure for "de facto" violations. For the same reasons, Plaintiff contends WDI's rest break policy likewise was non-compliant and that he and the class members did not receive proper breaks. [Trenner Decl., ¶ 30.]

Defendant denies Plaintiff's contentions, claiming they made meal and rest breaks available to Class Members in compliance with California law, including implementing a Bell Schedule system. Defendant contends their meal and rest break policies are lawful and that Class Members were frequently reminded via training and supervisors, that they were required to take all meal and rest breaks. Defendant also contends that time records and signed declarations demonstrate that Class Members took duty-free, timely meal and rest breaks. Defendant contends their meal and rest break policies and practices comported with the flexibility the *Brinker* court held was integral to California's meal and rest period requirements. Finally, Defendant argued that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant contends these claims are vulnerable to a ruling that class treatment is not appropriate. [Trenner Decl., ¶ 31.]

On the expense reimbursement claims, Plaintiff alleges he and class members were required to purchase their own safety gear such as steel-toed boots, grip gloves, safety goggles, and a reflective vest, without reimbursement. WDI requires employees to use their personal cell phones to access company information and communicate with supervisors but has failed to reimburse them for the use of their personal cell phones. Per WDI, however, the "safety gear" is nothing more than basic work boots, gloves, etc. and not any kind of specialized gear for which an employer must provide reimbursement. As far as cell phone use, WDI argued there would be no conceivable requirement for employees to use their own phone while at work and, to the extent they did, it would have been purely for personal convenience and therefore not reimbursable. [Trenner Decl., ¶ 32.]

Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage statements and waiting time penalties would also fail. Defendant also contends they would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of past wages. Cal. Code Regs. Tit. 8 § 13520; Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would have to prove that Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of employment. Defendant contends that any failure to pay wages upon separation was not willful. [Trenner Decl., ¶ 33.]

As far as potential PAGA liability, the theoretical penalties totaled at least $5.8 million should Plaintiff prevail and establish the alleged minimum wage violations at issue for each pay period. [Trenner Decl., ¶ 34.] As with the class claims, Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by Defendant on the merits, and further discounted these claims since the Court possesses wide discretion to reduce such penalties even if Plaintiff ultimately prevailed. Labor Code § 2699(e)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just $5 per pay period, a 90% reduction, 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 $30,000 to PAGA penalties, which amount is reasonable and in line with comparable settlements in other class actions in California. 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").

Thus, Defendant raised significant procedural and merits defenses to Plaintiff's claims, any one of which, if successful, could have derailed Plaintiff's case. Accordingly, Plaintiff faced risky issues going forward with this litigation, and given the need to secure class certification, try the case, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's 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's counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $1,025,000 recovery represents a significant percentage of Defendant's potential exposure and given these risks addressed above, a total recovery for the class of $1,025,000 is a fair result within the range of reasonableness considering all potential outcomes. [Trenner Decl., ¶¶ 35-37.]

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 ("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"); 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"); 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 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 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: September 08, 2023

CROSNER LEGAL, PC

By: ______________________

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