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**SUPERIOR COURT OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF CONTRA COSTA**

STANLEY GLENN, as an individual and  
on behalf of all others similarly situated,

Plaintiff,  
vs.

THE MCCOY GROUP, LLC., a  
California limited liability company;  
MCCOY GROUP, INC., a Wisconsin  
corporation; FOODLINER, INC., a  
Wisconsin corporation; and DOES 1-  
100, inclusive,

Defendants.

CASE NO.: C23-00863

Assigned for All Purposes to:  
Hon. Charles S. Treat  
Dept 12

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

**[Filed concurrently with Notice of Motion and  
Motion; Declarations of Nikki Trenner,  
Stanley Glenn, and Jodey Lawrence;  
[Proposed] Order]**

**DATE: TBD  
TIME: 8:30 a.m.  
DEPT.: 12**

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1     **I.     INTRODUCTION**

2             Plaintiff Stanley Glenn hereby moves the Court for an order granting preliminary approval  
3     to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf  
4     of about 138 individuals who are current and former non-exempt employees of The McCoy  
5     Group, LLC, McCoy Group, Inc., and Foodliner, Inc. (together “McCoy” or “Defendant”) and  
6     worked either directly or via a staffing agency for any one or more at any location in California at  
7     any time during the Class Period of August 16, 2020 to March 22, 2024. The proposed \$195,000  
8     settlement will provide about \$82,500 in cash payments to the class, with an average award  
9     currently estimated at about \$598. The balance of approximately \$112,500 will cover reasonable  
10    attorney’s fees and actual litigation costs, settlement administration costs, a modest enhancement  
11    award to Plaintiff, and civil penalties to the State. The settlement is the product of Plaintiff’s pre-  
12    filing investigation, formal discovery and a pre-mediation exchange of information, and arms-  
13    length negotiations overseen by experienced mediator Steve Mehta, Esq.

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

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

24            McCoy is a family-owned and operated company that provides transportation services,  
25    including shipping, truck sales, leasing, and rentals. Defendant Foodliner, Inc. is part of The  
26    McCoy Group and operates as the largest food grade bulk carrier in the United States. Plaintiff  
27    Glenn was employed by McCoy as a truck driver from July 2020 to May 2022. Plaintiff worked  
28    primarily out of Defendant’s location in Rialto, California. [Declaration of Nikki Trenner

1 (“Trenner Decl.”), ¶ 3.]

2 Plaintiff alleges several wage and hour violations by Defendant. First, he claims  
3 Defendant required Plaintiff and the Class Members to work off the clock as they were forced to  
4 clock out of Defendant’s timekeeping system while waiting, loading, and offloading cargo to  
5 prevent running out of their daily hours of service under federal DoT regulations. Plaintiff further  
6 alleges Defendant failed to pay for what amounted to “on duty” meal periods. For example,  
7 Plaintiff claims McCoy’s “vessel security” policies mandate that drivers watch over their  
8 equipment at all times during their shifts, and that other policies requiring that employees stay on  
9 schedule and make all deliveries on time likewise caused meal periods to be “on duty.” Plaintiff  
10 also alleged he and the Class Members had to use their personal cell phones for work related  
11 purposes, including communicating with supervisors before and after their shifts and  
12 downloading the company application to their personal phones to conduct daily work activities,  
13 all without any reimbursement. [Trenner Decl., ¶ 4.]

14 Based on these allegations, on April 13, 2023, Plaintiff filed the underlying class action  
15 against McCoy on behalf of himself and all other similarly situated non-exempt employees  
16 alleging (1) failure to pay minimum wages and liquidated damages; (2) failure to furnish itemized  
17 wage statements; (3) failure to timely pay all wages due upon separation of employment; (4)  
18 failure to reimburse business expenses; and (5) violations of the Unfair Competition Law. On  
19 October 3, 2023, after exhausting administrative remedies, Plaintiff filed a First Amended  
20 Complaint adding a cause of action under PAGA. The FAC is the operative complaint for  
21 purposes of settlement. [Trenner Decl., ¶ 5; Exh. 2.]

22 McCoy has at all times denied Plaintiff’s allegations and maintained its payroll and  
23 timekeeping policies and procedures comply with California law and that it paid the class  
24 members for all wages due. Defendant also contends there would be no need for any class  
25 member to use their own phone on company business and therefore no reimbursement is owed.  
26 Additionally, McCoy strongly contends the case cannot be maintained as a class action, arguing  
27 for example that to the extent class members worked off the clock, it was intermittent and  
28 infrequent and evidence of such off the clock work would be anecdotal, and therefore

1 individualized issues would predominate. [Trenner Decl., ¶ 6.]

2 After Plaintiff filed his complaint, the Parties engaged in initial written discovery and,  
3 after meeting and conferring regarding discovery, law and motion, and other case management  
4 issues, agreed to attempt mediation. The Parties also agreed on a protocol for an exchange of  
5 substantial documents and information before the mediation to facilitate the settlement  
6 discussions. Consequently, Plaintiff's counsel reviewed payroll records, compensation plans,  
7 personnel policies/handbooks, personnel files, and a random of sampling of Class Member  
8 paystubs and time records. Plaintiff then had those records analyzed by Berger Consulting Group  
9 to look for, inter alia, violation rates for potential damages from off the clock work, etc.  
10 Defendant also provided data regarding the total number of putative class members, the estimated  
11 total amount of workweeks and pay periods they worked, average pay rates, and information  
12 regarding other non-hourly compensation, among other relevant data. [Trenner Decl., ¶ 7.]

13 The Parties then engaged Steve Mehta, Esq., a respected professional neutral with  
14 substantial wage and hour and class action experience and, in February 2024, the Parties  
15 participated in a full day mediation with Mr. Mehta. Throughout the day, the arms-length  
16 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on  
17 their legal and factual positions, and made numerous offers and counter-offers. With the  
18 mediator's assistance, the Parties finally reached agreement on all major issues. The Parties then  
19 collaboratively drafted the Class Action and PAGA Settlement Agreement ("Settlement  
20 Agreement") setting forth the settlement terms now before the Court for approval. A true and  
21 correct copy of the Settlement Agreement is attached to the Trenner Declaration as Exhibit 1.  
22 [Trenner Decl., ¶ 9.]

### 23 **III. THE PROPOSED SETTLEMENT TERMS**

24 Under the settlement, McCoy will pay \$195,000 into a common fund, the Gross Settlement  
25 Amount ("GSA"). Attorney's fees of up to \$65,000 (1/3 of the GSA), litigation costs of up to  
26 \$20,000, settlement administration costs of no more than \$7,500, a service award to Plaintiff of no  
27  
28

1 more than \$10,000, and PAGA civil penalties of \$10,000,<sup>1</sup> all will be paid from the GSA. The  
2 balance of around \$82,500 will be allocated pro rata to the Class based on their weeks worked  
3 during the Class Period. No portion of the GSA will revert to McCoy. [Trenner Decl., ¶ 10.]

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

5 The settlement provides for conditional certification of a settlement class including all  
6 current and former non-exempt employees who worked either directly or via a staffing agency for  
7 any one or more of the Defendants at any location in California at any time during the Class Period  
8 of August 16, 2020 to March 22, 2024. The Settlement Class consists of about 138 individuals.  
9 [Trenner Decl., ¶ 11.]

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

11 As noted, the settlement obligates McCoy to pay \$195,000 to resolve the Settlement  
12 Class's claims, inclusive of attorney's fees and costs. At least \$82,500 from the GSA will be  
13 distributed to the Participating Class Members. This is a cash settlement that does not require  
14 Participating Class Members to submit a claim form to receive their settlement share.  
15 Participating Class Members will receive their settlement checks automatically via First Class  
16 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining  
17 eighty percent will be allocated to expenses, penalties and interest, which allocation is consistent  
18 with McCoy's potential liability. McCoy will pay any and all applicable employer-side payroll  
19 taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not  
20 claimed (because a class member does not cash their settlement check) will be forwarded to the  
21 State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 12.]

22 Each Participating Class Member will receive a share of the Net Settlement Amount based  
23 on his or her total weeks worked in California as a McCoy employee during the Class Period.  
24 Thus, each Class Member's Individual Settlement Payment will be calculated using criteria  
25 typically used in determining appropriate amounts of unpaid wages, unreimbursed expenses, and  
26 potential statutory penalties under applicable law. These methods are intended to ensure each  
27

28 <sup>1</sup> Consistent with PAGA, 75% of that amount or \$7,500, will go the LWDA for the State's share of the civil  
penalties, while the remaining 25% or \$2,500, will be distributed pro rata to the Aggrieved Employees.

1 Class Member receives a settlement award corresponding to the relative value of their potential  
2 claims. The proposed allocation provides a reasonable way to compensate Class Members based  
3 on the amount of time they worked for McCoy in California and the amount unpaid off the clock  
4 work, unreimbursed expenses, etc. The average gross award is estimated to be around \$598.  
5 [Trenner Decl., ¶ 13.]

6 **C. Settlement Administration**

7 Subject to the Court's approval, the Parties have agreed on Phoenix Settlement  
8 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has  
9 significant experience administering class action settlements, including numerous wage and hour  
10 matters. Phoenix's fees and costs will not exceed \$7,500.00. If the Court approves less than the  
11 above amount, the difference will remain in the Net Settlement Amount for distribution to the  
12 Participating Class Members. [Trenner Decl., ¶ 14; Declaration of Jodey Lawrence, ¶¶ 2-17;  
13 Exhs. A-C.]

14 **D. The Class Notice**

15 The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement)  
16 sets out information about this case and explains the basic settlement terms in plain language.  
17 The Notice also sets forth the individualized information used to calculate Class Members'  
18 Individual Settlement Payments and each Class Member's estimated settlement award. The  
19 Notice likewise details the procedures for Class Members to dispute their individual information,  
20 the procedure for submitting an objection to the Settlement, the procedure to request exclusion,  
21 and the fact that any final judgment will bind all class members who do not opt out. Cal. Rules of  
22 Court 3.769(f) and 3.766(d). In sum, the Notice provides the Class Members with the  
23 information necessary to evaluate the Settlement and decide to participate in, opt out of, or object  
24 to the proposed Settlement, and meets all requirements imposed by the California Rules of Court.  
25 Coupled with the notice procedure, the Notice provides the best notice practicable. [Trenner  
26 Decl., ¶ 15.]

27 ///

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

2           Class Members will have forty-five (45) days to dispute the information in their Notice  
3           used to calculate their settlement award, and also have 45 days to submit any objections to the  
4           settlement or to request exclusion. If a Class Member disputes their individual information, the  
5           Settlement Administrator will review the Class Member's records and any other information  
6           submitted, and make a final determination. [Trenner Decl., ¶ 16.]

7           **F.     Release of Claims**

8           All Participating Class Members will release McCoy from all claims alleged in the  
9           operative complaint, or that could have been brought based on the factual allegations in the  
10          complaint during the Class Period. The release is limited to the claims that were actually pleaded  
11          or could have been pleaded based on the alleged facts in the complaint. [Trenner Decl., ¶ 17.]

12          **G.     Plaintiff's Enhancement Award**

13          A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v.  
14          Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service  
15          and incentive payments ranging from \$2,000 to \$25,000). He devoted time and resources to the  
16          litigation, provided documents, assisted Class Counsel with investigating the claims asserted and  
17          in preparing for mediation. The service payment provided to Plaintiff as the class representative is  
18          typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d  
19          948, 958-59 (incentive awards are "intended to compensate class representatives for work done on  
20          behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,  
21          and, sometimes, to recognize their willingness to act as a private attorney general."). Defendant  
22          will not oppose a request for an enhancement award to Plaintiff of not more than \$10,000.00 in  
23          recognition of his time spent on this matter, the risks he undertook on behalf of the class, the benefit  
24          conferred to the class, and for providing a full general release of claims, all as addressed in his  
25          declaration filed herewith. If the Court approves less than the above amount, the difference will  
26          remain in the Net Settlement Amount for distribution to the Participating Class Members. [Trenner  
27          Decl., ¶ 18.]

28          ////

1           **H.     Attorney's Fees and Costs**

2           The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of  
3 attorney's fees of up to one-third of the GSA, or \$65,000 and reimbursement of actual costs and  
4 expenses of up to \$20,000.00. At final approval Plaintiff's counsel will submit a request for  
5 attorney's fees and actual litigation costs per the terms of the Settlement Agreement and  
6 applicable law, and will provide the Court with appropriate information and evidence regarding  
7 hourly rates, tasks performed, and time expended on the case. If the Court approves less than the  
8 above amounts, the difference will remain in the Net Settlement Amount for distribution to the  
9 Participating Class Members. [Trenner Decl., ¶ 19.]

10           **I.     PAGA Penalties and Notice to the LWDA**

11           The Parties allocated \$10,000 to resolution of Plaintiff's claims under PAGA and, as  
12 addressed in more detail below, Plaintiff submits that amount is fair, reasonable and adequate, and  
13 consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2),  
14 Plaintiff gave notice to the LWDA of the proposed settlement and the preliminary approval hearing.  
15 [Trenner Decl., ¶ 18.; Exh. 3.]

16           **IV.    ARGUMENT**

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

18           The law favors settlement, particularly in class actions where substantial resources can be  
19 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4  
20 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir.  
21 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co.  
22 (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not  
23 unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court.  
24 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co.  
25 (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and  
26 ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review  
27 occurs via a two-step process to determine, under all the circumstances, if the proposed settlement  
28 is fair, reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

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

14 If the court grants preliminary approval, it then orders the class be given notice in an  
15 appropriate manner, establishes a schedule and procedures for class members to request exclusion  
16 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s  
17 fees and costs is filed subsequent to preliminary approval and heard with the motion for final  
18 approval, as part of the second step of the two-step approval process. Dunk, 48 Cal.App.4th at  
19 1800; Wershba, 91 Cal.App.4th at 232. The proposed settlement in this matter warrants  
20 preliminary approval under the liberal standard discussed above, as it is fair, reasonable and  
21 adequate under all the circumstances, and represents a favorable result for the class.

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

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

1 In the present matter, conditional certification is proper since this matter satisfies all  
2 requirements for class certification under Code of Civil Procedure section 382. First, the class is  
3 both sufficiently numerous, consisting of approximately 138 individuals, and ascertainable by  
4 reference to Defendant's personnel and payroll records. [Trenner Decl., ¶ 20.] Next, Plaintiff is  
5 an adequate class representative, as his claims do not conflict with and are not antagonistic to the  
6 claims of other class members. [Declaration of Stanley Glenn, ¶¶ 2-10; Trenner Decl., ¶ 21.]  
7 Further, his claims are typical as he is a member of the class and his claims arise from the same  
8 employment practices and course of conduct giving rise to the claims of the other class members.  
9 [Id.] Lastly, his counsel is experienced and adequate class counsel. [Trenner Decl., ¶¶ 35-40.]

10 Next, common questions of law and fact predominate – particularly for purposes of a  
11 settlement class – as the Class Members all subject to the same policies that allegedly resulted in  
12 off the clock work and unreimbursed expenses. Since the focus of the claims against McCoy  
13 concerns the legality of common policies applied uniformly to the entire class, common issues  
14 predominate over individualized inquiries concerning liability. For instance, McCoy's  
15 compensation plans either properly compensate employees for waiting time, loading time, etc., or  
16 they do not. Regardless of these determinations, it will decide liability for all Class Members one  
17 way or another. [Trenner Decl., ¶ 22.]

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

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1  
2 C. **The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness**

3  
4 The proposed settlement resulted from serious, arms-length negotiations facilitated by  
5 respected mediator, Steve Mehta, Esq., who has considerable experience mediating wage and hour  
6 class action cases. [Trenner Decl., ¶¶ 8-9.] Plaintiff's counsel Zachary M. Crosner, Jamie K. Serb,  
7 and Nikki Trenner of Crosner Legal, P.C. have years of experience litigating wage and hour class  
8 actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further  
9 litigation or settling the matter. [Trenner Decl., ¶¶ 35-40.]

10 Next, California law recognizes several factors bearing on the fairness, adequacy, and  
11 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168  
12 Cal.App.4th 116, 128. These factors include: 1) the amount offered in settlement 2) the strength of  
13 plaintiff's case; 3) the risk, expense, complexity, and likely duration of further litigation; 4) the risk  
14 of maintaining class action status throughout trial; and 5) the experience and views of counsel. Id.  
15 Here, the proposed settlement falls within the range of reasonableness warranting preliminary  
16 approval – it involves a significant sum that, when distributed, will confer direct monetary benefits  
17 on the class members. Each class member will be entitled to a monetary payment without having  
18 to file a claim and each payment will be relative to the value of his or her potential claims.

19 Prior to the mediation, the parties engaged in both formal and informal discovery to  
20 facilitate settlement discussions. Plaintiff reviewed documents and information regarding McCoy's  
21 payroll practices, a random sampling of pay stubs and time records from class members, a class  
22 list, applicable compensation plans and expense reimbursement plans, etc., and information from  
23 Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other  
24 information used to formulate a damages model. Plaintiff then had that information analyzed by a  
25 consulting expert to assist in determining potential violation rates and other data used to formulate  
26 a damages model. Plaintiff's counsel are confident they obtained sufficient information to  
27 understand the law and facts of this case and make an informed decision regarding the proposed  
28 settlement and whether it is fair and reasonable. [Trenner Decl., ¶¶ 7, 24.]

1 Using that information, Plaintiff estimated McCoy's potential exposure on the class claims  
2 at approximately **\$2.336** million, including about \$1,337,000 on the unpaid wage/off the clock  
3 claim, \$48,700 on the unreimbursed expense claim, \$448,000 on the wage statement claims, and  
4 \$502,875 on the waiting time penalty claims. Plaintiff substantially discounted these numbers,  
5 however, in light of Defendant's many defenses to both class certification and the merits. [Trenner  
6 Decl., ¶¶ 7, 24.]

7 First, on the unpaid wage claims, Plaintiff first contends McCoy off the clock as they were  
8 forced to clock out of Defendant's timekeeping system while waiting, loading, and offloading cargo  
9 to prevent running out of their daily hours of service under federal DoT regulations. Plaintiff further  
10 alleges Defendant failed to pay for what amounted to "on duty" meal periods. For example, Plaintiff  
11 claims McCoy's "vessel security" policies mandate that drivers watch over their equipment at all  
12 times during their shifts, and that other policies requiring that employees stay on schedule and make  
13 all deliveries on time likewise caused meal periods to be "on duty." On the other hand, McCoy  
14 argued its policies strictly prohibited any off the clock work, and that is policies allowed employees  
15 sufficient time to complete all duties within the allocated hours of service, and to take a full, off  
16 duty lunch break. Thus, per McCoy, any alleged off the clock work would have been against  
17 company policy, done without the company's knowledge or approval, and therefore not  
18 compensable. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer  
19 must have actual or constructive knowledge of the off the clock work). Defendant further argued  
20 the issue is not certifiable since it would require innumerable individualized inquiries to determine  
21 the reasons for any alleged off the clock work and if it was compensable. [Trenner Decl., ¶ 25.]

22 The claims for unreimbursed business expenses under Labor Code § 2802 revolved around  
23 Plaintiff's allegations that McCoy required its non-exempt employees to use their personal cell  
24 phones for business purposes including, but not limited to communicating with supervisors while  
25 on duty, and downloading a company app used to conduct their duties. Cochran v. Schwan's Home  
26 Services, Inc. (2014) 228 Cal. App. 4th 1137, 1144 (2014) ("[T]o be in compliance with section  
27 2802, the employer must pay some reasonable percentage of the employee's cell phone bill."). In  
28 response, Defendant argued there was no need for use of personal phones for work purposes, and

1 that any such use would have been purely for personal convenience. Thus, per McCoy, use of  
2 personal phones wasn't necessary and therefore not reimbursable. [Trenner Decl., ¶ 30.]

3 Plaintiff's claims for penalties under Labor Code §§ 203 and 226 are derivative of the  
4 underlying unpaid minimum and overtime wage claims and, accordingly, they would essentially  
5 rise or fall with Plaintiff's success or failure on his primary claims. Further, Plaintiff had to account  
6 for the discretionary nature of such awards and the "good faith" and other defenses available to  
7 Defendant. Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1203-4 (2008) (employer did not  
8 willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits  
9 for failing to pay living wages). [Trenner Decl., ¶ 31.]

10 On the PAGA claims, the alleged aggrieved employees theoretically are entitled to penalties  
11 totaling about \$1.8 million should Plaintiff prevail on all claims, establish violations of the multiple  
12 Labor Code sections at issue, and secure the maximum penalty for eligible pay periods. [Trenner  
13 Decl., ¶ 33.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on  
14 Defendant's various defenses on the merits and also accounted for the Court's wide discretion to  
15 reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington  
16 v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period  
17 after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions  
18 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).  
19 Accordingly, the Parties allocated \$10,000 to PAGA penalties.

20 Plaintiff submits this amount is reasonable under the circumstances and in line with  
21 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.  
22 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final  
23 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);  
24 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303  
25 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of  
26 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).  
27 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,  
28 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,

1 2018) 2018 U.S. Dist. LEXIS 171356, at \*27 (approving settlement with PAGA penalties of 0.6%  
2 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has  
3 not objected to the settlement.

4 Overall, Defendant raised various defenses to Plaintiff's claims on both class certification  
5 and the merits that, if successful, could have negatively impacted Plaintiff's claims or potentially  
6 reduced potential damages. Accordingly, Plaintiff faced significant risks going forward with this  
7 litigation, and given the need to secure and maintain class certification, prevail at trial, and deal  
8 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff  
9 and counsel discounted the value of the class claims consistent with the risks discussed above,  
10 and carefully weighed the likelihood of the class receiving substantially greater benefit if the  
11 litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial  
12 risks – settlement on the proposed terms and without prolonged and costly litigation was in the  
13 best interests of the class. The overall \$195,000 recovery represents a significant percentage of  
14 Defendant's potential exposure and, given the multiple litigation risks addressed above, a total  
15 recovery for the class of \$195,000, with an average award of some \$598 per class member, is a  
16 fair result within the range of reasonableness considering all potential outcomes. [Trenner Decl.,  
17 ¶¶ 32-34.]

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

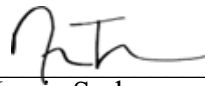
1 estimation of the reviewing court"). Importantly as well, the proposed settlement is non-  
2 reversionary and will provide benefits to the Class Members without a claims process. White,  
3 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket  
4 Guide for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

8 **V. CONCLUSION**

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

12  
13 Dated: May 30, 2024

**CROSNER LEGAL, P.C.**

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