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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SEAN HESTON and ANTONIO DE LEON, individually, and on behalf of other members of the general public similarly situated;

Plaintiffs,

vs.

SERVICE WEST, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 21CV002394

Assigned for All Purposes to:
Hon. Rebekah Evenson
Dept. 24

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

Date: September 18, 2025
Time: 9:00 a.m.
Dept.: 24

Reservation ID: 952918539761

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiffs Sean Heston ("Plaintiff Heston") and Antonio De Leon ("Plaintiff De Leon") (together with Plaintiff Heston, "Plaintiffs") hereby move the Court for an order granting preliminary approval to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of approximately 1,129 current and former non-exempt, California, hourly-paid employees of Service West, Inc. ("Service West" or "Defendant") who were employed at any time during the Class Period of November 10, 2017 through the date of Preliminary Approval. The proposed $1,250,000 settlement will provide about $478,000 in cash payments to the class, with an average award currently estimated at about $423. The balance of approximately $772,000 will cover reasonable attorney's fees and actual litigation costs, settlement administration costs, civil penalties to the State, and modest enhancement awards to the Plaintiffs. The settlement is the product of Plaintiffs' pre-filing investigation, extensive formal discovery and litigation, a pre-mediation exchange of information, and arms-length negotiations overseen by experienced mediators the Hon. Ronald Sabraw (Ret.) and David Phillips, Esq.

The proposed settlement is within the "range of reasonableness" for approval and Plaintiffs' counsel submit the settlement is a fair result given the substantial risks inherent in this matter. Accordingly, Plaintiffs request 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 Crosner Legal, P.C. and Lawyers *for* Justice, PC as Class Counsel; (4) appointing Plaintiffs Sean Heston and Antonio De Leon as the Class Representatives; (5) appointing Simpluris, Inc. as the Administrator; (6) approving the form of notice to the class and the notice procedure; and (7) scheduling a final fairness hearing.

II. BACKGROUND AND LITIGATION HISTORY

Service West was founded in 1981 in San Francisco, and provides commercial furniture installation, warehousing, and logistics services. Defendant currently maintains more than 400,000 square feet of warehousing space throughout the Bay Area and Southern California, and is currently headquartered in in San Leandro, California. Plaintiff Heston worked for Defendant from approximately June 2018 to approximately July 2020 as an hourly-paid Journeyman/Installer.

Plaintiff De Leon worked for Defendant as an Installer bringing and installing office furniture into office spaces. He went on disability leave on or about December 28, 2022 and was terminated in or around October 2023 while still out on disability leave. [Declaration of Jamie Serb ("Serb Decl."), ¶ 4.]

On November 10, 2021, Plaintiff Heston commenced the Action by filing a Complaint alleging causes of action against Service West for (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Premiums); (3) Violation of California Labor Code §§ 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code §§ 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code §§ 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code §§ 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq*. On November 23, 2021, Plaintiff Heston also filed the *Heston* PAGA Matter, alleging a cause of action for Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004). [Serb Decl., ¶ 5.]

On February 28, 2023, Plaintiff De Leon filed the *De Leon* Matter, alleging (1) Recovery of Unpaid Minimum Wages and Liquidated Damages; (2) Recovery of Unpaid Overtime Wages; (3) Failure to Provide Meal Periods or 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 September 11, 2023, Plaintiff De Leon filed a First Amended Complaint, adding a claim for Violation of the Private Attorneys General Act of 2004. [Serb Decl., ¶ 6.]

Defendant has at all times denied Plaintiffs' collective allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, that it paid the class member all wages due, and provided them with required meal and rest breaks. Defendant also contends there would be no need for any class member to use their own phone on company business and therefore no reimbursement is owed. Additionally, Defendant strongly contended the case cannot be maintained as a class action, arguing for example that to the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be anecdotal, and therefore individualized issues would predominate. [Serb Decl., ¶ 7.]

After Plaintiffs filed their complaints, the Parties engaged in initial written discovery and over the course of the litigation the Parties engaged in extensive motion practice. Service West first filed a motion to consolidate, which the Court granted on April 18, 2023 and consolidated the two cases with Heston as the lead case. On January 30, 2024, Service West moved to compel Plaintiff De Leon to arbitration, which motion the Court denied after full briefing and two hearings on March 26, 2024 and April 16, 2024. On February 13, 2024, Service West moved for summary adjudication in Heston, which motion was fully briefed but ultimately continued pending mediation. [Serb Decl., ¶ 8.]

After the Court consolidated the matters, the Parties agreed to attempt mediation, and also agreed on a protocol for an exchange of substantial documents and information before the mediation to facilitate the settlement discussions. Consequently, Plaintiffs' counsel reviewed payroll records, compensation plans, personnel policies/handbooks, meal and rest break policies, personnel files, and a random of sampling of Class Member paystubs and time records. Plaintiffs then had those records analyzed by Berger Consulting Group to look for, inter alia, violation rates for missed, late and/or short meal breaks, potential damages from unpaid overtime, etc. Defendant also provided data regarding the total number of putative class members, the estimated total amount of workweeks and pay periods they worked, average pay rates, and information regarding other non-hourly compensation, among other relevant data. [Serb Decl., ¶ 9.]

The Parties then engaged the Hon. Robert Sabraw (Ret.), a respected professional neutral with substantial wage and hour and class action experience and, in September 2023, the Parties participated in a full day mediation with Judge Sabraw but were unable to settle the case. As noted the Parties continued with litigation, discovery and law and motion, and ultimately agreed to a second mediation with David Phillips, Esq., another highly regarded neutral. The Parties mediated with Mr. Phillips in April 2024 and throughout the day, the arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive information on their legal and factual positions, and made numerous offers and counter-offers, but again were unable to reach an agreement. The Parties, however, continued negotiating for several months with the mediator's assistance and finally were able to reach a settlement in September 2024 after a mediator's proposal. The Parties then collaboratively drafted the Class Action and PAGA Settlement Agreement ("Settlement Agreement") setting forth the settlement terms now before the Court for approval. A true and correct, fully-executed copy of the Settlement Agreement is attached to the Serb Declaration as Exhibit 1. Finally, in order to fully effectuate the proposed settlement, Plaintiffs filed a Second Amended Complaint in Heston setting forth all allegations and claims being settled. [Serb Decl., ¶ 10.]

III. SUMMARY OF SETTLEMENT TERMS

Under the settlement, Service West will pay $1,250,000 into a common fund, the Gross Settlement Amount ("GSA"), in three equal payments over the course of 240 days after the Settlement's Effective Date. Attorney's fees of up to $435,000 (35% of the GSA), litigation costs of up to $80,000, settlement administration costs of no more than $12,000, service awards to Plaintiffs of no more than $10,000 each, and $225,000 for alleged PAGA civil penalties (apportioned 75%, or $168,750, to the LWDA, and 25%, or $56,250, to the eligible Aggrieved Employees), all will be deducted from the GSA. The balance of around $478,000 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Defendant. [Serb Decl., ¶ 11.]

A. Certification of the Class

The settlement provides for conditional certification of a settlement class including all current and former non-exempt, California, hourly-paid employees of Service West, Inc. ("Service West" or "Defendant") who were employed at any time during the Class Period of November 10, 2017 through the date of Preliminary Approval. The Class consists of about 1,129 individuals. [Serb Decl., ¶ 12.]

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

As noted, the settlement obligates Defendant to pay $1,250,000 to resolve the Class's claims, inclusive of attorney's fees and costs. At least $478,000 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses, penalties and interest, which allocation is consistent with Defendant's potential liability. Defendant 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 their settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Serb Decl., ¶ 13.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California for Defendant during the Class Period while employed in one of the specified positions. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a settlement award corresponding to the relative value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Defendant in California and the amount unpaid wages, the number of missed meal breaks and/or rest breaks, etc. The average gross award is estimated to be around $423. [Serb Decl., ¶ 14.]

C. <u>Settlement Administration</u>

Subject to the Court's approval, the Parties have agreed on Simpluris, Inc. ("Simpluris") as the Administrator. Simpluris is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Atticus's fees and costs will not exceed $12,000.00. If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Serb Decl., ¶ 15; Declaration of Denise Islas, ¶¶ 2-8; Exhs. A-C.]

D. The Class Notice

The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language. The Notice also sets forth the individualized information used to calculate Class Members' Individual Settlement Payments and each Class Member's estimated settlement award. The Notice likewise details the procedures for Class Members to dispute their individual information, the procedure for submitting an objection to the Settlement, the procedure to request exclusion, and the fact that any final judgment will bind all class members who do not op out. Cal. Rules of Court 3.769(f) and 3.766(d). In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement and decide to participate in, opt out of, or object to the proposed Settlement, and meets all requirements imposed by the California Rules of Court. Coupled with the notice procedure, the Notice provides the best notice practicable. [Serb Decl., ¶ 16.]

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 60 days to submit any objections to the settlement or to request exclusion. If a Class Member disputes their individual information, the Administrator will review the Class Member's records and any other information submitted, and make a final determination. [Serb Decl., ¶ 17.]

F. Release of Claims

All Participating Class Members will release Defendant from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint during the Class Period. Plaintiffs and the PAGA Employees likewise will release all alleged claims under PAGA alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint during the PAGA Period. [Serb Decl., ¶ 18.]

G. Plaintiffs' Enhancement Awards

A modest incentive award for each Plaintiff is appropriate under applicable law. See Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000). They devoted time and resources to the litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in preparing for mediation. The service payment provided to Plaintiffs as the class representatives is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."). Defendant will not oppose a request for an enhancement award to each Plaintiff of not more than $10,000.00 in recognition of their time spent on this matter, the risks they undertook on behalf of the class, and the benefit conferred to the class, as addressed in their respective declarations filed 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. [Serb Decl., ¶ 19.]

H. Attorney's Fees and Costs

The terms of the Parties' settlement also allow Plaintiffs' counsel to apply for an award of attorney's fees of up to 35% of the GSA, or $435,000 and reimbursement of actual costs and expenses of up to $80,000.00. At final approval Plaintiffs' counsel will submit a request for attorney's fees and actual litigation costs per the terms of the Settlement Agreement and applicable law, and will provide the Court with appropriate information and evidence regarding hourly rates, tasks performed, and time expended on the case. 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. [Serb Decl., ¶ 20.]

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I. PAGA Claims

As noted, the Parties allocated $225,000 to payment of alleged civil penalties under PAGA, which amount Plaintiffs submit is fair, reasonable, and adequate, and furthers PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiffs gave notice of the settlement and the approval hearing to the LWDA via its online portal. [Serb Decl., ¶ 21; Exh. 4.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

The first step is a motion for preliminary approval, through which the parties present the court with the proposed settlement and seek a determination that it is sufficiently fair and reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the "range of reasonableness" and if notice should be provided to the class regarding the settlement's proposed terms and conditions, and whether a final fairness hearing should be scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass'n, Inc. v. Touchstone Ins. Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class actions, courts 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 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 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 1,129 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Serb Decl., ¶ 22.] Next, Plaintiffs both are adequate class representatives, as their claims do not conflict with and are not antagonistic to the claims of other class members. [Declaration of Sean Heston; Declaration of Antonio De Leon, ¶¶ 2-9; Serb Decl., ¶ 23.] Further, their respective claims are typical as each is a member of the class and their claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [Id.] Lastly, their counsel is experienced and adequate class counsel. [Serb Decl., ¶¶ 39-43; Halwadjian Decl., ¶¶ 2-7]

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were paid via substantially similar compensation plans that underpaid them by improperly rounding employee time punches, and subject to the same policies that resulted in missed/non-compliant meal and rest periods. Since the focus of the claims against Defendant concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Defendant's time rounding practice either properly paid the class members for their hours worked or it did not. Regardless of these determinations, it will decide liability for all Class Members one way or another. [Serb Decl., ¶ 24.]

By now it is well-settled a theory of recovery asserting the existence of a uniform policy violating California law is sufficient to satisfy the requirements for class certification. Serb 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 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. [Serb Decl., ¶ 25.]

The proposed settlement resulted from serious, arms-length negotiations facilitated by two respected mediators, the Hon. Ronald Sabraw (Ret.) and David Phillips, Esq., both of whom have considerable experience mediating wage and hour class action cases. [Serb Decl., ¶¶ 9-10.] Plaintiffs' counsel at Crosner Legal, P.C. and Lawyers *for* Justice PC all have years of experience litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Serb Decl., ¶¶ 35-40; Halwadjian Decl. ¶¶ 2-7]

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

Here, the proposed settlement falls within the range of reasonableness warranting preliminary approval – it involves a significant sum that, when distributed, will confer direct monetary benefits on the class members. 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.

Prior to the mediations, the parties engaged in both formal and informal discovery to facilitate settlement discussions. Plaintiffs reviewed documents and information regarding Defendant's payroll practices, a random sampling of pay stubs and time records from class members, a class list, applicable compensation plans and expense reimbursement plans, meal and rest break policies, arbitration agreements, etc., and information from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a damages model. Plaintiffs then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. Plaintiffs' counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Serb Decl., ¶¶ 9, 26.]

Using this data, we estimated Defendant's maximum exposure at about $23.47 million, including about $2,676,000 on the unpaid wage claims, about $5,151,000 on the meal period claims, about $5,151,000 on the rest break claims, around $900,000 on the expense reimbursement claims, approximately $2,536,000 on the wage statement claim, and about $7,059,000 on the waiting time penalties. [Serb Decl., ¶¶ 27-28.] Plaintiffs significantly discounted these figures for settlement purposes, however, after evaluating Defendant's counterarguments and defenses (of which there are many) on both class certification and the merits.

First, on the unpaid wage claims, Plaintiffs first contend Defendant paid employees for 40 hours of work each week regardless of how many hours were reflected on employee time records, which typically were recorded by supervisors rather than individual employees. Per Plaintiffs, they and other class members oftentimes worked both before and after their scheduled shift times, or during meal periods, but did not receive appropriate compensation for those hours worked and instead were paid per their scheduled hours. As a result of the rounding and off the clock work, Plaintiffs contend class members lost substantial compensation. [Serb Decl., ¶ 29.]

On the other hand, Defendant argued its timekeeping and payroll policies captured and paid for all time accurately and at the correct rates. Per Service West, any rounding was entirely neutral in its overall effect and therefore proper under See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal. App. 4th 889. Defendant also argued its policies strictly prohibited off the clock work and, to the extent any such work occurred, it was aberrational and done without management's authorization or knowledge. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Thus, per Defendant, the Class Members received full compensation for all hours worked. [Serb Decl., ¶ 30.]

On the meal break claims, Plaintiffs focused primarily on Defendant's alleged failure to maintain a California-compliant break policy and to provide Plaintiffs and the class members employees with all required meal periods. Per Plaintiffs, class members regularly suffered short, late or missed meal and rest periods due to severe understaffing, strict deadlines, and heavy workloads. For instance, Plaintiffs' preliminary examination of Defendant's time sampling suggested over 36% of eligible shifts reflect at least one type of recorded meal period violation, including first meal periods *less than* thirty minutes in length or taken late *after* the fifth hour of work, an over 90% of shifts eligible for a second meal periods have no recorded second meal period. As the California Supreme Court held, a presumption of a legal violation applies where records reflect a missed on non-compliant meal period violations. Donohue v. AMN Services, LLC, (2021) 11 Cal.5th 58. [Serb Decl., ¶ 31.]

Defendant countered that in many instances employees actually took their meal breaks as reflected in the time sheets and, otherwise individual inquiries would be necessary to determine the reason for any purportedly non-compliant breaks, such as whether a break was missed voluntarily, etc. For the same reasons, Defendant contended the claim would fail on the merits because it would be difficult for Plaintiffs to show Defendant's actual or constructive knowledge that a particular class member worked through a specific lunch period. [Serb Decl., ¶ 32.]

With respect to rest periods, Plaintiffs allege Defendant failed to relinquish all control over Plaintiffs and other putative class members. For example, investigations reveal that Plaintiffs and other putative class members were ***not*** afforded the opportunity to take compliant rest periods each day due to heavy workloads and time sensitive work tasks. Even if employees were able to take rest periods, Defendant's policies fail to provide sufficient guidelines for rest periods, and do not inform employees that rest periods can be taken offsite. In response, Defendant contended it maintained a fully-compliant break policy at all times, and it always provided the class members with the opportunity to take rest breaks and thus met the requirements imposed by California law. Per Defendant, if individuals did not take a rest period, it was in violation of company policy and, once again, a multitude of individual inquiries would be necessary to determine if an individual may have missed a break by personal choice or for some other reason. [Serb Decl., ¶¶ 33.]

The claims for unreimbursed business expenses under Labor Code § 2802 revolved around Plaintiffs' allegations that Defendant required its non-exempt employees to use their personal cell phones for business purposes such as communicating with supervisors. Cochran v. Schwan's Home Services, Inc. (2014) 228 Cal. App. 4th 1137, 1144 (2014) ("[T]o be in compliance with section 2802, the employer must pay some reasonable percentage of the employee's cell phone bill."). Plaintiffs further allege Defendant failed to properly compensate non-exempt employees for the costs of operating personal vehicles for business-related purposes, and allege employees were frequently required to drive their personal vehicles between work sites throughout the workday. Gattuso v. Harte-Hanks Shoppers, Inc. (2007) 42 Cal.4th 554. In response, Defendant argued there was no need for employees to use personal phones for legitimate work purposes, and that any such use would have been purely for personal convenience. Thus, per Defendant, use of personal phones wasn't necessary and therefore not reimbursable. Defendant likewise argued employees rarely if ever used personal vehicles for any purpose while clock in, and again no reimbursement was required. [Serb Decl., ¶ 34.]

Plaintiffs' claims for penalties under Labor Code §§ 203 and 226 are derivative of the underlying unpaid minimum and overtime wage and meal/rest break claims and, accordingly, they would essentially rise or fall with Plaintiffs' success or failure on her primary claims. Further, Plaintiffs had to account for the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. For instance, as to Section 203 waiting time penalties, Defendant raised a good faith defense to the waiting time penalties as it applies to both meal/rest periods and underpaid overtime premiums. Amaral v. Cintas Corp. No. 2,163 Cal.App.4th 1157, 1203-4 (2008) (employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits for failing to pay living wages). [Serb Decl., ¶ 35.]

As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled to penalties totaling about $21.7 million should Plaintiffs prevail on all claims, establish violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all issues and all pay periods. [Trenner Decl., ¶ 36.] As with the class claims, Plaintiffs discounted the potential PAGA penalties based on Defendant'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 $225,000 to PAGA penalties.

Plaintiffs submit 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.

Thus, Defendant raised various defenses to Plaintiffs' claims on both class certification and the merits that, if successful, could have negatively impacted Plaintiffs' claims or potentially reduced potential damages. Accordingly, Plaintiffs faced significant risks going forward with this litigation, and given the need to secure and maintain class certification, prevail at trial, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiffs and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiffs 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 $1,250,000 recovery represents a significant percentage of Defendant's potential exposure and, given the multiple litigation risks addressed above, a total recovery for the class of $1,250,000, with an average award of over $420 per class member, is a fair result within the range of reasonableness considering all potential outcomes. [Serb Decl., ¶¶ 37-38.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed settlement is non-reversionary and will provide benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and their 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, Plaintiffs respectfully request that the Court grant this motion, conditionally certify the settlement class, grant preliminary approval to the proposed class action and PAGA settlement, and enter the [Proposed] Order filed herewith.

Dated: July 30, 2025

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