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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

WILLIAM WATSON, as an individual on behalf of himself and on behalf of all others similarly situated, Plaintiff, vs. NOTARIZE, INC. a Delaware corporation; and DOES 1-100, inclusive, Defendants.	Case No.: 30-2023-01310277-CU-OE-CXC Assigned for All Purposes to: Honorable Melissa R. McCormick Department CX104 MEMORANDUM OF POINTS AND AUTHORTIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT **Date: July 25, 2024** **Time: 2:00 p.m.** **Dept.: CX104** **Reservation ID:74291669**

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I. INTRODUCTION

Plaintiff William Watson hereby moves the Court for an order granting preliminary approval to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of approximately 51 individuals employed by Defendant Notarize, Inc. ("Notarize" or "Defendant") during the period of March 3, 2019 through the date of preliminary approval. The proposed $182,500 settlement will provide at least $71,667 in cash payments to the settlement class, with an average award of at least $1,405. The balance of approximately $110,833 will cover a modest enhancement award to Plaintiff, reasonable attorney's fees and actual litigation costs, settlement administration costs, and payment of civil penalties to the state. The settlement is the product of Plaintiff's pre- and post-filing investigation, a pre-mediation exchange of information, and arms-length and adversarial negotiations overseen by experienced and well-regarded mediator Steve Mehta, Esq.

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

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant is an on-demand remote electronic notary service that allows anyone to legally notarize a document online. Plaintiff Watson worked for Defendant as an "Account Executive" for about a year, from October 2021 to September 2022. Defendant classified Plaintiff's position as a full-time, exempt sales position and paid him a base salary of $70,000 per year, plus commissions on guaranteed bookings. Plaintiff's position, as well as the positions of the other class members, was remote as they all reside and work remotely in California even though and Defendant's headquarters are in Boston. [Declaration of Brandon Brouillette ("Brouillette Decl."), ¶ 4.]

On March 3, 2023, Plaintiff filed a class action complaint against Notarize alleging causes of action for: (1) recovery of unpaid minimum wages and liquidated damages; (2) recovery of unpaid overtime wages; (3) failure to provide meal periods of compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to furnish accurate itemized wage statements; (6) failure to timely pay all wages due upon separation of employment; (7) failure to reimburse business expenses; and, (8) unfair competition. On August 25, 2023, Plaintiff filed a First Amended Complaint containing the same causes of action as the original Complaint and adding an additional claim for civil penalties under the Private Attorneys General Act ("PAGA"), Labor Code sections 2698, *et seq*. [Brouillette Decl., ¶ 5.]

Plaintiff alleges Defendant failed to pay all wages due to the class members, exempt and non-exempt employees alike, primarily because it failed to pay employees for all hours worked. As to employees classified as exempt, like Plaintiff, Plaintiff claims that Defendant misclassified under one or more non-applicable exemptions. For example, Plaintiff contends their job duties and compensation scheme do not satisfy the elements of any overtime exemption available under California law, particularly the outside sales exemption and the inside/commissioned sales exemption. As a result, Plaintiff alleges Notarize failed to pay for overtime, and further failed to provide all required meal and rest breaks to its employees located in California. Plaintiff further contends Notarize did not properly reimburse class members for costs associated with working from home, such as internet and telephone, regardless of their status as an exempt or non-exempt employee. [Brouillette Decl., ¶ 6.]

Notarize has at all times denied Plaintiff's allegations and maintained its payroll policies, exemption classifications, and meal and break policies comply with California law, regardless of whether employees are classified as exempt or non-exempt, and that it paid its employees all overtime wages, provided them with compliant meal and rest breaks, and covered reasonable and necessary expenses. Additionally, Notarize strongly contends the case cannot be maintained as any kind of class or representative action, arguing for example that determining whether employees worked off the clock more than eight hours a day, or 40 hours per week, or whether employees voluntarily skipped their meal and rest breaks, would require individualized issues to resolve and thus class treatment would be inappropriate. [Brouillette Decl., ¶ 7.]

After Plaintiff filed his complaint, the Parties engaged in substantial meet and confer discussions regarding discovery, potential law and motion, and other case management issues, and ultimately agreed to attempt early mediation, and further agreed to explore settlement on a class action basis. Thereafter, the Parties engaged in additional informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. Consequently, Plaintiff's counsel reviewed payroll records, personnel policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and time records produced by Notarize for several hundred pay periods. Defendant also provided documents and information reflecting the estimated total amount of workweeks and pay periods they worked, number of class members, and average hourly pay rates, among other relevant data. [Brouillette Decl., ¶ 8.]

The Parties then engaged Steve Mehta, Esq., a highly respected mediator with extensive wage and hour class action experience and, on November 7, 2023, participated in a mediation with Mr. Mehta. The arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive information on their legal and factual positions, and made numerous offers and counter-offers. Ultimately, the Parties reached agreement on all major issues to resolve the matter, and thereafter collaboratively drafted the Settlement Agreement setting forth the full and final settlement terms. [Brouillette Decl., ¶ 9.]

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

Under the settlement, Notarize will pay $182,500.00 into a common fund, the Gross Settlement Amount ("GSA"). Reasonable attorney's fees of up to one-third of the GSA, or $60,833.33, actual litigation costs of up to $15,000, a modest enhancement award of up to $10,000 for plaintiff, settlement administration costs of no more than $5,000, and $20,000 for alleged civil penalties under PAGA,[1] all will be paid from the GSA. The remainder of approximately $71,667

[1] Consistent with PAGA, $15,000 of that amount will go the LWDA for the State's share of the civil penalties, and the remaining $5,000 will be distributed pro rata to the Aggrieved Employees.

will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to Notarize. [Brouillette Decl., ¶ 10.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all persons currently or formerly employed by Defendant, either directly or through any affiliate, staffing agency, or professional employer organization, as non-exempt, hourly paid employees working in the State of California during the Class Period of March 3, 2019 through preliminary approval. The Settlement Class consists of approximately 51 individuals.[2] [Brouillette Decl., ¶ 11.]

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Notarize to pay $182,500 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $71,667 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses, penalties and interest. Notarize will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the California State Controller's Unclaimed Property Fund. [Brouillette Decl., ¶ 12.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her position held and total weeks worked for Notarize during the Class Period while employed by Defendant as either a non-exempt or exempt employee. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid wages, unpaid premium wages for missed meal breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are

[2] The Parties' settlement contemplates a class size of up to 60 individuals by the time the settlement is approved by the Court and the exact number of class members will be determined by the time that approval of the settlement is obtained.

intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Notarize, and the number of instances they lost overtime pay due to the alleged off the clock work, or missed a break or were not provided compensation in lieu of such missed breaks. The average class settlement award will be approximately $1,405, and the awards potentially will range from about $37 for a class member with one work week to over $9,800 for an individual employed for the entire class period. There are approximately 16 Aggrieved Employees eligible to receive a share of the PAGA civil penalties, and their average PAGA award will be about $312.50. [Brouillette Decl., ¶ 13.]

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

C. <u>Settlement Administration</u>

Subject to the Court's approval, the Parties have agreed on Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Phoenix's fees will not exceed $5,000.00. If the Court approves a lesser amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Brouillette Decl., ¶ 14; Declaration of Mike Moore, ¶¶ 2-19; Exhs. A-B.]

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

The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language. The Notice also sets forth the individualized information used to calculate Class Members' Individual Settlement Payments and each Class Member's estimated settlement award. The Notice likewise details the procedures for Class Members to dispute their individual information, the procedure for submitting an objection to the Settlement, and the procedure to request exclusion. In sum, the Notice provides the Class

Members with the information necessary to evaluate the Settlement, provides fair opportunity to participate in, opt out of, or object to the proposed Settlement, and otherwise complies with California Rules of Court 3.769(f) and 3.766(d). Coupled with the notice procedure, the proposed Notice provides the Class with the best notice practicable. [Brouillette Decl., ¶ 15.]

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

Class Members will have sixty days to dispute the information in their Notice used to calculate their settlement award, and also have sixty days to submit any objections to the settlement or to request exclusion. In the event a Class Member disputes their individual information, the Settlement Administrator will review the Class Member's records as well as any additional information submitted and make a determination, which decision will be subject to Court review. [Brouillette Decl., ¶ 16.]

F. Release of Claims

All Participating Class Members will be deemed to release Notarize from all class claims alleged in the operative complaint, or that could have been brought based on the allegations in the operative complaint from March 3, 2019 through preliminary approval, and will release PAGA claims alleged in the operative complaint, or that could have been brought based on the allegations in the operative complaint from March 3, 2022 through preliminary approval. The releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. [Brouillette Decl., ¶ 17.]

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

The settlement provides Defendant will not oppose a request for reasonable attorney's fees not to exceed one-third of the Gross Settlement Amount, or $60,833.33, nor will it oppose a request for reimbursement of actual litigation costs and expenses of up to $15,000.00. Defendant also will not oppose a request for an enhancement award to Plaintiff of not more than $10,000.00 each in recognition of his time spent on this matter, the risks he undertook on behalf of the class, and the benefit conferred to the class. Plaintiff's counsel will provide the Court with appropriate summaries and evidence of 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., ¶ 18.]

H. PAGA Claims and Notice to the LWDA

The Parties allocated $20,000 to payment of civil penalties under PAGA for such claims against Notarize, as addressed in more detail below. 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 and as reflected in the accompanying proof of service. [Brouillette Decl., ¶ 19; Exh. 3.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

The first step is a motion for preliminary approval, through which the parties present the court with the proposed settlement and seek a determination if it is sufficiently fair and reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the "range of reasonableness" and if notice should be provided to the class regarding the settlement's proposed terms and conditions, and whether a final fairness hearing should be scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass'n, Inc. v. TouchTWC Ins.

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

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

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

B. The Proposed Settlement Class Should Be Conditionally Certified

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

In the present matter, conditional certification is proper since this matter satisfies all requirements for class certification under Code of Civil Procedure section 382. First, the class is both sufficiently numerous, consisting of approximately 51 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Brouillette Decl., ¶ 20.] Next, Plaintiff is an adequate class representative, as his claims do not conflict with and are not antagonistic to the claims of other class members. Further, his claims are typical given he is a member of the class and his claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [Brouillette Decl., ¶ 21; Declaration of William Watson, ¶¶ 2-9.] Lastly, his counsel is experienced and adequate class counsel. [Brouillette Decl., ¶¶ 35-46.]

Next, common questions of law and fact predominate – particularly for purposes of a settlement class. Since the focus of the claims against Notarize concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. Whether Defendant maintained a legally policy and practice to reimburse employees all necessary business expenses incurred as a result of working remotely is a driving issue common to all class members. In addition, whether Defendant failed to pay employees for all hours worked, is also dependent on company-wide practices applied equally and consistently to all class members, and Defendant either had practices that were either compliant with California law or they were not. Regardless of that determination, the lawfulness of Defendant's policies will decide liability for all class members one way or another. Similarly, whether Notarize maintained compliant meal and rest break policy is another issue common to all class members. [Brouillette Decl., ¶ 22.]

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

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator Steve Mehta, Esq., who has extensive experience mediating wage and hour class actions. [Brouillette Decl., ¶ 9.] Plaintiff's counsel Brandon Brouillette, Zach Crosner, and Jamie

Serb all have years of litigation experience, including litigating numerous wage and hour class/PAGA actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Brouillette Decl., ¶¶ 35-46.]

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

Prior to mediation, the parties engaged in extensive informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Notarize's payroll practices, pay stubs and time records for a sampling of pay periods, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiff's counsel is confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Brouillette Decl., ¶¶ 8, 24.]

Next, the proposed settlement falls within the range of reasonableness warranting preliminary approval. The proposed settlement involves a significant sum that, when distributed, will confer direct monetary benefits on the class members. As described above, each class member will be entitled to a monetary payment without having to file a claim and each payment will be relative to the value of his or her potential claims.

Plaintiff's analysis was supported by the pre-mediation production described above, which permitted Plaintiff's counsel to estimate potential damages on various theories of liability. Using that data, Plaintiff ran various calculations and estimated Notarize's likely maximum exposure on the class claims at approximately $1,094,900 including $415,450 on the unpaid wage claims, $185,100 on the meal break claims, $185,100 on the rest break claims, $49,450 on the expense reimbursement claim, $29,400 on the wage statement claims, and $230,400 on the waiting time penalty claims. [Brouillette Decl., ¶¶ 25-26.] Plaintiff and his counsel substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation.

First, on the unpaid wage claims, Plaintiff alleged Notarize failed to pay employees for all hours worked, as a result of requiring employees to work off the clock beyond their scheduled work hours and/or by failing to give employees credit for all hours worked as a result of wrongfully misclassifying class members as exempt employees. [Brouillette Decl., ¶ 27.]

If Plaintiff and all class members were not paid for all hours worked, as Plaintiff contends, they then were entitled to overtime pay for any hours worked in excess of eight hours a day or forty hours per week. Plaintiff contends he typically worked over 40 hours per week, including attending zoom meetings that began before his typical shift start time of 9 am, and further attending to administrative paperwork after his shift ended at 5 pm. Thus, per Plaintiff, he lost on average 2-3 hours of work per week that should have been paid at an overtime rate. He further claims Notarize did not maintain compliant written break policies and, as a result, he and other class members likewise frequently missed breaks, had meal periods lasting less than 30 minutes or that started late, and he never received any premium wages for those violations. [Brouillette Decl., ¶ 28.]

Defendant denies Plaintiff's contentions, claiming that it maintains a policy that precludes employees from working off the clock, and that it maintains legally compliant meal and rest break practices. Moreover, Defendant claims it properly classified Plaintiff and the class members as exempt and would prevail on that affirmative defense, and that it otherwise paid all wages due under applicable law. Notarize also argued that the exemption issue was not appropriate for class treatment as determining the amount of time each class member spent on outside sales duties would entail innumerable individualized inquiries. *E.g.*, Duran v U.S. Bank, N.A. (2014) 59 Cal.4th 1. Further, Notarize contended that Plaintiff's treatment as an exempt employee was moot, since he was provided meal and rest break pursuant to the same policies that applied to non-exempt employees, and that, in fact, Plaintiff and class members routinely took their breaks. It further argued that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant contends these claims are vulnerable to a ruling that class treatment is not appropriate. Defendant also emphasized many putative class members signed severance agreements upon separation of employment and, accordingly, would be unable to participate in the case. [Brouilette Decl., ¶ 29.]

On the expense reimbursement claim, Plaintiff alleges that throughout his employment, he and the class members were required to use their personal home offices, internet and phone for work purposes. Per Plaintiff, however, Defendant did not fully reimburse class members for these expenses. Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113. On the other hand, Defendant argued it either supplied employees with necessary technology and connectivity, or provided any reimbursement needed. [Brouillette Decl., ¶ 30.]

Plaintiff also alleged derivatively that, as a result of the above alleged violations, Defendant failed to provide accurate wage statements and failed to timely pay all wages that were due and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff's derivative claims would also fail. Defendant also contends it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of past wages. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would have to prove that Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of employment. Defendant contends that any failure to pay wages upon separation was not willful. [Brouillette Decl., ¶ 31.]

As far as potential PAGA liability, the alleged claims theoretically could result in civil penalties totaling about $500,000 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue, and recover the maximum penalties. [Brouillette Decl., ¶ 32.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Notarize's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington

v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $20,000 to PAGA penalties, and Plaintiff submits this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

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

Plaintiff and his counsel discounted the value of the class claims consistent with the risks discussed above, evaluated Defendant's exemption, waiver/release, and other affirmative defenses, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $182,500 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $182,500, which will result in average award of $1,400 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members in short order. [Brouillette Decl., ¶ 34.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary and will provide timely benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. CONCLUSION

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

Dated: May 8, 2024

CROSNER LEGAL, PC

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