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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN BERNARDINO**
17

18 LOUIS NORIEGA and THERESA MOORE,
19 individuals, on behalf of themselves and on
behalf of all persons similarly situated,

20
21 Plaintiffs,

22 vs.

23 QVC, INC., a Corporation; and DOES 1
24 through 50, inclusive,

Case No.: **CIVSB2319032**

Assigned for all Purposes to:
Hon. Jessica Morgan
Dept. S-26

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

Date: December 13, 2024
Time: 8:30 a.m.
Dept.: S-26

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1 **I. INTRODUCTION**

2 Plaintiffs Louis Noriega and Theresa Moore (“Plaintiffs”) hereby move the Court for an
3 order granting preliminary approval to a proposed non-reversionary class action settlement to
4 resolve wage and hour claims on behalf of approximately 1,775 individuals employed by
5 Defendant QVC, Inc. (“QVC” or “Defendant”) as non-exempt employees in California during the
6 period of December 24, 2021 to August 22, 2024. The proposed non-reversionary \$1,500,000
7 settlement will result in an estimated net settlement fund of approximately \$829,000, with a
8 current estimated average settlement award of approximately \$467 per Class Member. The
9 balance of about \$671,000 will cover costs of settlement administration, modest service awards to
10 Plaintiffs, reasonable attorney’s fees and litigation costs, and PAGA Penalties to the State and the
11 Aggrieved Employees. The Settlement is the product of Plaintiffs’ pre- and post-filing
12 investigation, a pre-mediation exchange of information, and arms-length and adversarial
13 negotiations overseen by experienced and well-regarded mediator David Rotman, Esq.

14 As demonstrated below, the settlement is within the “range of reasonableness” for
15 preliminary approval. Plaintiffs’ counsel believes the settlement is a significant result for the class
16 given the substantial risks inherent in this matter. Accordingly, Plaintiffs request the Court enter
17 an order: (1) granting preliminary approval to the proposed class action settlement; (2)
18 conditionally certifying the settlement class as defined below; (3) appointing Zachary M. Crosner,
19 Jamie Serb and Sepideh Ardestani of Crosner Legal, P.C., and Norman B. Blumenthal, Kyle R.
20 Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, as
21 Class Counsel; (4) appointing plaintiffs Louis Noriega and Theresa Moore as the Class
22 Representatives; (5) appointing Simpluris, Inc. as the Administrator; (6) approving the form of
23 notice to the class and the procedure for providing such notice; and (7) scheduling a final approval
24 hearing.

25 **II. BACKGROUND**

26 Defendant QVC is a retail distribution company that sells products from home and fashion
27 to beauty, electronics and jewelry. Defendant claims to reach more than 200 million homes
28 worldwide via its 12 broadcast networks and reaches millions more via multiple streaming

1 services, websites, mobile apps and social pages. QVC maintains a warehousing and distribution
2 center in Ontario, California. Plaintiff Noriega worked for Defendant as a Fulfillment Center
3 Team Member in Ontario from September 15, 2022 to December 14, 2022. Plaintiff Moore
4 worked in the Ontario facility as a Fulfillment Center Team Member from October 2021 to May
5 2023. [Declaration of Sepideh Ardestani (“Ardestani Decl.”), ¶ 4.]

6 Plaintiffs assert multiple wage and hour claims against Defendant. First, Plaintiffs contend
7 they and the class members had to work “off the clock” because (a) they had to wait in long lines
8 to clock in/out for the shifts and their meal breaks, all while subject to employer control and (b)
9 depending on where they were working in the enormous warehouse, employees could need several
10 minutes to get to/from their work station to the break area which time was counted against their
11 meal break time. Additionally, at the end of a shift class members allegedly were not allowed to
12 clock out at the lobby of the building but instead had to clock out time clocks located deep in the
13 warehouse and then spend several minutes walking across the warehouse floor and exit the
14 building. Plaintiffs allege that, if an employee used the lobby time clocks they would written up
15 and disciplined. [Ardestani Decl., ¶ 5.]

16 Plaintiffs also contend they did not receive all required meal and rest breaks, or did not
17 receive them on a compliant basis, and never received an extra hour of premium pay in lieu of a
18 missed or non-compliant break. For the reasons addressed above, Plaintiffs allege QVC’s time
19 keeping policies caused these break violations as class members lost break time waiting in the
20 time clock line or traversing the warehouse to the break area and accordingly did not receive fully-
21 compliant meal and rest breaks. Finally, Plaintiffs allege class members had to use their personal
22 cell phones for work purposes such as communicating with each other and with supervisors.
23 [Ardestani Decl., ¶ 6.]

24 Based on these allegations, on August 9, 2023, after notice to QVC and the LWDA and
25 exhausting his administrative remedies, Plaintiff Noriega filed a PAGA-only representative
26 complaint in this Court seeking civil penalties against Defendant for several alleged violations of
27 the Labor Code and IWC Wage Orders. After likewise exhausting her administrative remedies, on
28 November 3, 2023, Plaintiff Moore also filed a PAGA-only complaint in this Court alleging

1 substantially similar Labor Code violations by Defendant. Plaintiffs asserted their PAGA claims
2 on behalf of individuals who worked for Defendant as non-exempt employees in California during
3 the relevant time frame (*i.e.*, between August 9, 2022 and present). [Ardestani Decl., ¶ 7.]

4 QVC has at all times denied Plaintiffs' collective allegations and maintained its meal break
5 and payroll policies and procedures comply with California law, that it provided the class
6 members with required meal and rest breaks, and that it paid Plaintiffs and the class members all
7 wages due and for all hours worked. Additionally, QVC strongly contends the case cannot be
8 maintained as any kind of class or representative action, arguing that to the extent class members
9 missed breaks, that such breaks were non-compliant, or that employees worked "off the clock,"
10 such conduct was against company policy, and intermittent or infrequent. QVC further contends
11 that evidence of such alleged violations would be purely anecdotal. Thus, per QVC, individual
12 issues predominate and trial would be unmanageable. [Ardestani Decl., ¶ 8.]

13 Once Plaintiffs filed their respective complaints, the Parties engaged in meet and confer
14 discussions regarding potential discovery issues, potential law and motion matters, and the merits
15 of the cases, and ultimately agreed to attempt early mediation. They then engaged in significant
16 informal discovery to facilitate an exchange of information necessary to engage in a meaningful
17 mediation. Consequently, Plaintiffs' counsel reviewed payroll records, personnel
18 policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and
19 time records produced by QVC for about 30% of the class members. Defendant also provided
20 documents and information reflecting the estimated total number of workweeks and pay periods
21 employees worked, employees' average hourly pay rates, and other relevant data. [Ardestani
22 Decl., ¶ 9.]

23 The Parties then engaged David Rotman, Esq., a respected mediator with extensive wage
24 and hour class action experience and, in May 2024, participated in a full day mediation with Mr.
25 Rotman. Throughout the day, the arms-length negotiations were hard-fought and adversarial as the
26 Parties exchanged extensive information on their legal and factual positions, and made numerous
27 offers and counter-offers. Near the end of the day, the Parties reached agreement on all major
28 issues. [Ardestani Decl., ¶ 10.]

1 In addition to settling the pending PAGA claims, with Mr. Rotman's assistance the Parties
2 also agreed to resolve Plaintiffs' claims on a class-wide basis. Following the mediation, the
3 Parties collaboratively drafted the Class Action and PAGA Settlement Agreement ("Agreement")
4 setting forth the full and final settlement terms. Finally, Plaintiffs also filed a First Amended
5 Complaint in the Noriega matter that added Ms. Moore as a party-plaintiff and further added class
6 allegations consistent with claims alleged in the two initial complaints and related PAGA notice
7 letters. [Ardestani Decl., ¶ 11.]

8 **III. PROPOSED SETTLEMENT TERMS**

9 Under the settlement, QVC will pay \$1,500,000.00 into a common fund, the Gross
10 Settlement Amount or GSA. Attorney's fees of up to one-third of the GSA (\$500,000), litigation
11 costs of up to \$33,000, service awards of \$10,000 each for the plaintiffs (*i.e.*, \$20,000 total),
12 settlement administration costs of no more than \$18,000, and \$100,000 for alleged PAGA civil
13 penalties,¹ all will be paid from the Gross Settlement Amount. The remainder of approximately
14 \$829,000 ("Net Settlement Amount") will be allocated among the Participating Class Members
15 based on their total weeks worked during the Class Period. No portion of the GSA will revert to
16 QVC. [Ardestani Decl., ¶ 12.]

17 **A. Certification of the Class**

18 The settlement provides for conditional certification of a settlement class comprised of
19 individuals employed by Defendant QVC, Inc. as non-exempt employees in California during the
20 period of December 24, 2021 to August 22, 2024. The Class consists of approximately 1,775
21 individuals. [Ardestani Decl., ¶ 13.]

22 **B. The Benefit Conferred on the Class**

23 As noted, the settlement obligates QVC to pay \$1,500,000 to resolve the Class Members'
24 claims, inclusive of attorney's fees and costs. Approximately \$829,000 from the GSA will be
25 distributed to the Participating Class Members. This is a cash settlement that does not require
26 Participating Class Members to submit a claim form to receive their settlement share.

27 _____
28 ¹ Consistent with PAGA and the Agreement, \$75,000 of this amount will go to the LWDA for the State's share of
civil penalties, and the remaining \$25,000 will be distributed to the Aggrieved Employees. The recent amendment to
PAGA does not apply to this Action which was filed before June 2024.

1 Participating Class Members will receive their settlement checks automatically via First Class
2 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
3 eighty percent will be allocated to expense reimbursement, penalties and interest. QVC will pay
4 any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject
5 to the Court's approval, any amounts not claimed (because a class member does not cash his or her
6 settlement check), plus interest, will be forwarded to the California State Controller's Unclaimed
7 Property Fund. [Ardestani Decl., ¶ 14.]

8 Each Participating Class Member will receive a share of the Net Settlement Amount based
9 on his or her total weeks worked for QVC in California during the Class Period while employed in
10 a non-exempt position. Thus, each Class Member's Individual Settlement Share will be calculated
11 using criteria typically used in determining appropriate amounts of allegedly unpaid wages, unpaid
12 premium wages for missed meal breaks, and potential statutory penalties under applicable law.
13 These methods are intended to ensure each Class Member receives a portion of the available
14 settlement funds corresponding to the relative value of his or her potential claims. The proposed
15 allocation provides a reasonable way to compensate Class Members based on the amount of time
16 they worked for QVC and the number of instances they may allege that they missed a meal break,
17 were not provided compensation in lieu of such missed breaks, or lost wages due to the alleged off
18 the clock work, etc. The average award currently is estimated to be approximately \$467.
19 [Ardestani Decl., ¶ 15.]

20 **C. Settlement Administration**

21 Subject to the Court's approval, the Parties have agreed to the appointment of Simpluris,
22 Inc. ("Simpluris") as Administrator. Simpluris is qualified and has significant experience
23 administering class action settlements, including numerous wage and hour matters. Simpluris has
24 agreed to cap its fees and costs at \$18,000.00. If the Court approves less than the above amount,
25 the difference will remain in the Net Settlement Amount for distribution to the Participating Class
26 Members. [Ardestani Decl., ¶ 16; Declaration of Eric Springer, ¶¶ 6-14, Exhs. A-C.]

27 **D. The Class Notice**

28 The proposed Class Notice (Exhibit A to the Agreement) sets out information about this

1 case and explains the basic settlement terms in plain language. The Class Notice will also set
2 forth individualized information used to calculate each Class Member's Individual Settlement
3 Share and each Class Member's estimated settlement award. The Class Notice likewise details the
4 procedures for Class Members to dispute their individual information, the procedure for
5 submitting an objection to the Settlement, and the procedure to request exclusion from the
6 Settlement. The Class Notice provides the Class Members with the information necessary to
7 evaluate the Settlement and provides a fair opportunity for Class Members to choose to participate
8 in, opt out of, or object to the proposed Settlement. Coupled with the notice procedure, the
9 proposed Class Notice provides the Class with the best notice practicable. [Ardestani Decl., ¶ 17.]

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

11 Class Members will have 60 days to dispute the information in their Notice used to
12 calculate their settlement award, or to request exclusion from the Settlement. (Agreement at ¶
13 1.42.) In the event a Class Member disputes their individual information, the Administrator will
14 review the Class Member's records as well as any additional information submitted for purposes
15 of making a final determination. [Ardestani Decl., ¶ 18.]

16 **F. Release of Claims**

17 All Participating Class Members will be deemed to release defendant QVC from all claims
18 alleged in the operative complaint, or that could have been brought based on the allegations in the
19 operative complaint, including PAGA claims, during the Class and PAGA Periods. (Agreement at
20 ¶¶ 6.2, 6.3.) The release is limited to the claims that were actually pleaded or could have been
21 pleaded based on the alleged facts in the operative complaint. [Ardestani Decl., ¶ 19.]

22 **G. Attorney's Fees and Costs, and Plaintiffs' Service Awards**

23 The settlement provides Defendant will not oppose a request for attorney's fees not to
24 exceed one-third of the GSA, or \$500,000, nor will it oppose a request for reimbursement of
25 litigation costs and expenses of up to \$33,000.00. Defendant also will not oppose a request for
26 service awards to Plaintiffs of not more than \$10,000 each in recognition of their time spent on
27 this matter, the risks they undertook on behalf of the class, and the benefit conferred to the class.
28 Plaintiffs have submitted their declarations herewith, and Plaintiffs' counsel will provide the Court

1 with appropriate summaries and evidence of their efforts and time records in anticipation of the
2 Final Approval Hearing. If the Court approves less than the above amounts, the difference will
3 remain in the Net Settlement Amount for distribution to the Participating Class Members.

4 [Ardestani Decl., ¶ 20.]

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

6 As noted, the Parties allocated \$100,000 from the GSA to resolution of Plaintiffs' claims
7 under PAGA, and submit that amount is fair, reasonable and adequate, and consistent with PAGA's
8 underlying purposes. Per Labor Code section 2699(l)(2), Plaintiffs gave notice of the settlement
9 and the approval hearing to the LWDA via its online portal. [Ardestani Decl., ¶ 21; Exh. 3.]

10 **IV. ARGUMENT**

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

12 The law favors settlement, particularly in class actions where substantial resources can be
13 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
14 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir.
15 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951)
16 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
17 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
18 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
19 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion and ensures
20 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs
21 via a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
22 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

23 The first step is a motion for preliminary approval, through which the parties present the
24 court with the proposed settlement and seek a determination if it is sufficiently fair and reasonable
25 to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of
26 Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the
27 "range of reasonableness" and if notice should be provided to the class regarding the settlement's
28 proposed terms and conditions, and whether a final fairness hearing should be scheduled.

1 Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins.
2 Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring
3 settlement of class actions, courts generally apply a presumption of fairness to class action
4 settlements when (1) the settlement results from arms-length bargaining, (2) investigation and
5 discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is
6 experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48
7 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

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

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

17 **B. The Proposed Class Should Be Conditionally Certified²**

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

24 In the present matter, conditional certification is proper since this matter satisfies all
25 requirements for class certification under Code of Civil Procedure section 382. First, the class is
26 both sufficiently numerous, consisting of approximately 1,775 individuals, and ascertainable by
27

28 ² Defendant agrees to conditional class certification for purposes of settlement only. If the Parties’ Settlement is not approved for any reason, Defendants reserve all right to oppose any effort by Plaintiffs to certify a class.

1 reference to Defendant’s personnel and payroll records. [Ardestani Decl., ¶ 22.] Next, Plaintiffs
2 are adequate class representatives, as their claims do not conflict with and are not antagonistic to
3 the claims of other class members. Further, their claims are typical given both are members of the
4 class and their claims arise from the same employment practices and course of conduct giving rise
5 to the claims of the other class members. [Ardestani Decl., ¶ 23.] Lastly, their counsel is
6 experienced and adequate class counsel. [Ardestani Decl., ¶¶ 39-44; Declaration of Kyle
7 Nordrehaug (“Nordrehaug Decl.”), ¶¶ 3-5.]

8 Next, common questions of law and fact predominate – particularly for purposes of a
9 settlement class – as the Class Members all were subject to the same break policy, or lack thereof,
10 and likewise were subject to same alleged failure to accurately record and pay for all hours
11 worked. Since the focus of the claims against QVC concerns the legality of common policies
12 applied uniformly to the entire class, common issues predominate over individualized inquiries
13 concerning liability. Whether certain company-wide QVC policies resulted in off the clock work,
14 or caused break violations, are questions that Plaintiffs allege are common to all class members.
15 Regardless of the outcome, determining these questions will decide liability for all class members
16 one way or another. [Ardestani Decl., ¶ 24.]

17 By now, it is well-settled that a theory of recovery asserting the existence of a uniform
18 policy violating California law is sufficient to satisfy the requirements for class certification. Jones
19 v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
20 consistently applied to a group of employees is in violation of the wage and hour laws are of the
21 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
22 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
23 or law that supports commonality for class certification”). Lastly, a class action is superior to
24 other means for the fair and efficient adjudication of this controversy. [Ardestani Decl., ¶ 25.]

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

27 The proposed settlement resulted from serious, arms-length negotiations facilitated by
28 respected mediator David Rotman, Esq., who has extensive experience mediating wage and hour

1 class actions. [Ardestani Decl., ¶ 10.] Plaintiffs' counsel Zachary M. Crosner, Jamie Serb, and
2 Sepideh Ardestani of Crosner Legal, P.C., and Norman B. Blumenthal, Kyle R. Nordrehaug, and
3 Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, have years of experience
4 litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks
5 and benefits of pursuing further litigation or settling the matter. [Ardestani Decl., ¶¶ 39-44;
6 Nordrehaug Decl., ¶¶ 3-5.]

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

14 Prior to settlement, the parties engaged in extensive informal discovery to facilitate
15 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding QVC's
16 payroll practices, pay stubs and time records for a sampling of class members, meal and rest break
17 policies, etc., and information from Defendant regarding class size and breakdown, work weeks,
18 rates of pay, and other information used to formulate a damages model. Plaintiffs then had that
19 information reviewed with the assistance of consulting experts at Berger Consulting Group to help
20 evaluate meal and rest break violations rates and the amount of potential off the clock work and
21 formulate a damages model. Plaintiffs are confident they obtained sufficient information to enable
22 them to understand the law and facts of this case and make an informed decision regarding the
23 proposed settlement and whether it is in the best interests of the class. [Ardestani Decl., ¶¶ 9, 26.]

24 Using that data, Plaintiffs ran various calculations and estimated QVC's likely maximum
25 exposure on the class claims at approximately \$9,439,132, which consists of \$140,578 for unpaid
26 wages due to the allege miscalculation of the regular rate, \$858,847 on the unpaid wage/off the
27 clock claims, \$15,103 on the meal break claims (after deduction of meal period premiums already
28 paid), \$86,726 on the rest break claims, and \$143,030 on the expense reimbursement claims. In

1 addition, as to derivative statutory penalties, Plaintiffs calculated the maximum value of the wage
2 statement claims to be \$4,725,650 and \$3,469,198 for the waiting time penalty claims. Plaintiffs’
3 counsel substantially discounted the value of these claims, however, in light of the multiple and
4 considerable risks posed by proceeding with the litigation. [Ardestani Decl., ¶¶ 27-28.]

5 On the unpaid wage claims, Plaintiffs argued QVC’s policies resulting in substantial “off
6 the clock” work that went uncompensated by Defendant. As noted above, Plaintiffs allege class
7 members lost several minutes of compensable time each shift by, inter alia, having to wait in long
8 lines to clock in and out, and losing time getting from their work stations to the break room and/or
9 time clocks due to the sheer size of the Ontario facility and QVC’s unique policies that allegedly
10 could result in discipline for failure to timely clock in/out. With the significant waiting time the
11 employees faced plus the controlled walking time in the warehouse, employees essentially were
12 compelled to subject themselves to well more than 6 minutes per shift congregating early and
13 under Defendant’s control in order to avoid punishment for a late clock in. [Ardestani Decl., ¶ 29.]

14 In response, Defendant took the position that its time keeping policies are legally
15 compliant, that it accurately tracked and paid for all hours worked consistent with those policies,
16 and that any work done “off the clock” was not sanctioned and done without QVC’s knowledge.
17 Per QVC, any time spent in line at the time stations or traveling through the warehouse was
18 accounted for, and Defendant compensated employees for their time walking between the entrance
19 and exit of the distribution centers and the time clocks. Per QVC, if any time went uncounted or
20 unpaid, it was both aberrational and against company policy, and a myriad of individualized
21 inquiries would be required to resolve the issue and accordingly class certification would be
22 inappropriate. [Ardestani Decl., ¶ 30.]

23 For the meal and rest break claims, Plaintiffs argued Defendant frequently provided non-
24 compliant meal breaks in several ways. Per Plaintiffs, the Class Members had to spend their break
25 time (1) traveling from the depths of Defendant’s warehouse to the lobby where their lunches were
26 located (in refrigerators provided by Defendant), (2) submitting to loss inspections off the clock
27 before leaving the premises for a lunch, and (3) having to spend break time waiting in line to clock
28 in to return to work. Thus, Plaintiff alleged nearly all meal periods were impacted by one or more

1 of these factors and thus non-compliant. [Ardestani Decl., ¶ 31.]

2 In response, Defendant argued its break policies were fully compliant with California law,
3 and that it provided all required meal periods and thereby met its obligations under the Labor
4 Code and Wage Order. Defendant provides (and, at all relevant times, has provided) employees
5 with 45-minute meal periods, significantly reducing the number of “short” meal periods (*i.e.*, meal
6 periods less than 30 minutes in length). Further, Defendant argued it provided employees with a
7 net 30 minutes for their meal breaks and accounted for any time potentially spent waiting in line to
8 clock out or walking through the warehouse. QVC also noted that to the extent employees missed
9 a meal break or took a non-compliant break, any such discrepancies were aberrational and against
10 company policy and a myriad of individual issues would be required to determine if the potential
11 violation resulted from employee choice or some other reason. Consequently, per the Defendant,
12 individualized inquiries would dominate on this issue and render class certification inappropriate.
13 Defendant also argued it paid hundreds of break premiums for facially non-compliant meal
14 periods. [Ardestani Decl., ¶ 32.]

15 As with meal breaks, Defendant argued its rest break policies complied with California law
16 and authorized and permitted employees to take all required breaks and that all breaks were at
17 least a net 10 minutes. Defendant further contended that, in light of the fact that it is not required
18 to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or
19 discouragement from taking rest periods would be purely anecdotal and individual issues would
20 predominate on liability. Defendant also contends that it is only liable if Plaintiff can prove, on a
21 shift-by-shift basis, the aggrieved employees actually did not receive a fully compliant rest break.
22 This arguably would make a trial unmanageable since the number of instances an employee
23 missed a rest break would have to be tested on a case by case basis to determine if there was
24 compliance. [Ardestani Decl., ¶ 33.]

25 Plaintiffs’ based their expense reimbursement claim on the need to use their personal
26 mobile devices for company business, for which they were not reimbursed as required by Labor
27 Code section 2802 and Cochran v. Schwan’s Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014)
28 (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code

1 section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans
2 with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
3 cell phone bills.”). On the other hand, Defendant argued there was no conceivable reason for Class
4 Members to use their own phones while on the clock and working, and thus any use of personal
5 phones was not necessary and not reimbursable. [Ardestani Decl., ¶ 34.]

6 Finally, Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged
7 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims were
8 based on the “off the clock” unpaid wage claim and the overtime regular rate claims, and will rise
9 or fall along with that primary claim, in addition to being subject to “good faith” and other
10 defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157,
11 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even
12 though the class prevailed on the merits on the underlying claim for failing to pay living wages).
13 Notably, the recent decision that good faith belief of compliance by the employer in Naranjo v.
14 Spectrum Sec. Servs., Inc., (2024) 15 Cal. 5th 1056, 1065, could completely negate the claims for
15 waiting time and wage statement penalties, even if wages were owed to the Class. Accordingly,
16 Plaintiffs discounted the derivative claims significantly in light of these multiple potential
17 defenses. [Ardestani Decl., ¶ 35.]

18 As far as potential PAGA liability, the theoretical penalties theoretically totaled \$5 million
19 if PAGA penalties were assessed in the full amount of \$100 for every pay period, and \$24 million
20 should stacking of penalties be permitted and Plaintiffs have prevailed on all claims and established
21 violations of the multiple Labor Code sections at issue for every single eligible pay period.
22 [Ardestani Decl., ¶ 36.] As with the class claims, Plaintiffs discounted the potential PAGA penalties
23 for the multi-layered defenses proffered by Defendant on the merits, and further discounted these
24 claims since the Court possesses wide discretion to reduce such penalties even if Plaintiffs ultimately
25 prevailed. Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court
26 reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp.
27 (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just \$5 per pay
28 period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour

1 Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).
2 Accordingly, the Parties allocated \$100,000 to PAGA penalties, which amount is reasonable and in
3 line with comparable settlements in other class actions in California. Van Kempen v. Matheson Tri-
4 Gas, Inc. (N.D. Cal. 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA
5 penalty from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater
6 Partners I (N.D. Cal. 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500 PAGA payment
7 reasonable when measured against the overall settlement of \$345,000 and the possible weaknesses
8 in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed
9 of the terms of the PAGA portion of the settlement and will be able to weigh in as necessary.
10 Jennings v. Open Door Mktg. Inc. (N.D. Cal. 2018) 2018 U.S. Dist. LEXIS 171356, at *27
11 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the
12 settlement agreement to the LWDA, and the LWDA has not objected to the settlement").

13 The settlement obviates the significant risk that this Court may find any kind of class or
14 representative resolution unachievable or deny certification of all or some of Plaintiffs' claims.
15 Furthermore, even if Plaintiffs certify of all or some of the claims, continued litigation would be
16 lengthy and expensive as the parties pursued merits discovery, a probable motion to decertify, as
17 well as trial and possible appeals, and would substantially delay any recovery by the class with no
18 assurance of recovering significantly more than the proposed settlement. While Plaintiffs are
19 confident in the merits of their claims, legitimate controversies exist regarding Plaintiffs' claims.
20 Plaintiffs also recognize proving the amount of wages and penalties due each Class Member
21 would be an expensive, time-consuming, and uncertain proposition. [Ardestani Decl., ¶¶ 37-38.]

22 Plaintiffs and their counsel discounted the value of the class claims consistent with the
23 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
24 greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very
25 real and substantial risks – settlement on the proposed terms and without prolonged and costly
26 litigation was in the best interests of the class. The overall \$1,500,000 recovery represents a
27 significant percentage of Defendant's potential exposure. Given the risks addressed above, a total
28 recovery for the class of \$1,500,000, which will result in average award of some \$467 per class

1 member, is a significant result well within the range of reasonableness considering all potential
2 outcomes, and it will provide direct monetary awards to all Class Members without further delay.
3 [Ardestani Decl., ¶¶ 37-38; Nordrehaug Decl., ¶ 9.]

4 Importantly, the mere fact that a settlement does not provide the same recovery as might be
5 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
6 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
7 settlement process...even if the relief afforded by the proposed settlement is substantially
8 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
9 settlement because the public interest may indeed be served by a voluntary settlement in which
10 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
11 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
12 different from the question whether the settlement is perfect in the estimation of the reviewing
13 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
14 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery
15 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
16 disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d
17 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
18 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement
19 is non-reversionary and will provide timely benefits to the Class Members without a claims
20 process. White, 803 F.Supp.2d at 1098. Plaintiffs and their counsel submit the settlement is
21 within the “range of reasonableness,” and is fair and adequate for the Class.

22 **V. CONCLUSION**

23 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant this
24 motion, conditionally certify the Class, grant preliminary approval to the proposed class action
25 settlement, and enter the [Proposed] Preliminary Approval Order filed herewith.

26 Dated: October 16, 2024

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