JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
NIKKI TRENNER (SBN 3160070)
nikki@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff JAMAL ALI

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

JAMAL ALI, as an individual and on behalf of all others similarly situated, Plaintiff, v. DDW DIRECT WEST, LLC, a California Limited Liability Company; DDW DIRECT, LLC, a Massachusetts Limited Liability Company; and DOES 1-100, inclusive, Defendants.	Case No.: 23CV031181 Assigned for All Purposes to: Hon. Michael Markman Dept. 23 MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT Date: August 5, 2025 Time: 10:00 a.m. Dept.: 23 **Reservation ID: 179514523965**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff Jamal Ali 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 295 individuals employed by defendant Diesel Direct West, LLC ("DDW" or Defendant") in California as current and former non-exempt employees that worked either directly or via a staffing agency for Defendant at any location in California during the Class Period of April 13, 2019, to February 24, 2025. The proposed $200,000 settlement will provide about $60,833 in cash payments to the class, with an average award currently estimated at about $206. The balance of approximately $139,167 will cover reasonable attorney's fees and actual litigation costs, settlement administration costs, an enhancement award to plaintiff, and civil penalties to the State. The settlement is the product of Plaintiff's pre-filing investigation, formal discovery and a pre-mediation exchange of information, and arms-length negotiations overseen by experienced mediator Steve Pearl, Esq.

The proposed settlement is within the "range of reasonableness" for approval and Plaintiff's counsel submit the settlement is a fair result 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 Zachary M. Crosner, Jamie K. Serb and Nikki Trenner, and Crosner Legal, P.C. as Class Counsel; (4) appointing Plaintiff Jamal Ali as the Class Representative; (5) appointing Apex Settlement Administrators as the Settlement Administrator; (6) approving the form of notice to the class and the notice procedure; and (7) scheduling a final fairness hearing.

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant DDW Direct West provides fuel, gasoline and DEF products in California via its fleet of commercial vehicle drivers. Plaintiff was employed by Defendant as a commercial vehicle driver from January 8, 2019 to April 29, 2022. He regularly worked at least 8 hours per day, 5 days per week and primarily worked out of DDW's Alameda location. [Declaration of Nikki Trenner ("Trenner Decl."), ¶ 4.]

Plaintiff alleges DDW violated California wage and hour law in several respects. First, he alleges Defendant failed to pay all minimum wages due by failing to pay employees for all time spent performing non-driving activities, including performing pre-shift and post-shift inspections, performing vehicle maintenance, and completing paperwork. He further alleges meal periods were "on duty" because employees were not allowed leave their vehicles unattended and thus meal periods were not duty-free and should have been compensated even though DDW "auto-deducted" thirty minutes of time each shift these on duty meal breaks. He further claims he had to use personally pay to launder his mandatory work uniforms without reimbursement. [Trenner Decl., ¶ 5.]

Based on these allegations, on April 13, 2023, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for: (a) recovery of unpaid wages and liquidated damages; (b) failure to furnish accurate itemized wage statements; (c) failure to timely pay all wages due upon separation of employment; (d) failure to reimburse business expenses; and (e) violation of the Unfair Competition Law. On January 2, 2024, after notice to Defendant and the LWDA and exhausting administrative remedies, Plaintiff filed a First Amended Complaint adding a cause of action for alleged violations of PAGA. [Trenner Decl., ¶ 6; Exh. 3]

DDW has at all times denied Plaintiff's allegations and maintained its timekeeping and payroll policies and procedures comply with all applicable state and federal law, and that it accurately tracked and paid for all hours worked. DDW argued that the vast majority (90+%) of Class Members are commercial vehicle drivers, its written policies prohibited off the clock work, that commercial vehicle drivers are governed by the FCMSA and, as such, meal period and rest break claims were preempted by federal law and that, in any event, Plaintiff and the vast majority of Class Members did not clock out for meal periods but instead received paid on-duty meal periods as evidenced by their timekeeping records, paystubs, and the on-duty meal period agreements. It further argued there were no special requirements for laundering uniforms and any such expenses therefore were for personal preference and not reimbursable. Additionally, DDW strongly contends the case cannot be maintained as a class action, arguing for example that to the extent class members allegedly worked off the clock it was intermittent and infrequent and evidence of such off the clock work would be anecdotal and therefore individualized issues would predominate. [Trenner Decl., ¶ 7.]

Once the matter was at issue, the Parties initiated discovery and began meeting and conferring regarding discovery, law and motion, and other case management issues, and ultimately agreed to attempt mediation. The Parties also agreed on a protocol for an exchange of additional documents and information before the mediation to facilitate the settlement discussions. Consequently, Plaintiff's 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. 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. [Trenner Decl., ¶ 8.]

The Parties then engaged Steve Pearl, Esq., a respected professional neutral with substantial wage and hour and class action experience. In June 2024, the Parties participated in a full day mediation with Mr. Pearl. 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 ultimately were unable to reach an agreement. The Parties mediated a second time with Mr. Pearl in August 2024 but again did not reach a final settlement. Ultimately, after several months of additional negotiations, Mr. Pearl issued a mediator's proposal that was accepted by all Parties on February 24, 2025. The Parties then collaboratively drafted the Class Action and PAGA Settlement ("Settlement Agreement") setting forth the settlement terms now before the Court for approval. A fully-executed, true and correct copy of the Settlement Agreement is attached to the Trenner Declaration as Exhibit 1. [Trenner Decl., ¶ 9.]

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

Under the settlement, DDW will pay $200,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $66,666.67 (1/3 of the GSA), litigation costs of up to $45,000, settlement administration costs of no more than $7,500, a service award to Plaintiff of no more than $10,000, and PAGA civil penalties of $10,000, all will be paid from the GSA. The balance of around $60,833 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 DDW. [Trenner Decl., ¶ 10.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all current and former non-exempt employees that worked either directly or via a staffing agency for Defendant at any location in California during the Class Period of April 13, 2019, to February 24, 2025. The Settlement Class consists of about 295 individuals. [Trenner Decl., ¶ 11.]

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates DDW to pay $200,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $60,833 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 penalties and interest, which allocation is consistent with DDW's potential liability. DDW 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 United Way as the proposed *cy pres* beneficiary. [Trenner Decl., ¶ 12.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a non-exempt employee during the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, 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 DDW in California and the amount unpaid off the clock work, etc. The average award is estimated to be around $206. [Trenner Decl., ¶ 13.]

C. Settlement Administration

Subject to the Court's approval, the Parties have agreed on Apex Class Action, LLC ("Apex") as the Settlement Administrator. Apex is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Apex's fees and costs will not exceed $7,500. 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. [Trenner Decl., ¶ 14; Declaration of Sean Hartranft, ¶¶ 2-7; Exhs. A-B.]

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. [Trenner Decl., ¶ 15.]

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

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

F. Release of Claims

All Participating Class Members will release DDW and the Released Parties from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the complaint during the Class Period. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. Similarly, Plaintiff, acting on behalf of the LWDA, will release all claims for PAGA penalties alleged or that could have been alleged in the operative complaint for the PAGA Period. [Trenner Decl., ¶ 17.]

G. Plaintiff's Enhancement Award

A modest incentive award for 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). She 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 Plaintiff 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 Plaintiff of not more than $10,000.00 in recognition of her time spent on this matter, the risks she undertook on behalf of the class, and the benefit conferred to the class, as addressed in his declaration filed herewith. 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. [Trenner Decl., ¶ 18; Declaration of Jamal Ali, ¶¶ 2-9.]

H. Attorney's Fees and Costs

The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of attorney's fees of up to one-third of the GSA, or $66,666.67 and reimbursement of actual costs and expenses of up to $45,000.00. Plaintiff's counsel will submit a request for attorney's fees and actual litigation costs at final approval 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. [Trenner Decl., ¶ 19.]

I. PAGA and Notice to the LWDA

As noted, the Parties allocated $10,000 to resolution of Plaintiff's alleged claims under PAGA, and Plaintiff submits that amount is fair, reasonable and adequate, and furthers with PAGA's underlying purposes. Consistent with PAGA, $7,500 of that amount will go to the LWDA for the State's share of the civil penalties, while the remaining $2,500 will be distributed pro rata to eligible Aggrieved Employees. Prior to filing this motion, Plaintiff provided notice of the proposed settlement of the PAGA claims and the approval hearing to the LWDA. [Trenner Decl., ¶ 20; 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 of 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 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 295 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Trenner Decl., ¶ 21.] 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. [Ali Decl., ¶¶ 2-9; Trenner Decl., ¶ 22.] Further, his claims are typical as 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. [Id.] Lastly, his counsel is experienced and adequate class counsel. [Trenner Decl., ¶¶ 34-40.]

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 company-wide policies that resulted in alleged off the clock work and alleged "on duty" meal periods that went uncompensated. For instance, whether class members had to take care of non-driving duties while "off the clock" presents another common issue. Regardless of this determination, it will decide liability for all Class Members one way or another. [Trenner Decl., ¶ 23.]

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. 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 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. [Trenner Decl., ¶ 24.]

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 Pearl, Esq., who has extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 9.] Plaintiff's counsel Nikki Trenner, Jamie Serb and Zachary Crosner, and Crosner Legal PC, have years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Trenner Decl., ¶¶ 34-40.]

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 formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding DDW's payroll practices, pay stubs and time records for a sampling of class members, meal 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. This extensive information then was analyzed by a consulting expert to look for time spent working off the clock, etc., and other issues relevant to liability and damages. Plaintiff's counsel are 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. [Trenner Decl., ¶¶ 8, 25.]

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.

Using that data, Plaintiff ran various calculations and estimated DDW's likely maximum exposure on the class claims at approximately $3,119,395, including about $1,582,000 on the unpaid wage/off the clock claim, $106,395 on the unreimbursed expense claim, $586,300 on the wage statement claims, and $844,800 on the waiting time penalty claims. [Trenner Decl., ¶¶ 26-27.] Plaintiff and counsel substantially discounted the value of these claims, however, in light of

Defendant's multi-layered defenses on both class certification and on the merits, and the considerable risks posed by proceeding with the litigation.

First, on the unpaid wage claims, Plaintiff alleged DDW's compensation plans failed to pay for all hours worked and particularly failed to compensate employees for non-driving time. Cardenas v. McLane Foodservices, Inc. (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252; Armenta v. Osmose, Inc. (2005) 135 Cal.App.4th 314, 320. More specifically, Plaintiff contends that non-driving activities such as performing pre-shift and post-shift inspections, performing vehicle maintenance, and completing paperwork, either were not compensated at all or were compensated at rate lower than the applicable minimum wage. Plaintiff also contends that DDW's policies resulted drivers being "on duty" during meal periods since they could not leave their vehicles unattended and that there were other restrictions on what activities drivers could do while on a meal break. Per Plaintiff, this resulted in meal periods essentially being "on duty" and compensable. As a result, per Plaintiff, he and the class members lost at least 1 hour of compensable time each shift due to this off the clock and uncompensated work. In response, Defendant argued that California law did not apply to inter-state drivers when they did not primarily work in California; its timekeeping and payroll policies accurately tracked and paid for all employee time, that drivers clocked out and in for meal periods and there was no "auto deduction" policy, and that it specifically provided for compensation for non-driving activities. It also argued that its policies prohibited any "off the clock" work and further California's meal break requirements were preempted by federal hours of service regulations governing certain commercial truck drivers. DDW argued that the vast majority (90+%) of Class Members are commercial vehicle drivers, its written policies prohibited off the clock work, that commercial vehicle drivers are governed by the FCMSA and, as such, meal period and rest break claims were preempted by federal law and that, in any event, Plaintiff and the vast majority of Class Members did not clock out for meal periods but instead received paid on-duty meal periods as evidenced by their timekeeping records, paystubs, and the on-duty meal period agreements. Accordingly, per DDW, if any off the clock work occurred it was intermittent and infrequent, against company policy, and done without the employer's knowledge or consent. For these reasons, per DDW, class certification of this issue would be impossible because innumerable individual inquires would be required to determine what "off the clock" occurred and if it was compensable. [Trenner Decl., ¶ 28.]

On the expense reimbursement claim, Plaintiff alleges that he and the class members had to incur the costs of laundering and maintaining their work uniforms, which costs were not reimbursed by Defendant. In response, DDW argued the uniforms required no special or unique treatment for being laundered and if any driver incurred those costs it was purely for personal convenience or preference, was not necessary to their employment, and therefore was not reimbursable. [Trenner Decl., ¶ 29.]

The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to take into account the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses. [Trenner Decl., ¶ 30.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling around $1,335,000 in civil penalties should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections as to each and every pay period at issue. [Trenner Decl., ¶ 31.] As with the class claims, Plaintiff 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 $10,000 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 further and 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 and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Trenner Decl., ¶ 32.]

Plaintiff 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. 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, and the overall $200,000 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of

$200,000, which will result in average award of over $200 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 without further delay. [Trenner Decl., ¶ 33.]

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: April 23, 2025

CROSNER LEGAL PC

Nikki Trenner
Jamie K. Serb
Zachary M. Crosner
Attorneys for Plaintiff JAMAL ALI