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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN JOAQUIN**

16 MOHAMMAD MAHMOOD DAWOOD,
17 as an individual and on behalf of all others
18 similarly situated,

19 Plaintiff,

20 v.

21 TIGER LINES, LLC, a California limited
22 liability company; and DOES 1-100,
23 inclusive,

24 Defendants.

Case No.: STK-CV-UOE-2022-0012329

Assigned for All Purposes to:
Hon. Robert T. Waters
Dept. 11-B

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

[Filed Concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner,
Mohammad Mahmood Dawood, and Lisa
Mullins; [Proposed] Order]

Date: TBD
Time: 9:00 a.m.
Dept.: 11-B

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1 **I. INTRODUCTION**

2 Plaintiff Mohammad Mahmood Dawood hereby moves the Court for an order granting
3 preliminary approval to a proposed non-reversionary class action settlement to resolve wage and
4 hour claims on behalf of approximately 852 individuals who performed work for Defendant Tiger
5 Lines, LLC (“Tiger Lines” or “Defendant”) in California as non-exempt employees at any time
6 during the Class Period of December 30, 2018 to July 20, 2023. The proposed \$300,000 settlement
7 will provide about \$138,005 in cash payments to the class, with an average award of about \$162.
8 The balance of approximately \$161,995 will cover a modest enhancement award to Plaintiff,
9 reasonable attorney’s fees and actual litigation costs, settlement administration costs, and payment
10 of civil penalties to the State. The settlement is the product of Plaintiff’s pre- and post-filing
11 investigation, a pre-mediation exchange of information, and lengthy arms-length negotiations
12 overseen by experienced mediator Michael Loeb, Esq.

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

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

24 Tiger Lines provides transportation services such as moving freight of all types, providing
25 dedicated fleet services and logistics, hauling raw produce from grower to processor, transporting
26 recyclables, waste, and forest byproducts. Tiger Lines operates throughout California and several
27 other western states. Plaintiff was employed by Tiger Lines as a seasonal truck driver from July
28 2020 to November 2022. [Declaration of Nikki Trenner (“Trenner Decl.”), ¶ 4.]

1 Plaintiff alleges Tiger Lines violated California wage and hour law in several respects. First,
2 he alleges a failure to pay all minimum wages due by failing to pay Plaintiff and the Class Members
3 separately for on duty meal breaks where, due to certain company policies, Plaintiff and the class
4 members were not relieved of al duty. Plaintiff alleges Tiger Lines also failed reimburse business
5 expenses incurred by Class Members for the use of their personal cellular phones. Lastly, he alleges
6 Defendant failed to provide accurate, itemized wage statements and failed to pay all wages owed
7 upon the separation of employment.¹ [Trenner Decl.), ¶ 5.]

8 Based on these allegations, on December 30, 2022, Plaintiff filed the underlying class action
9 against Tiger Lines on behalf of himself and all other similarly situated non-exempt employees
10 alleging (1) failure to pay minimum wages; (2) failure to furnish accurate, itemized wage statements;
11 (3) failure to timely pay all wages due upon separation of employment; (4) failure to reimburse
12 business expenses; and (5) violation of the Unfair Competition Law, Bus. & Prof. Code sections
13 17200, et seq. After appropriate notice to the Labor & Workforce Development Agency
14 (“LWDA”),² Plaintiff filed a First Amended Complaint adding a cause of action under PAGA based
15 on the same alleged Labor Code violations. [Trenner Decl., ¶ 6.]

16 Tiger Lines has at all times denied Plaintiff’s allegations and maintained its meal break and
17 payroll policies and procedures comply with California law, that its timekeeping and payroll policies
18 accurately track and pay for all hours worked by its employees, and that it obtained required on duty
19 meal break waivers to the extent employees did have to work during a lunch break. It also argued
20 that it provided employees with necessary electronics to perform their duties and there would be no
21 need to use a personal phone. Defendant also strongly contends the case cannot be maintained as
22 any kind of class or representative action, arguing for example that to the extent class members
23 worked during a meal break, or used their own phone for work purposes, it was intermittent and
24

25 ¹Defendant and the class members engaged in “interstate commerce” such that federal law completely preempts
26 application of California’s meal and rest break requirements. Int’l Bhd. of Teamsters, Local 2785 v. Fed. Motor
27 Carrier Safety Admin. (9th Cir. 2021) 986 F.3d 841, 858 (California meal and rest break requirements preempted by
28 federal law for certain truck drivers); Garcia v. Superior Court (2022) 80 Cal.App.5th 63, 68 (same). For the same
reasons, as well as the nature of the vehicles they drove, they likewise were exempt from overtime requirements under
applicable federal Department of Transportation and California Highway Patrol regulations.

² Plaintiff’s January 5, 2023 PAGA notice letter and proof submission to the LWDA are attached the Trenner
Declaration as Exhibit 2.

1 infrequent and evidence of such issues would be purely anecdotal, and therefore individualized
2 issues predominate and trial on a representative basis would be unmanageable. [Trenner Decl., ¶ 7.]

3 After Plaintiff filed his complaint, Defendant sought to compel his claims to arbitration,
4 which motion was denied by the Court. The Parties then subsequently met and conferred regarding
5 discovery and other case management issues, and agreed to participate in early mediation. The
6 Parties then engaged in informal discovery to facilitate an exchange of information necessary to
7 engage in a meaningful mediation. Consequently, Plaintiff's counsel reviewed payroll records,
8 personnel policies/handbooks, personnel files, and a random of sampling paystubs and time records
9 for about 15% of the pay periods at issue. Defendant also provided documents reflecting its wage
10 and hour policies and practices, and data regarding the total number of current and former
11 employees, the estimated total amount of workweeks and pay periods they worked, and average
12 hourly pay rates, among other relevant data. Plaintiff had that information reviewed and analyzed
13 by Berger Consulting Group to assist with evaluating things such as time allegedly lost to due
14 rounding, meal period violation rates, etc., and to prepare a damages model. [Trenner Decl., ¶ 8.]

15 The Parties then engaged Michael Loeb, Esq., a highly respected mediator with extensive
16 wage and hour class action experience and, in August 2023, participated in a full day mediation with
17 Mr. Loeb. Throughout the day, the arms-length negotiations were hard-fought and adversarial as the
18 Parties exchanged extensive information on their legal and factual positions, and made numerous
19 offers and counter-offers. After a full day of negotiations, the Parties reached agreement on all
20 major issues and thereafter prepared the Settlement Agreement now before the Court for approval.
21 [Trenner Decl., ¶ 9.]

22 **III. THE PROPOSED SETTLEMENT TERMS**

23 Under the settlement, Tiger Lines will pay \$300,000.00 into a common fund, the Gross
24 Settlement Amount. Reasonable attorney's fees of up to \$100,000 (1/3 of the GSA), litigation costs
25 of up to \$25,000, an enhancement award to Plaintiff of up to \$10,000, settlement administration
26 costs of no more than \$11,995, and \$15,000 for civil penalties under PAGA (of which 75%, or
27 \$11,250, will go to the Labor & Workforce Development Agency, and 25%, or \$3,750 will go to
28 the Aggrieved Employees) all will be paid from the Gross Settlement Amount. The remainder of

1 approximately \$138,005 will be allocated among the Participating Class Members based on their
2 total weeks worked during the Class Period. No portion of the Gross Settlement Amount will revert
3 to Tiger Lines. [Trenner Decl., ¶ 10.]

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

5 The settlement provides for conditional certification of a settlement class including all
6 current and former non-exempt employees who performed work for Defendant in California at any
7 time during the Class Period of December 30, 2018 to July 20, 2023. The Settlement Class consists
8 of approximately 852 individuals.³ [Trenner Decl., ¶ 11.]

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

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

18 Each Participating Class Member will receive a share of the Net Settlement Amount based
19 on his or her total weeks worked for Tiger Lines during the Class Period while employed in a non-
20 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
21 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
22 wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These
23 methods are intended to ensure each Class Member receives a portion of the available settlement
24 funds corresponding to the relative value of his or her potential claims. The proposed allocation
25 provides a reasonable way to compensate Class Members based on the amount of time they worked
26 for Tiger Lines and the number of instances they missed a meal break and/or rest break, were not

27 ³ The "PAGA Employees" for purposes of PAGA include all current and former non-exempt employees
28 who performed work for Defendant in California at any time during the PAGA Period of May 16, 2022 to
July 20, 2023. There are approximately 400 PAGA Employees. [Trenner Decl., ¶ 11.]

1 provided compensation in lieu of such missed breaks, or lost pay due to the alleged rounding and
2 regular rate issues. The average class settlement award will be approximately \$162. [Trenner Decl.,
3 ¶ 13.]

4 **C. Settlement Administration**

5 Subject to the Court's approval, and after obtaining multiple bids, the Parties agreed on
6 ILYM Group, Inc. ("ILYM") as the Settlement Administrator. [Trenner Decl., ¶ 14.] ILYM is
7 qualified and has significant experience administering class action settlements, including numerous
8 wage and hour matters. ILYM has agreed to cap its fees and costs at \$11,995.00. If the Court
9 approves less than the above amount, the difference will remain in the Net Settlement Amount for
10 distribution to the Participating Class Members. [Declaration of Lisa Mullins, ¶¶ 2-7; Exhs. A-C.]

11 **D. The Class Notice**

12 The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about
13 this case and explains the basic settlement terms in plain language, and meets all requirements under
14 California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the individualized
15 information used to calculate Individual Settlement Payments and each Class Member's estimated
16 settlement award. The Notice likewise details the procedures for Class Members to dispute their
17 individual information, for submitting an objection to the Settlement, and to request exclusion. In
18 sum, the Notice provides the Class Members with the information necessary to evaluate the
19 Settlement and provides fair opportunity to participate in, opt out of, or object to the proposed
20 Settlement. Coupled with the notice procedure, the proposed Notice provides the Class with the best
21 notice practicable. [Trenner Decl., ¶ 15.]

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

23 Class Members will have forty-five (45) days to dispute the information in their Notice used
24 to calculate their settlement award, and also have 45 days to submit any objections to the settlement
25 or to request exclusion. In the event a Class Member disputes their individual information, the
26 Settlement Administrator will review the Class Member's records as well as any additional
27 information submitted, and make a final determination. [Trenner Decl., ¶ 16.]

28 ////

1 **F. Release of Claims**

2 All Participating Class Members will release Tiger Lines from all claims alleged in the
3 operative FAC, or that could have been brought based on the factual allegations in the FAC during
4 the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the PAGA
5 notice to the extent alleged in the FAC. The Class and PAGA releases are limited to the claims that
6 were actually pleaded or could have been pleaded based on the alleged facts in the FAC, and PAGA
7 notice for the PAGA claims. Only Plaintiff is entering into a full general release of all claims and
8 waiver of Civil Code section 1542. [Trenner Decl., ¶ 17.]

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

10 The settlement provides Defendant will not oppose a request for attorney's fees not to exceed
11 1/3 of the Gross Settlement Amount, or \$100,000, nor will it oppose a request for reimbursement of
12 litigation costs and expenses of up to \$25,000.00. Defendant also will not oppose a request for an
13 enhancement award to Plaintiff of not more than \$10,000.00 in recognition of his time spent on this
14 matter, the risks he undertook on behalf of the class, and the benefit conferred to the class, as set
15 forth in his declaration filed herewith. Plaintiff's counsel will provide the Court with appropriate
16 summaries and evidence of their efforts and time records in anticipation of the Final Approval
17 Hearing, and Plaintiff has filed his declaration herewith. If the Court approves less than the above
18 amounts, the difference will remain in the Net Settlement Amount for distribution to the
19 Participating Class Members. [Trenner Decl., ¶ 18.]

20 **H. PAGA and Notice to the LWDA**

21 As noted, the Parties allocated \$15,000 to resolution of Plaintiff's claims under PAGA. As
22 required by Labor Code section 2699(1)(2), Plaintiff gave notice of the settlement and the approval
23 hearing to the LWDA via its online portal. [Trenner Decl., ¶ 19; Exh. 3.]

24 **IV. ARGUMENT**

25 **A. Standard of Review for a Class Action Settlement**

26 The law favors settlement, particularly in class actions where substantial resources can be
27 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
28 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 via
7 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 that 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. Wershba,
15 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs. (1994)
16 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class
17 actions, courts apply a presumption of fairness to class action settlements when (1) the settlement
18 results from arms-length bargaining, (2) investigation and discovery are sufficient to allow counsel
19 and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the
20 percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

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

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

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

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

11 In the present matter, conditional certification is proper since this matter satisfies all
12 requirements for class certification under Code of Civil Procedure section 382. First, the class is
13 both sufficiently numerous, consisting of approximately 852 individuals, and ascertainable by
14 reference to Defendant’s personnel and payroll records. [Trenner Decl., ¶ 20.] Next, Plaintiff is an
15 adequate class representative, as his claims do not conflict with and are not antagonistic to the claims
16 of other class members. Further, his claims are typical given he is a member of the class and his
17 claims arise from the same employment practices and course of conduct giving rise to the claims of
18 the class members. [Declaration of Mohammad Mahmood Dawood, ¶¶ 3-7; Trenner Decl., ¶ 21.]
19 Lastly, Plaintiff’s counsel are experienced and adequate class counsel. [Trenner Decl., ¶¶ 34-40.]

20 Next, common questions of law and fact predominate – particularly for purposes of a
21 settlement class – as the Class Members all were subject to the same policy that rendered their meal
22 breaks as “on duty,” and likewise were subject to the same need to use personal phones for work
23 purposes. Since the focus of the claims against Tiger Lines concerns the legality of common policies
24 applied uniformly to the entire class, common issues predominate over individualized inquiries
25 concerning liability. For instance, Tiger Lines’s policies regarding on duty meal breaks applied
26 equally and consistently to all class members, and this policy is either compliant with California
27 law or it is not. Regardless of that determination, it will decide liability for all class members one
28 way or another. [Trenner Decl., ¶ 22.]

1 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
2 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
3 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
4 consistently applied to a group of employees is in violation of the wage and hour laws are of the
5 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court (2013)
6 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact or law
7 that supports commonality for class certification”). Lastly, a class action is superior to other means
8 for the fair and efficient adjudication of this controversy. [Trenner Decl., ¶ 23.]

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

11 The proposed settlement resulted from serious, arms-length negotiations facilitated by
12 respected mediator, Michael Loeb, Esq., who has extensive experience mediating wage and hour
13 class actions. [Trenner Decl., ¶ 9.] Plaintiff’s counsel Zachary M. Crosner, Jamie Serb, and Nikki
14 Trenner, all have years of experience litigating wage and hour class actions. Plaintiff’s counsel are
15 well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
16 [Trenner Decl., ¶¶ 34-40.]

17 Next, California law recognizes several factors bearing on the fairness, adequacy, and
18 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
19 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2)
20 the strength of plaintiff’s case; 3) the risk, expense, complexity, and likely duration of further
21 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views
22 of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated
23 below, the proposed settlement satisfies these requirements.

24 Prior to mediation, the parties engaged in both formal and informal discovery to facilitate
25 settlement discussions. As a result, Plaintiff reviewed documents and information regarding Tiger
26 Lines’s payroll practices, a representative sampling of pay stubs and time records for about 15% of
27 the class members, applicable compensation plans, meal break policies, etc., and information from
28 Defendant regarding class size and breakdown, number of work weeks/pay periods, average rates

1 of pay, and other information used to formulate a damages model. Plaintiff then had that information
2 reviewed with the assistance of a consulting expert. Plaintiff's counsel are confident they obtained
3 sufficient information to understand the law and facts of this case and make an informed decision
4 regarding the proposed settlement and whether it is fair and reasonable. [Trenner Decl., ¶¶ 8, 24.]

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

12 Using the data obtained from Defendant, Plaintiff ran various calculations and estimated
13 Tiger Lines's likely maximum exposure on the class claims at approximately **\$2,640,000** million,
14 including about \$1,128,125 on the unpaid wage/on duty meal break claim, \$148,300 on the
15 unreimbursed expense claim, \$752,000 on the wage statement claims, and \$612,500 on the waiting
16 time penalty claims. [Trenner Decl., ¶¶ 25-26.]

17 First, on their unpaid wage claims, Plaintiffs allege Tiger Lines failed to pay for all hours
18 worked because it required employees to remain on duty during their 30 minute unpaid meal break.
19 More particularly, contain policies prohibiting employees from engaging in certain behaviors
20 throughout the entirety of their shifts under threat of disciplinary action which are not abated during
21 meal periods. Namely, Tiger Lines' "Employee Conduct and Work Rules" policy prohibits
22 employees from (a) leaving work without permission; (b) sleeping or malingering; and (c) making
23 or accepting personal telephone calls, including cell phone calls, of more than three minutes in
24 duration during "working hours" – meaning employees' entire work schedule including meal
25 periods. Namely, Tiger Lines' Employee Handbooks in effect from December 2018 to January 2021
26 define when a driver is considered on-duty: "If a driver is required to stay with his or her vehicle to
27 watch the load while he or she eats, this is considered an 'on-duty' meal period and the driver should
28 be paid for this time. Likewise, if a driver is required to be 'on-call' for dispatch so that a load can

1 be picked up or dropped off to comply with shipper or other business requirements, or to stay with
2 his or her truck to protect the freight, he or she is considered ‘on-duty.’ [Trenner Decl., ¶ 27.]

3 As a result, per Plaintiff, he and the class members lost as much as 90+ minutes of
4 compensable time each week due to this off the clock and uncompensated work. Plaintiff’s experts
5 calculated this resulted in a loss of thousands of compensable hours worked. In response, Defendant
6 argued its timekeeping and payroll policies accurately tracked and paid for all employee time and.
7 It also argued that its policies prohibited any “off the clock” work and, accordingly, if any off the
8 clock work occurred it was intermittent and infrequent, against company policy, and done without
9 the employer’s knowledge or consent. For these reasons, per Tiger Lines, class certification of this
10 issue would be impossible because innumerable individual inquiries would be required to determine
11 whether any compensable “off the clock” work occurred. [Trenner Decl., ¶ 28.]

12 On the expense reimbursement claim, Plaintiff alleges that use of his personal cellular phone
13 was necessary and consequential to his employment duties for purposes of group messaging, and
14 receiving work-related calls and texts. Defendant did not reimburse employees for the cost
15 associated with the use of the personal cellular phones for Defendant’s benefit. Cochran v. Schwan’s
16 Home Serv. (2014) 228 Cal.App.4th 1137, 1144. In response, Tiger Lines argued it provided
17 employees with all tools and equipment necessary to perform their job duties and, to the extent
18 employees used their own phones, it was purely for personal convenience, was not necessary to
19 their employment, and therefore was not reimbursable. [Trenner Decl., ¶ 29.]

20 Plaintiff next alleged Tiger Lines’s wage statements violated Labor Code § 226 on their face
21 by, inter alia, failing to include the employer name and address, and the employees’ social security
22 number/employee ID number. He also alleged derivative claims under Labor Code § 226 and §§
23 201-203 (waiting time penalties). These derivative claims are based on the unpaid wage claims and
24 will rise or fall along with those primary claims, in addition to being subject to “good faith” and
25 other defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th
26 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even
27 though the class prevailed on the merits on the underlying claim for failing to pay living wages).
28 Defendant argued further that the wage statements accurately contained all required information,

1 and that acted in good faith all times with respect to payment of wages. Accordingly, Plaintiff
2 discounted these claims significantly for these multiple potential defenses. [Trenner Decl., ¶ 30.]

3 As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled
4 to penalties totaling about \$4.8 million should Plaintiff prevail on all claims, establish violations of
5 the multiple Labor Code sections at issue, and secure the maximum penalty on all issues. [Trenner
6 Decl., ¶ 31.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on
7 Defendant's various defenses on the merits and also accounted for the Court's wide discretion to
8 reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington
9 v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period
10 after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions
11 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).
12 Accordingly, the Parties allocated \$15,000 to PAGA penalties. [Trenner Decl., ¶ 34.]

13 Plaintiff submits this amount is reasonable under the circumstances and in line with
14 comparable settlements in other wage and hour class actions in California. *E.g.*, 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).
20 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
21 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
22 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
23 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
24 not objected to the settlement.

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

1 and possible appeals, and would substantially delay any recovery by the class with no assurance of
2 recovering significantly more than the proposed settlement. While Plaintiff is confident in the merits
3 of his claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes
4 proving the amount of wages and penalties due each Class Member would be an expensive and
5 uncertain proposition. [Trenner Decl., ¶ 32.]

6 Plaintiff and I discounted the value of the class claims consistent with the risks discussed
7 above, and carefully weighed the likelihood of the class receiving substantially greater benefit if
8 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 \$300,000 recovery represents a significant
11 percentage of Defendant’s potential exposure and, given the risks addressed above, a total
12 recovery for the class of \$300,000, which will result in average award of some \$162 per class
13 member, is a significant result well within the range of reasonableness considering all potential
14 outcomes, and it will provide direct monetary awards to all Class Members without further delay.
15 [Trenner Decl., ¶ 33.]

16 Importantly, the mere fact that a settlement does not provide the same recovery as might be
17 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
18 Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the settlement
19 process...even if the relief afforded by the proposed settlement is substantially narrower than it
20 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
21 public interest may indeed be served by a voluntary settlement in which each side gives ground in
22 the interest of avoiding litigation”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)
23 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of
24 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
25 inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal.
26 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
27 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.
28 (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . .

1 is different from the question whether the settlement is perfect in the estimation of the reviewing
2 court"). Importantly as well, the proposed settlement is non-reversionary and will provide
3 immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098;
4 c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed.
5 2010) at 20, available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary
6 provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his
7 counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for
8 the Class.

9 **V. CONCLUSION**

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

13
14 Dated: February 20, 2024

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