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behalf of himself and on behalf of all others similarly situated
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11 DARIUS WALKER, as an individual on
12 behalf of himself and on behalf of all others
similarly situated,

13 Plaintiff,

14 v.
15

16 PEAK TECHNICAL SERVICES, INC., a
Pennsylvania corporation; PEAK
17 TECHNICAL SERVICES L.P., a
Pennsylvania limited partnership; and
18 EMSAR BIOMEDICAL SERVICES, INC.,
an Ohio corporation; CSA SERVICES
19 SOULTIONS, LLC, a Delaware limited
liability company; CSA FRANCHISING,
20 LLC, a Delaware limited liability company,
and DOES 1-100, inclusive,

21 Defendants.
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Case No. 34-2023-00333158-CU-OE-GDS

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

Date: October 23, 2026

Time: 9:00 a.m.

Dept.: 8A

Reservation No.: A-333158-001

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1 **I. INTRODUCTION**

2 Plaintiff Darius Walker hereby moves the Court for an order granting preliminary approval
3 to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf
4 of 14 individuals employed as non-exempt employees in California between all non-exempt,
5 hourly employees, including Plaintiff, employed by Peak Technical Services LP and Peak
6 Technical Services, Inc. (the "Peak Defendants") as non-exempt employees and staffed at
7 Defendants Emsar Biomedical Services, Inc., CSA Services Solutions, and/or CSA Franchises
8 LLC (collectively, "Emsar") in California from January 17, 2019 through the date of preliminary
9 approval. The proposed \$67,500 settlement will provide at least \$26,750 in cash payments to the
10 settlement class, with an average award of about \$1,910. The balance of approximately \$40,750
11 will cover a modest enhancement award to Plaintiff, reasonable attorney's fees and actual litigation
12 costs, settlement administration costs, and payment of civil penalties. The settlement is the product
13 of Plaintiff's pre- and post-filing investigation, a pre-mediation exchange of information, and
14 arms-length and adversarial negotiations overseen by experienced and well-regarded mediator
15 Jonathan Andrews, Esq.

16 As demonstrated below, the settlement is within the "range of reasonableness" for
17 preliminary approval. Plaintiff's counsel believes the settlement is a significant result for the class
18 given the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court enter
19 an order: (1) granting preliminary approval to the proposed class action settlement;
20 (2) conditionally certifying the settlement class as defined below; (3) appointing Zachary Crosner
21 and Brandon Brouillette, and Crosner Legal, PC as Class Counsel; (4) appointing plaintiff Darius
22 Walker as the Class Representative; (5) appointing Phoenix Settlement Administrators as the
23 Settlement Administrator; (6) approving the form of notice to the class and the procedure for
24 providing such notice; and (7) scheduling a final fairness hearing.

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

26 The Peak Defendants provide, inter alia, temporary tech workers to clients around the
27 country in areas such as IT, manufacturing, and engineering. Plaintiff Walker was a direct hire of
28 the Peak Defendants and assigned to work at Emsar, which is a medical device services company

1 providing asset management, preventative maintenance, corrective action, installation, and depot
2 biomedical services across the country. [Declaration of Brandon Brouillette (“Brouillette Decl.”),
3 ¶ 4.]

4 Plaintiff alleges Defendants failed to pay the class at least the applicable minimum wage
5 for all hours worked, primarily by rounding off time punches such that Class Members lost hours
6 worked and corresponding pay. Plaintiff also alleged Defendants did not provide all required meal
7 breaks on a fully-compliant basis, that Defendants’ time records suggest numerous “de facto” meal
8 period violations, failed to provide all required rest breaks, and that Defendants failed to pay the
9 required premium wage for all alleged non-compliant meal and rest periods. Based on these
10 allegations, on January 17, 2023, Plaintiff filed a class action complaint alleging causes of action
11 against Defendants for unpaid wages, failure to provide meal and rest periods or compensation in
12 lieu thereof, failure to provide accurate wage statements, waiting time penalties, and unfair
13 competition. After notice to Defendants and the LWDA, and exhausting administrative remedies,
14 on March 10, 2023, Plaintiff filed a First Amended Class and Representative Complaint alleging
15 the same class causes of action and an additional cause of action for violation of the Private
16 Attorneys General Act, Labor Code §§ 2698, et seq. The First Amended Complaint is the operative
17 complaint in the action. [Brouillette Decl., ¶ 5; Exh. 3.]

18 Defendants have at all times denied Plaintiff’s allegations and maintained their meal and
19 rest break and payroll policies and procedures comply with California law, that they provided
20 employees with fully compliant meal and rest breaks, and that they properly tracked employee
21 time and paid Plaintiff and all other employees all wages due and at the correct hourly rate.
22 Defendants further contend the fully reimbursed employees for all reasonable and necessary
23 business expenses. Additionally, Defendants strongly contend the case cannot be maintained as
24 any kind of class or representative action, arguing for example that to the extent class members
25 missed meal breaks, that such breaks were non-compliant, it was intermittent and infrequent and
26 evidence of such violations would be purely anecdotal, and therefore individualized issues
27 predominate and trial would be unmanageable. [Brouillette Decl., ¶ 6.]

28 After Plaintiff filed his initial complaint, Defendants successfully moved to stay the case

1 under the rule of exclusive concurrent jurisdiction, in light of another matter pending in Orange
2 County Superior Court. Ultimately, the Parties agreed to attempt a global mediation including this
3 case and the Orange County case, and further agreed on an informal exchange of information
4 necessary to engage in a meaningful mediation. Consequently, Defendants produced, and
5 Plaintiff's counsel reviewed, payroll records, personnel policies and employee handbooks, meal
6 break policies, personnel files, and a random sampling of paystubs and time records produced by
7 Defendants. Defendants also provided documents and information reflecting the estimated total
8 number of workweeks and pay periods they worked, and average hourly pay rates, among other
9 data. [Brouillette Decl., ¶ 7.]

10 The Parties then engaged Jonathan Andrews, Esq., a highly respected mediator with
11 extensive wage and hour class action experience and in September 2024, participated in a full day
12 mediation with Mr. Andrews. Throughout the day, the arms-length negotiations were hard-fought
13 and adversarial as the Parties exchanged extensive information on their legal and factual positions,
14 and made numerous offers and counter-offers, but were unable to reach an agreement. The Parties
15 continued to negotiate with the mediator's assistance, however, and eventually Plaintiff and the
16 Peak Defendants reached agreement on all major issues several months later. The settling parties,
17 Plaintiff and the Peak Defendants, then collaboratively drafted the Settlement Agreement setting
18 forth the full and final settlement terms. Emsar is not a party to the settlement. [Brouillette Decl.,
19 ¶ 8; Exh. 1.]

20 **III. THE PROPOSED SETTLEMENT TERMS**

21 Under the settlement, the Peak Defendants will pay \$67,500.00 into a common fund, the
22 Gross Settlement Amount ("GSA"). Reasonable attorney's fees of up to one-third of the GSA, or
23 \$22,500, actual litigation costs of up to \$10,000, a modest enhancement award of up to \$5,000 for
24 plaintiff, settlement administration costs of no more than \$2,750, and a payment of \$500 for alleged
25 civil penalties under PAGA (of which \$375 will go to the LWDA with the remaining \$125 to the
26 Aggrieved Employees), all will be paid from the GSA. The remainder of approximately \$26,750
27 will be allocated among the Participating Class Members based on their weeks worked during the
28 Class Period. No portion of the GSA will revert to any defendant. [Brouillette Decl., ¶ 9.]

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

2 The settlement provides for conditional certification of a settlement class including as non-
3 exempt employees in California between all non-exempt, hourly employees, including Plaintiff,
4 employed by the Peak Defendants as non-exempt employees and staffed at Defendants Emsar
5 Biomedical Services, Inc., CSA Services Solutions, and/or CSA Franchises LLC in California
6 from January 17, 2019 through the date of preliminary approval. The Parties estimate the
7 Settlement Class consists of approximately 14 individuals. [Brouillette Decl., ¶ 10.]

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

9 As noted, the settlement obligates the Peak Defendants to pay \$67,500 to resolve the
10 Settlement Class's claims against the Peak Defendants and related entities, inclusive of attorney's
11 fees and costs. This is a cash settlement that does not require Participating Class Members to
12 submit a claim form to receive their settlement share. Participating Class Members will receive
13 their settlement checks automatically via First Class U.S. Mail. One-third of each settlement share
14 will be allocated to wages and the remaining two-thirds will be allocated to expenses, penalties
15 and interest. The Peak Defendants will pay any and all applicable employer-side payroll taxes
16 separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed
17 (because a class member does not cash his or her settlement check) will go to the California State
18 Controller's Unclaimed Property Fund. [Brouillette Decl., ¶ 11.]

19 Each Class Member's Individual Settlement Payment will be calculated using criteria
20 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
21 missed meal breaks, and potential statutory penalties under applicable law. These methods are
22 intended to ensure each Class Member receives a portion of the available settlement funds
23 corresponding to the relative value of his or her potential claims. Plaintiff contends the proposed
24 allocation provides a reasonable way to compensate Class Members based the amount of time they
25 worked for Defendant, and the number of instances they missed a break, were not provided
26 compensation in lieu of such missed breaks, lost wages due alleged rounding, etc. The average
27 class award will be approximately \$1,910, while the average PAGA award will be about \$8.93.
28 [Brouillette Decl., ¶ 12.]

1 **C. Settlement Administration**

2 Subject to the Court’s approval, the Parties have agreed on Phoenix Settlement
3 Administrators (“Phoenix”) as the Settlement Administrator. Phoenix is qualified and has
4 significant experience administering class action settlements, including numerous wage and hour
5 matters. Phoenix currently estimates its fees will be no more than \$2,750.00. If the Court approves
6 less than the above amount, the difference will remain in the Net Settlement Amount for
7 distribution to the Participating Class Members. [Brouillette Decl., ¶ 13; Declaration of Jodey
8 Lawrence, ¶¶ 2-22; Exhs. A-B.]

9 **D. The Class Notice**

10 The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about
11 this case and explains the basic settlement terms in plain language. The Notice also sets forth the
12 individualized information used to calculate Class Members’ Individual Settlement Payments and
13 each Class Member’s estimated settlement award. The Notice likewise details the procedures for
14 Class Members to dispute their individual information, the procedure for submitting an objection
15 to the Settlement, and the procedure to request exclusion. In sum, the Notice provides the Class
16 Members with the information necessary to evaluate the Settlement, provides fair opportunity to
17 participate in, opt out of, or object to the proposed Settlement, and otherwise complies with
18 California Rules of Court 3.769(f) and 3.766(d). Coupled with the notice procedure, the proposed
19 Notice provides the Settlement Class with the best notice practicable. The Notice will be mailed
20 in English only as the class members are well-educated tech workers. [Brouillette Decl., ¶ 14.]

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

22 Class Members will have sixty (60) days to dispute the information in their Notice used to
23 calculate their settlement award, and also have 60 days to submit any objections to the settlement
24 or to request exclusion. In the event a Class Member disputes their individual information, the
25 Settlement Administrator will review the Class Member’s records as well as any additional
26 information submitted, and make a final determination. [Brouillette Decl., ¶ 15.]

27 **F. Release of Claims**

28 All Participating Class Members will be deemed to release the Peak Defendants and the

Released Parties from all claims alleged in the operative First Amended Complaint, or that could have been brought based on the allegations in the operative complaint, including PAGA claims, that arose during the Class Period and PAGA Period. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. As emphasized in the Settlement Agreement, no claims against Emsar are being released, although Emsar will be entitled to an offset of amounts paid under this settlement. [Brouillette Decl., ¶ 16.]

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

The settlement provides Defendants will not oppose a request for reasonable attorney's fees not to exceed one-third of the Gross Settlement Amount, or \$22,500, nor will they oppose a request for reimbursement of actual litigation costs and expenses of up to \$10,000. Defendants also will not oppose a request for an enhancement award to Plaintiff of not more than \$5,000.00 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 will provide the Court with appropriate summaries and evidence of its efforts and time records in anticipation of the Final Approval Hearing, and Plaintiff has submitted his declaration herewith. 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. [Brouillette Decl., ¶ 17.]

H. PAGA Claims and Notice to the LWDA

The Parties allocated \$500 to payment of civil penalties under PAGA for such claims against Defendant, as addressed in more detail below, and Plaintiff submits that amount 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. [Brouillette Decl., ¶ 18; Exh. 5.]

V. 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)

1 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37
2 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
3 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
4 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
5 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion and ensures
6 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs
7 via a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
8 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

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

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

28 The proposed settlement in this matter warrants preliminary approval under the liberal

1 standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and
2 represents a favorable result for the class.

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

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

10 In the present matter, conditional certification is proper since this matter satisfies all
11 requirements for class certification under Code of Civil Procedure section 382. First, the class is
12 both sufficiently numerous, consisting of approximately 14 individuals, and ascertainable by
13 reference to Defendants' personnel and payroll records. [Brouillette Decl., ¶ 19.] “There is no set
14 number required to maintain a class action, and the statutory test is whether a class is so numerous
15 that ‘it is impracticable to bring them all before the court.’” Hebbard v. Colgrove (1972) 28 Cal.
16 App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but
17 that a class of as few as 28 is acceptable); Bowles v. Superior Court (1995) 44 Cal. 2d 574
18 (upholding a class of ten members); Rose v. City of Hayward (1981) 126 Cal. App. 3d 926, 932
19 (finding that “Settlement Class Members are ‘ascertainable’ where they may be readily identified
20 without unreasonable expense or time by reference to official records.”)

21 Next, Plaintiff is an adequate class representative, as his claims do not conflict with and
22 are not antagonistic to the claims of other class members. Further, his claims are typical given his
23 is a member of the class and his claims arise from the same employment practices and course of
24 conduct giving rise to the claims of the other class members. [Brouillette Decl., ¶ 20; Declaration
25 of Darius Walker, ¶¶ 2-9.] Lastly, his counsel is experienced and adequate class counsel.
26 [Brouillette Decl., ¶¶ 30-41; Exh. 6.]

27 Next, common questions of law and fact predominate – particularly for purposes of a
28 settlement class – as the Class Members all were subject to the same meal and rest break policies,

1 the same alleged time rounding policies that shorted them on pay, etc. Since the focus of the claims
2 against Defendants concern the legality of common policies applied uniformly to the entire class,
3 common issues predominate over individualized inquiries concerning liability. Defendants'
4 alleged lack of a compliant break policy and the resulting failure to provide compliant meal breaks
5 is company-wide policy applied equally and consistently to all class members, and this policy is
6 either compliant with California law or it is not. Regardless of that determination, it will decide
7 liability for all class members one way or another. Similarly, whether Defendants' alleged rounding
8 policy shorted employees on their compensable hours worked presents another common question.
9 [Brouillette Decl., ¶ 21.]

10 By now it is well-settled that a theory of recovery asserting the existence of a uniform
11 policy violating California law is sufficient to satisfy the requirements for class certification. Jones
12 v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
13 consistently applied to a group of employees is in violation of the wage and hour laws are of the
14 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
15 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
16 or law that supports commonality for class certification”). Lastly, a class action is superior to other
17 means for the fair and efficient adjudication of this controversy. [Brouillette Decl., ¶ 22.]

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

20 The proposed settlement resulted from serious, arms-length negotiations facilitated by
21 respected mediator Jonathan Andrews, Esq., who has extensive experience mediating wage and
22 hour class actions. [Brouillette Decl., ¶ 8.] Plaintiff’s counsel Zach Crosner and Brandon
23 Brouillette have years of litigation experience, including litigating wage and hour class actions.
24 Plaintiff’s counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation
25 or settling the matter. [Brouillette Decl., ¶¶ 30-41; Exh. 6.]

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

1 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and
2 views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As
3 demonstrated below, the proposed settlement satisfies these requirements.

4 Prior to mediation, the Parties engaged in substantial informal discovery to facilitate
5 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
6 Defendants' payroll practices, pay stubs and time records for essentially all of the class members,
7 meal and rest break policies, etc., and information from Defendants regarding class size and
8 breakdown of job positions, work weeks, rates of pay, and other information used to formulate a
9 damages model. Plaintiff's counsel are confident they obtained sufficient information to enable
10 them to understand the law and facts of this case and make an informed decision regarding the
11 proposed settlement and whether it is in the best interests of the class. [Brouillette Decl., ¶¶ 7, 23.]

12 On the minimum wage issue, even though time was tracked to the minute, Plaintiff claims
13 Defendants improperly rounded employee time punches down such that the Class Members lost
14 several minutes of compensable hours worked each shift. Here, Plaintiff estimated Class Members
15 lost at least 10 minutes of compensable time on each shift due to the rounding. Camp v. Home
16 Depot USA, Inc. (2022) 84 Cal.App.5th 638 (2022). In response, Defendants argued that any
17 rounding was entirely neutral in its overall effect and accordingly allowed under California law.
18 See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal.App.4th 889. With accounting for
19 potential defenses, Plaintiff believes the maximum exposure on this claim is about **\$2,050** but,
20 after applying a 25% risk discount, estimated the potential exposure after trial at about **\$1,540**.
21 [Brouillette Decl., ¶ 24.]

22 On the meal and rest break claims, Plaintiff alleged his review of the time records produced
23 showed substantial "de facto" violations for missed and non-compliant meal periods, including
24 untimely and short meal breaks. Further, he alleged his review of the corresponding pay records
25 suggested Defendants never paid meal period premiums despite the violations being apparent on
26 the face of the time records. Plaintiff further contends he and the Class Members routinely missed
27 rest breaks due to the volume of work and need to meet deadlines. On the other hand, Defendants
28 denied Plaintiff's contentions, claiming they made meal and rest breaks available to Class

1 Members in compliance with California law. Defendants contended their meal break policies have
2 been lawful throughout the class period, and that they provided employees with all required meal
3 and rest periods. Defendants further contended the applicable meal break policies and practices
4 comport with the flexibility the California Supreme Court has held was integral to California's
5 meal period requirements. Finally, Defendants argued that Plaintiff's meal and rest break claims
6 are not susceptible to common proof, as the claims would require individualized inquiry, including
7 whether there was an unlawful companywide policy, whether employees had the opportunity to
8 take meal and rest breaks, whether they voluntarily chose to forego their meal and rest breaks, and
9 whether Defendants ever prevented them from taking meal and rest breaks. Accordingly,
10 Defendants contended these claims are vulnerable to a ruling that class treatment is not appropriate.
11 Plaintiff estimated the maximum exposure on these claims at about **\$12,320** for each claim (i.e.,
12 \$24,640 total), and estimated a risk-discounted value of about **\$12,320** after applying a 50%
13 discount to account for Defendants' arguments against certification and on the merits. [Brouillette
14 Decl., ¶ 25.]

15 As a result of the above alleged violations, Plaintiff also derivatively alleges Defendants
16 failed to provide accurate wage statements and further failed to timely pay all wages that were due
17 and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff's claim
18 for wage statement violations and waiting time penalties would also fail. Defendants contend that
19 they timely paid all final wages to terminating employees, and in any event, it would not be liable
20 for waiting time penalties whenever a "good faith dispute" exists over the payment of past wages.
21 Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant contends
22 Plaintiff would have to prove Defendants "willfully" failed to pay Class Members appropriate
23 wages due upon separation of employment. Without taking into consideration any of Defendants'
24 defenses to certification or on the merits, Plaintiff calculated Defendants' maximum exposure for
25 inaccurate wage statements at about **\$2,100**, and the exposure for waiting time penalties at about
26 **\$87,780** based on 14 former employees during the limitations period. Applying a 25% risk
27 discount yielded a risk-discounted exposure of about **\$1,575** and **\$65,835** on these claims.
28 [Brouillette Decl., ¶ 26.]

1 As far as potential PAGA liability, the theoretical penalties totaled at least \$8,400 should
2 Plaintiff prevail and establish all alleged violations and collect the maximum allowable penalty for
3 every single pay period at issue. As with the class claims, Plaintiff discounted the potential PAGA
4 penalties for the multi-layered defenses proffered by Defendants on the merits and further
5 discounted the PAGA claims since the Court possesses wide discretion to reduce such penalties
6 even if Plaintiff ultimately prevailed, should the Court find such an award to be unfair, arbitrary,
7 or excessively punitive. Labor Code § 2699(e)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011
8 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by over 82% after a bench
9 trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court
10 awarded penalties of just \$5 per pay period, a 90% reduction, which decision was upheld on
11 appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis
12 48557 (PAGA penalties denied after trial). [Brouillette Decl., ¶ 27.]

13 Accordingly, the Parties allocated \$500 to PAGA penalties, which amount is reasonable
14 and in line with comparable settlements in other class actions in California. Van Kempen v.
15 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
16 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
17 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
18 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
19 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). This
20 amount also is about 6% of the maximum value of the PAGA claims, and around 16.1% of the risk
21 discounted value, which again is comparable to many other approved PAGA settlements. Finally,
22 the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able
23 to weigh in as necessary. [Brouillette Decl., ¶ 27.]

24 The settlement obviates the significant risk that this Court may find any kind of class or
25 representative resolution unachievable or deny certification of all or some of Plaintiff's claims.
26 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued
27 litigation would be lengthy and expensive as the Parties pursued merits discovery, a probable
28 motion to decertify, as well as trial and possible appeals, and would substantially delay any

1 recovery by the class with no assurance of recovering significantly more than the proposed
2 settlement. While Plaintiff is confident in the merits of these claims, legitimate controversies exist
3 regarding each one of them and Plaintiff also recognizes proving the amount of wages and
4 penalties due each Class Member would be an expensive, time-consuming, and uncertain
5 proposition. [Brouillette Decl., ¶ 28.]

6 Plaintiff and his counsel discounted the value of the class claims consistent with the risks
7 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
8 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and
9 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
10 was in the best interests of the class. The overall \$67,500 recovery represents a significant
11 percentage of Defendants’ potential exposure – around 57.9% of the overall class exposure and
12 around 83.1% of the estimated risk-discounted exposure. Given the various procedural and merits
13 risks addressed above, a total recovery for the class of \$67,500, which will result in average award
14 of some \$1,910 per class member, plus additional amounts under PAGA, is a significant result
15 well within the range of reasonableness considering all potential outcomes, and it will provide
16 direct monetary awards to all Class Members without further delay. [Brouillette Decl., ¶ 29.]

17 Importantly, the mere fact that a settlement does not provide the same recovery as might
18 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
19 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
20 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
21 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement
22 because the public interest may indeed be served by a voluntary settlement in which each side
23 gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir. 2012) 696
24 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is different from the
25 question whether the settlement is perfect in the estimation of the reviewing court”); 7-Eleven
26 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
27 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
28 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); White

1 v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
2 contention settlement was not fair and reasonable even though it represented 99% discount off the
3 maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary
4 and will provide timely benefits to the Class Members without a claims process. White, 803
5 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket
6 Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
7 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
8 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
9 within the “range of reasonableness,” and is fair and adequate for the Class.

10 **V. CONCLUSION**

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

14
15 Dated: September 29, 2026

CROSNER LEGAL, PC

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17 By: _____



18 Brandon Brouillette
19 Attorneys for Plaintiff
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