

1 BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
2 CHAD SAUNDERS, ESQ. (SBN 257810)
chad@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
9440 Santa Monica Blvd. Suite 301
5 Beverly Hills, CA 90210
Tel: (866) 276-7637
6 Fax: (310) 510-6429

7 Attorneys for Plaintiff Pedro Cedeno

8 Norman B. Blumenthal (SBN 068687)
Kyle R. Nordrehaug (SBN 205975)
9 Aparajit Bhowmik (SBN 248066)
Christine T. LeVu (SBN 288271)
10 **BLUMENTHAL NORDREHAUG**
BHOWMIK DE BLOUW LLP
11 2255 Calle Clara
La Jolla, CA 92037
12 Telephone: (858) 551-1223
Facsimile: (858) 551-1232

13 Attorneys for Plaintiff
14 SANTOS MARTINEZ PADILLA

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF RIVERSIDE**

17
18 PEDRO CEDENO, as an individual on behalf
of himself and on behalf of all others similarly
19 situated,

20 Plaintiff,

21 vs.

22 SANNIPOLI CORPORATION, a
California Corporation; MATTHEWS
23 INTERNATIONAL CORPORATION, a
Pennsylvania Corporation; THE YORK
24 GROUP, INC., a Delaware Corporation; and
DOES 1-100, inclusive,

25 Defendants.
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27
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) Lead Case No. CVRI2303826
)
) [Consolidated with Case Nos. CVRI2304132;
) CVRI2304915; and CVRI2306853]

) Assigned for All Purposes To:
) Judge: Harold W. Hopp
) Dept: 1

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

Date: August 27, 2024
Time: 8:30 a.m.
Dept. 1

Reservation No: 203794953319

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1 **I. INTRODUCTION**

2 Plaintiffs Pedro Ceden0 and Santos Martinez Padilla hereby move the Court for an order
3 granting preliminary approval to a proposed non-reversionary class action settlement to resolve
4 wage and hour claims on behalf of approximately 461 individuals including all current and former
5 non-exempt hourly employees, including Plaintiffs, who worked for Defendants Matthews
6 International Corporation (“Matthews”), The York Group Inc., (“York”) and Sannipoli Corporation
7 (“Sannipoli”) (collectively “Defendants”) directly or through a staffing agency at a Sannipoli
8 Corporation d/b/a/ Whited Cemetery Service location in California during the Class Period of July
9 26, 2019, through April 4, 2024. The proposed \$900,000 settlement will provide about \$482,110 in
10 cash payments to the class, with an average award of about \$1,045. The balance of approximately
11 \$417,890 will cover a modest enhancement award to Plaintiffs, reasonable attorney’s fees and
12 actual litigation costs, settlement administration costs, and payment of civil penalties to the State.
13 The settlement is the product of Plaintiffs’ pre- and post-filing investigation, a pre-mediation
14 exchange of information, and lengthy arms-length negotiations overseen by experienced mediator
15 Louis Marlin, Esq.

16 As demonstrated below, the settlement is within the “range of reasonableness” for
17 preliminary approval. Plaintiff’s counsel believes the settlement is a fair result for the class given the
18 substantial risks inherent in this matter. Accordingly, Plaintiffs request the Court enter an order:
19 (1) granting preliminary approval to the proposed class action settlement and the Class Action and
20 PAGA Settlement Agreement (“Settlement Agreement”); (2) conditionally certifying the settlement
21 class as defined below; (3) appointing Zachary M. Crosner, Chad Saunders, and Brandon Brouillette
22 of Crosner Legal, P.C., and Norman Blumenthal, Kyle Nordrhaug, Aparajit Bhowmik, and Christine
23 LeVu and Blumenthal Nordrehaug Bhowmick De Blouw LLP as Class Counsel; (4) appointing
24 plaintiffs Pedro Ceden0 and Santos Martinez Padilla as the Class Representatives; (5) appointing
25 Apex Class Action, LLC as the Settlement Administrator; (6) approving the form of notice to the
26 class and the procedure for providing such notice; and (7) scheduling a final fairness hearing.

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

2 Sannipoli Corp., which does business as Whited Cemetery Service, owns and operates
3 several funeral homes in California. In or around January 2021, Sannipoli was acquired by
4 Defendant Matthews International Corp. (which in turn is owned by The York Group, Inc.).
5 Plaintiff Cedenó was employed by Sannipoli/Whited as a non-exempt employee with a job title of
6 laborer and quality control inspector from in or around April 2022, through April 25, 2023. He
7 worked for Whited at its Menifee, California location. [Declaration of Chad Saunders ("Saunders
8 Decl."), ¶ 4.] Plaintiff Padilla likewise was a non-exempt employee of Defendants during the
9 relevant time period. [Declaration of Kyle Nordehaug ("Nordrehaug Decl."), ¶ 6.]

10 Plaintiffs allege Defendants committed a number of Labor Code violations. First, they claim
11 Sannipoli utilized a time rounding policy that resulted in systematic underpayment of wages, and
12 further that Sannipoli did not pay Plaintiffs and Class Members overtime at the regular rate of pay
13 and failed to incorporate, inter alia, non-discretionary bonuses into the regular rate for pay. Next
14 Plaintiffs alleged Sannipoli did not provide second meal periods when employees worked more than
15 10 hours in a workday, and also did not permit employees to take off-duty rest breaks because
16 Defendants' policy states that employees "must remain on the facility premises" during rest breaks.
17 Plaintiffs also alleged they incurred unreimbursed expenses such as use of personal telephones and
18 personal vehicles on company business. Finally, Plaintiffs alleged Sannipoli did not list the name of
19 the legal entity that was the employer on wage statements but instead identified the dba "Whited
20 Cemetery Service" as the employer even though no such legal entity exists. [Saunders Decl., ¶ 5.]

21 Based on these allegations, Plaintiffs collectively filed several complaints against
22 Defendants. First, on July 26, 2023, Plaintiff Cedenó filed a putative class action, case number
23 CVRI2303826, alleging (1) violation of California Labor Code §§ 1194, 1197, and 1197.1 (unpaid
24 minimum wages); (2) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (3)
25 violation of Labor Code §§ 226.7 and 512 (a) (unpaid meal period premiums); (4) violation of Labor
26 Code § 226.7 (unpaid rest period premiums); (5) violation of Labor Code § 226(a) (non-compliant
27 wage statements); (6) violation of Labor Code §§ 201 and 202 (final wages not timely paid); (7)
28 violation of Labor Code §§ 2800 and 2802 (unreimbursed business expenses); (8) violation of

1 Business & Professions Code §§ 17200, et seq. On August 11, 2023, after notice to Labor &
2 Workforce Development Agency (“LWDA”), Plaintiff Cedenó filed a separate complaint seeking
3 civil penalties under PAGA based on the same alleged Labor Code violations. [Saunders Decl., ¶ 6.]

4 On September 18, 2023, Plaintiff Padilla filed a putative class action complaint in Riverside
5 County Superior Court against Defendants, case number CVRI2304915, alleging largely the same
6 Labor Code violations as the Cedenó action. On December 21, 2023, after exhausting administrative
7 remedies, Padilla filed a second complaint under the PAGA against Defendants, case number
8 CVRI2306853. [Nordrehaug Decl., ¶¶ 6-7; Saunders Decl., ¶ 7.]

9 On February 8, 2024, the Parties filed a stipulation to consolidate all of the above complaints
10 into a single action, with the lead Case Number CVRI2303826. On February 20, 2024 the Court
11 granted the stipulation and ordered the Complaints to be consolidated for the purposes of settlement
12 and approval. [Saunders Decl., ¶ 8.]

13 On the merits, Defendants have at all times denied Plaintiffs’ collective allegations and
14 maintained their timekeeping and payroll policies accurately track and pay for all hours worked by
15 its employees and at the correct rates of pay. Defendants further contend they provided employees
16 with all required meal and rest breaks on a fully compliant basis, and reimbursed any reasonable and
17 necessary business expenses as required under California law. Defendants also argued the case
18 cannot be maintained as any kind of class or representative action, emphasizing for example that to
19 the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it
20 was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and
21 therefore individualized issues predominate and trial on a representative basis would be
22 unmanageable. [Saunders Decl., ¶ 9.]

23 After Plaintiffs filed their respective complaints, the Parties initiated discovery and, after
24 meeting and conferring on issues related to case management, discovery, and potential law and
25 motion, ultimately agreed to attempt mediation. The Parties further agreed to facilitate an informal
26 exchange of information necessary engage in a meaningful mediation. Consequently, Plaintiffs’
27 counsel reviewed payroll records, personnel policies/handbooks, compensation policies, personnel
28 files, and a random of sampling paystubs and time records for about 20% of the class. Defendants

1 also provided documents reflecting their wage and hour policies and practices, and data regarding
2 the total number of current and former employees, the estimated total amount of workweeks and pay
3 periods they worked, and average hourly pay rates, among other relevant data. Plaintiffs had that
4 information reviewed and analyzed by Berger Consulting Group to assist with evaluating things such
5 as time allegedly lost to due rounding, meal period violation rates, etc., and to prepare a damages
6 model. [Saunders Decl., ¶ 10.]

7 The Parties then engaged Louis Marlin, Esq., a highly respected mediator with extensive
8 wage and hour class action experience and, in January 2024, participated in a full day global
9 mediation with Mr. Marlin. Throughout the day, the arms-length negotiations were hard-fought and
10 adversarial as the Parties exchanged extensive information on their legal and factual positions, and
11 made numerous offers and counter-offers. After a full day of negotiations, the Parties reached
12 agreement on all major issues in all cases and thereafter prepared the Settlement Agreement now
13 before the Court for approval. [Saunders Decl., ¶ 11.]

14 **III. THE PROPOSED SETTLEMENT TERMS**

15 Under the settlement, Defendants will pay \$900,000 into a common fund, the Gross
16 Settlement Amount. Reasonable attorney's fees of up to \$300,000 (33 1/3% of the GSA), actual
17 litigation costs not to exceed \$25,000, enhancement awards to Plaintiffs of up to \$10,000 each,
18 settlement administration costs of no more than \$12,890, and \$60,000 for civil penalties under PAGA
19 (of which 75%, or \$45,000, will go to the Labor & Workforce Development Agency, and 25%, or
20 \$15,000 will go to the PAGA Employees) all will be paid from the Gross Settlement Amount. The
21 remainder of approximately \$482,110 will be allocated among the Settlement Class Members based
22 on their total weeks worked during the Class Period. No portion of the Gross Settlement Amount will
23 revert to Defendants. [Saunders Decl., ¶ 12.]

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

25 The settlement provides for conditional certification of a settlement class including all current
26 and former non-exempt hourly employees, including Plaintiffs, who worked for Defendants directly
27 or through a staffing agency at a Sannipoli Corporation d/b/a/ Whited Cemetery Service location in
28

California during the Class Period of July 26, 2019 to April 4, 2024.¹ The Settlement Class consists of approximately 461 individuals.² [Saunders Decl., ¶ 13.]

B. The Benefit Conferred on the Settlement Class

This is a cash settlement that does not require Settlement Class Members to submit a claim form to receive their settlement share. Settlement Class Members will receive their settlement checks automatically via First Class U.S. Mail. Eighty percent of each settlement share will be allocated to wages and the remaining twenty percent will be allocated to expenses reimbursement, penalties and interest. Defendants will pay any and all applicable employer-side payroll taxes separately and in addition to the Gross Settlement Amount. Subject to the Court’s approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the State Controller’s Unclaimed Property Fund. [Saunders Decl., ¶ 14.]

Each Settlement Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Defendants during the Class Period while employed in a non-exempt position. 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, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Defendants and the number of instances they missed a meal break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost pay due to the alleged rounding and regular rate issues. [Saunders Decl., ¶ 15-16.]

The average class settlement award will be approximately \$1,045, and the class awards will

¹ Earlier this year, Matthews settled a wage & hour class action titled Beinbrech v. Matthews International Corp. (San Bernardino Co., Case No.CIVSB2226992) for \$1.1 million. That settlement is pending preliminary approval. According to Defendants' counsel, it did not include any employees of Sannipoli.

² The “PAGA Employees” for purposes of PAGA include all current and former non-exempt employees of Defendants who worked either directly or through a staffing agency at a Whited Cemetery Service location in California employed between June 7, 2022 and April 4, 2024. There are approximately 199 PAGA Employees. [Saunders Decl., ¶ 13.]

1 range from about \$25 on the low end (for Class Members with one work week) to about \$6,030 on
2 the high end (for Class Members employed for the entire Class Period). The estimated average PAGA
3 award will be about \$75, and PAGA awards will range from about \$2 to \$205. [Saunders Decl., ¶ 17.]

4 **C. Settlement Administration**

5 Subject to the Court's approval, and after obtaining multiple bids, the Parties agreed on Apex
6 Class Action, LLC ("Apex") as the Settlement Administrator. Apex is qualified and has significant
7 experience administering class action settlements, including numerous wage and hour matters. Apex
8 has agreed to cap its fees and costs at \$12,890 on a flat fee basis. If the Court approves less than the
9 above amount, the difference will remain in the Net Settlement Amount for distribution to the Class
10 Members. [Saunders Decl., ¶ 18; Declaration of Sean Hartranft, ¶¶ 2-7; Exhs. A-B.]

11 **D. The Class Notice**

12 The proposed Notice (Exhibit 2 to the Saunders Declaration) sets out information about this
13 case and explains the basic settlement terms in plain language, and meets all requirements under
14 California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the individualized
15 information used to calculate Individual Settlement Payments and each Class Member's estimated
16 settlement award. The Notice likewise details the procedures for Class Members to dispute their
17 individual information, for submitting an objection to the Settlement, and to request exclusion.
18 Further, each notice packet will include a Request for Exclusion form and Objection Form (Exhibits
19 3 and 4 to the Saunders Declaration). In sum, the Notice provides the Class Members with the
20 information necessary to evaluate the Settlement and provides fair opportunity to participate in, opt
21 out of, or object to the proposed Settlement. Many Class Members are more comfortable in Spanish
22 and accordingly the notice documents will be translated into Spanish in addition to English. Coupled
23 with the notice procedure, the proposed Notice provides the Class with the best notice practicable.
24 [Saunders Decl., ¶ 19.]

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

26 Class Members will have forty-five (45) days to dispute the information in their Notice used
27 to calculate their settlement award, and also have 45 days to submit any objections to the settlement
28 or to request exclusion. In the event a Class Member disputes their individual information, the

1 Settlement Administrator will review the Class Member's records as well as any additional
2 information submitted, and make a final determination. [Saunders Decl., ¶ 20.]

3 **F. Release of Claims**

4 All Settlement Class Members will release Defendants from all claims alleged in the
5 operative complaint, or that could have been brought based on the factual allegations in the complaint
6 during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the
7 PAGA notice to the extent alleged in the FAC. The Class and PAGA releases are limited to the claims
8 that were actually pleaded or could have been pleaded based on the alleged facts in the FAC, and
9 PAGA notice for the PAGA claims. Only Plaintiffs will provide a full general release of all claims.
10 [Saunders Decl., ¶ 21.]

11 **G. Attorney's Fees and Costs, and Plaintiffs' Enhancement Awards**

12 The settlement provides Defendants will not oppose a request for attorney's fees not to exceed
13 33.33% of the Gross Settlement Amount, or \$300,000, nor will it oppose a request for reimbursement
14 of litigation costs and expenses of up to \$25,000.00. Defendants also will not oppose a request for
15 an enhancement award to Plaintiffs of not more than \$10,000.00 each in recognition of their time
16 spent on this matter, the risks they undertook on behalf of the class, and the benefit conferred to the
17 class, as set forth in their respective declarations filed herewith. Plaintiffs' counsel will provide the
18 Court with appropriate summaries and evidence of their efforts and time records in anticipation of
19 the Final Approval Hearing. If the Court approves less than the above amounts, the difference will
20 remain in the Net Settlement Amount for distribution to the Class Members. [Saunders Decl., ¶ 22.]

21 **H. PAGA Claims and Notice to the LWDA**

22 As noted, the Parties allocated \$60,000 from the GSA to resolution of Plaintiffs' claims under
23 PAGA, and Plaintiffs submit that amount is fair, reasonable, and adequate, and consistent with
24 PAGA's underlying purposes. As required by Labor Code section 2699(l)(2), Plaintiffs gave notice
25 of the settlement and approval hearing to the LWDA via its online portal. [Saunders Decl., ¶ 23;
26 Exh. 6.]

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1 **IV. ARGUMENT**

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

3 The law favors settlement, particularly in class actions where substantial resources can be
4 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
5 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992)
6 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
7 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly compromised,
8 settlement of a class action requires court approval. Cal. Rule of Court. 3.769; Wershba v. Apple
9 Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794,
10 1801. This judicial review protects against fraud or collusion, and ensures fairness to the absent class
11 members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via a two-step process to
12 determine, under all the circumstances, if the proposed settlement is fair, reasonable and adequate.
13 Id. at 1801; Wershba, 91 Cal.App.4th at 245.

14 The first step is a motion for preliminary approval, through which the parties present the court
15 with the proposed settlement and seek a determination that it is sufficiently fair and reasonable to
16 warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of Court
17 3.769(c). This preliminary evaluation determines if the proposed settlement is within the “range of
18 reasonableness” and if notice should be provided to the class regarding the settlement’s proposed
19 terms and conditions, and whether a final fairness hearing should be scheduled. Wershba, 91
20 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs. (1994) 27
21 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class
22 actions, courts apply a presumption of fairness to class action settlements when (1) the settlement
23 results from arms-length bargaining, (2) investigation and discovery are sufficient to allow counsel
24 and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the
25 percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

26 If the court grants preliminary approval, it then orders the class be given notice in an
27 appropriate manner, establishes a schedule and procedures for class members to request exclusion or
28 object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s fees and

costs, and any enhancement for the class representative(s), is filed subsequent to preliminary approval and heard with the motion for final approval, as part of the second step of the two-step approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

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

B. The Proposed Settlement Class Should Be Conditionally Certified

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

In the present matter, conditional certification is proper since this matter satisfies all requirements for class certification under Code of Civil Procedure section 382. First, the class is both sufficiently numerous, consisting of approximately 461 individuals. The class also is ascertainable by reference to Defendants' personnel and payroll records. [Saunders Decl., ¶ 24.]

Plaintiffs also are adequate class representatives, as their respective claims do not conflict with and are not antagonistic to the claims of other class members. Further, their claims are typical given 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. [Saunders Decl., ¶ 25.] Lastly, Plaintiffs' counsel are experienced and adequate class counsel. [Saunders Decl., ¶¶ 40-52; Nordrehaug Decl., ¶¶ 3-5, Exh. 1.]

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the same meal and rest break policy, and likewise were subject to the same time rounding and regular rate policies. Since the focus of the claims against Defendants concern the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance,

1 Defendants' calculation and payment of overtime was done under a company-wide policy applied
2 equally and consistently to all class members, and those policies are either are compliant with
3 California law or they are not. Regardless of that determination, it will decide liability for all class
4 members one way or another. Similarly, whether personal cell use was necessary raises another
5 question common to all class members. [Saunders Decl., ¶ 26.]

6 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
7 violating California law is sufficient to satisfy the requirements for class certification. Saunders v.
8 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 ("Claims alleging that a uniform policy
9 consistently applied to a group of employees is in violation of the wage and hour laws are of the sort
10 routinely, and properly, found suitable for class treatment"); Williams v. Superior Court (2013) 221
11 Cal.App.4th 1353 ("A company-wide practice can sustain a common question of fact or law that
12 supports commonality for class certification"). Lastly, a class action is superior to other means for
13 the fair and efficient adjudication of this controversy. [Saunders Decl., ¶ 27.]

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

16 The proposed settlement resulted from serious, arms-length negotiations facilitated by
17 respected mediator, Louis Marlin, Esq., who has extensive experience mediating wage and hour class
18 actions. [Saunders Decl., ¶ 8.] Plaintiffs' counsel Zachary M. Crosner, Jamie Serb, and Brandon
19 Brouillette and Crosner Legal, and Norman Blumenthal, Kyle Nordrehaug, Aparajit Bhowmik, and
20 Christine LeVu and Blumenthal Nordrehaug Bhowmick De Blouw, all have years of experience
21 litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and
22 benefits of pursuing further litigation or settling the matter. [Saunders Decl., ¶¶ 40-52; Nordrehaug
23 Decl., ¶¶ 3-5, Exh. 1.]

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

1 of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated
2 below, the proposed settlement satisfies these requirements.

3 Prior to mediation, the parties engaged in both formal and informal discovery to facilitate
4 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding
5 Defendants' payroll practices, a representative sampling of pay stubs and time records for about 25%
6 of the class members, applicable compensation plans, meal and rest break policies, etc., and
7 information from Defendants regarding class size and breakdown, number of work weeks/pay
8 periods, average rates of pay, and other information used to formulate a damages model. Plaintiffs
9 then had that information reviewed with the assistance of a consulting expert. Plaintiffs' counsel are
10 confident they obtained sufficient information to understand the law and facts of this case and make
11 an informed decision regarding the proposed settlement and whether it is fair and reasonable.
12 [Saunders Decl., ¶¶ 10, 28.]

13 Next, the proposed settlement falls within the range of reasonableness warranting preliminary
14 approval. The proposed settlement involves a significant sum that, when distributed, will confer
15 direct monetary benefits on the class members. As described above, each class member will be
16 entitled to a monetary payment without having to file a claim and each payment will be relative to
17 the value of his or her potential claims. Through the information exchanged and analysis undertaken,
18 Plaintiffs and counsel weighed the risks of continued litigation against the benefits of the proposed
19 settlement and determined settlement to be the most reasonable option.

20 Using the data obtained from Defendants, Plaintiffs ran various calculations and estimated
21 Defendants' likely maximum exposure on the class claims at approximately **\$4.730** million,
22 including about \$78,600 on the unpaid wage/rounding claim, \$17,000 on the underpaid
23 overtime/regular rate claims, \$630,500 on the meal break claims, \$1,531,000 on the rest break claims,
24 \$190,090 on the unreimbursed expense claims, \$670,000 on the wage statement claims, and
25 \$1,613,000 on the waiting time penalty claims. [Saunders Decl., ¶¶ 29-30.]

26 First, on their unpaid wage claims, Plaintiffs allege Defendants' compensation plans
27 failed to pay for all hours worked and particularly that Defendants rounded employee time
28 punches such that the class members systematically lost hours worked as a result. Per Plaintiffs'

1 experts' analysis, around 79% of the class members lost time due to rounding, and the overall
2 class lost nearly 3,000 hours of pay. In response, Defendants argued their timekeeping and
3 payroll policies accurately tracked and paid for all employee time, and that any rounding was
4 entirely neutral in its overall impact on employee pay and thus permissible under cases such as
5 See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal. App. 4th 889. Thus, per Defendants,
6 any time rounding resulted in no loss of compensable time or pay to the class members. On the
7 regular rate claim, Plaintiffs alleged employees were not paid all overtime wages due because
8 Defendants did not include certain forms of compensation, primarily non-discretionary bonus
9 payments, in the "regular rate of pay" used to calculate the correct overtime rate. "Regular rate of
10 pay, which can change from pay period to pay period, includes adjustments to the straight time
11 rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly
12 compensation the employee has earned." Alvarado v. Dart Container Corp. of California (2018) 4
13 Cal.5th 542, 554. As a result, Plaintiffs contend Defendants frequently underpaid the Class
14 Members for their overtime. While Plaintiffs believe this is one of their stronger claims, they
15 also recognize the exposure is nominal, as the amount lost typically is only a few dollars per
16 work week. [Saunders Decl., ¶ 31.]

17 On the meal break claims, Plaintiffs primarily contend there are numerous "de facto"
18 violations for missed, late, and short meal periods. Per Plaintiffs, his experts' review of the time
19 records produced suggested a violation rate of around 43% for missed and non-compliant meal
20 periods, including missed second lunches on 10+ hour shifts. In response, Defendants argued their
21 break policies are fully compliant with California law, that it provided class members with the
22 opportunity to take all required breaks, and that many class members waived second meal periods.
23 Defendants further maintained that, in light of its compliant policies, whether a class member
24 missed a meal period, received a late meal period, or missed a rest break would have been
25 aberrational and against company policy. Thus, per Defendants, these issues are not amenable to
26 class or representative treatment since their resolution would require individualized inquiries as to
27 why a break was missed or non-compliant. Further, Defendants emphasized it paid thousands in
28 premium wages for documented violations. [Saunders Decl., ¶ 32.]

1 For rest breaks, Plaintiffs again argued that there were numerous “de facto” violations
2 where class members didn’t receive a break (especially third breaks), or didn’t receive a compliant
3 break/had their breaks interrupted by supervisors. Plaintiffs further argued Defendants’ policies
4 prohibited them from leaving the premises while on a rest break. As with meal breaks, Defendants
5 argued the applicable rest break policies complied with California law, and that it authorized and
6 permitted employees to take all required breaks. Defendants further contended that, in light of the
7 fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize
8 rest periods and/or discouragement from taking rest periods would be purely anecdotal and
9 individual issues would predominate on liability. This arguably would once again make class
10 certification and a trial unmanageable since the number of instances an employee missed a rest
11 break, or had a break interrupted, would have to be tested on a case by case basis to determine
12 compliance. [Saunders Decl., ¶ 33.]

13 On the expense reimbursement claim, Plaintiffs allege that use of his personal cellular phone
14 was necessary and consequential to his employment duties for purposes of communicating with
15 supervisors. Defendants did not reimburse employees for the cost associated with the use of the
16 personal cellular phones for Defendants’ benefit. Cochran v. Schwan’s Home Serv. (2014) 228
17 Cal.App.4th 1137, 1144. Plaintiffs further argued class members occasionally had to drive their
18 personal vehicles for work purposes but did not receive any reimbursement. Gattuso v Harte-Hanks
19 Shoppers, Inc. (2007) 42 Cal.4th 554. In response, Defendants argued it provided employees with
20 all tools and equipment necessary to perform their job duties, and to the extent employees used their
21 own phones while at work it was purely for personal convenience, was not necessary to their
22 employment, and therefore was not reimbursable. Similarly, per Defendants there would be no need
23 for class members to use their personal vehicles on company business. [Saunders Decl., ¶ 34.]

24 As far as the wage statement claim, Plaintiffs allege Defendants wage statements violated
25 Section 226(a)(8) on their face because they do not identify the actual legal entity that employed the
26 class members. He further alleges derivative claims under Labor Code § 226 (inaccurate wage
27 statements) and §§ 201-203 (waiting time penalties). These derivative claims are based on the unpaid
28 wage claims and will rise or fall along with those primary claims, in addition to being subject to

1 “good faith” and other defenses available to Defendants. E.g., Amaral v. Cintas Corp. No. 2 (2008)
2 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor
3 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay
4 living wages). Defendants argued further that the wage statements accurately contained all required
5 information, and that acted in good faith all times with respect to payment of wages. Accordingly,
6 Plaintiffs discounted these claims significantly in light of these multiple potential defenses.
7 [Saunders Decl., ¶ 35.]

8 As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled
9 to penalties totaling about **\$2.639** million should Plaintiffs prevail on all claims, establish violations
10 of the multiple Labor Code sections at issue, and secure the maximum penalty on all claims as to all
11 pay periods at issue. As with the class claims, Plaintiffs discounted the potential PAGA penalties
12 based on Defendants’ various defenses on the merits and also accounted for the Court’s wide
13 discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2);
14 Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per
15 pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour
16 Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).
17 Accordingly, the Parties allocated \$60,000 to PAGA penalties. [Saunders Decl., ¶¶ 36-37.]

18 Plaintiffs submit this amount is reasonable under the circumstances and in line with
19 comparable settlements in other wage and hour class actions in California. E.g., Van Kempen v.
20 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
21 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
22 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
23 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
24 \$345,000 and the possible weaknesses in plaintiffs’ case, or 2.2 percent of total settlement).
25 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and
26 will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018)
27 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
28 “[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not

1 objected to the settlement.

2 Taking into account all of the above-discussed risk factors, Plaintiffs calculated Defendants'
3 exposure on the class claims at around **\$1,182,000** on a risk-discounted basis and, accordingly, the
4 settlement represents a little under 77% of the estimated recovery after trial. Given Defendants'
5 multi-layered defenses and all other potential risks of continued litigation, a total recovery for the
6 class of \$900,000, which will result in average award of over \$1,045 per class member, is a
7 significant result well within the range of reasonableness considering all potential outcomes, and it
8 will provide direct monetary awards to all Class Members without further delay. [Saunders Decl.,
9 ¶¶ 38-39; Nordrehaug Decl., ¶ 9.]

10 Importantly, the mere fact that a settlement does not provide the same recovery as might be
11 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
12 Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the settlement
13 process...even if the relief afforded by the proposed settlement is substantially narrower than it
14 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
15 public interest may indeed be served by a voluntary settlement in which each side gives ground in
16 the interest of avoiding litigation”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)
17 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of
18 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
19 inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal.
20 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
21 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.
22 (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
23 different from the question whether the settlement is perfect in the estimation of the reviewing
24 court”). Importantly as well, the proposed settlement is non-reversionary and will provide immediate
25 benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal
26 Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20,
27 available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary provisions
28 and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit

1 the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

2 **V. CONCLUSION**

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

6
7
8 Dated: August 5, 2024

CROSNER LEGAL, PC

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10 By: 
11 Chad Saunders, Esq.
12 Brandon Brouillette, Esq.
13 Zachary M. Crosner, Esq.
Attorneys for Plaintiff
PEDRO CEDENO

14 DATED: August 5, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

15
16
17 By: _____
18 Norman B. Blumenthal
19 Kyle R. Nordrehaug
20 Aparajit Bhowmik
Nicholas J. De Blouw
Attorneys for Plaintiff Santos Martinez Padilla