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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

MARIA GUADALUPE HERNANDEZ, on
behalf of the State of California, and others
similarly situated,

Plaintiff,

vs.

YZER, LLC, a Florida limited liability
company; PEOPLEASE LLC, a South
Carolina limited liability company; and DOES
1-100, inclusive,

Defendant.

Case No. 23CV025345

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**

[Filed concurrently with Notice of Motion and
Motion; Declarations of Michael Jones, Maria
Guadalupe Hernandez, and Chris Longley;
[Proposed] Order]

Date: August 8, 2024
Time: 10:00 a.m.
Dept.: 23

Reservation ID: 664141701579

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1 **I. INTRODUCTION**

2 Plaintiff Maria Guadalupe Hernandez hereby moves the Court for an order granting
3 preliminary approval to a proposed non-reversionary class action settlement to resolve wage and
4 hour claims on behalf of approximately 514 current and former non-exempt individuals who
5 worked for Defendant YZER, LLC (“YZER”) in California at any time within the Class Period of
6 July 26, 2021 to April 17, 2024, and current and former non-exempt individuals who worked for
7 YZER and who were issued wage statements by Defendant PEOPLEASE, , LLC (“PEOPLEASE,”
8 and together with YZER the “Defendants”) in California at any time during the Class Period. The
9 proposed \$1,000,000 settlement will provide about \$586,667 in cash payments to the class, with
10 an average award currently estimated at about \$1,140. The balance of approximately \$413,333
11 will cover reasonable attorney’s fees and actual litigation costs, settlement administration costs,
12 civil penalties to the State, and an enhancement award to Plaintiff. The settlement is the product
13 of Plaintiff’s pre-filing investigation, formal discovery and a pre-mediation exchange of
14 information, and arms-length negotiations overseen by experienced mediator Michael Young,
15 Esq.

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

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

26 YZER is a logistics company that employs couriers to deliver pharmaceutical products,
27 among other goods, from locations across California. Defendant PEOPLEASE issues wage
28 statements and provides limited administrative services to companies, including YZER.

1 [Declaration of Michael Jones (“Jones Decl.”), ¶ 3.]

2 Plaintiff Maria Hernandez worked for YZER as a courier out of YZER ’s Santa Fe
3 Springs location, delivering pharmaceuticals and supplies to pharmacies and hospitals. She was
4 employed from July 2021 to August 2022. During her employment with YZER, Plaintiff
5 contends Defendants did not pay all wages due, and essentially paid employees for 40 hours of
6 work each week regardless of the actual hours worked. She further alleges Defendants failed to
7 provide her and the class members with compliant meal periods or rest breaks and failed to
8 maintain any written meal period or rest break policy. Finally, she alleges employees had to use
9 their own cell phones for work purposes without reimbursement. [Jones Decl., ¶ 4.]

10 Based on these allegations, on January 9, 2023, Plaintiff filed a class action lawsuit
11 against Defendants in Alameda County, alleging claims for: (1) failure to pay all wages due,
12 including minimum and overtime wages (2) failure to provide all required meal and rest breaks or
13 compensation in lieu thereof; (3) failure to reimburse business expenses; (4) failure to provide
14 accurate, itemized wage statements; (5) failure to pay all wages due upon termination of
15 employment, and (6) unfair competition. Plaintiff also alleged claims for unfair competition
16 premised on the same Labor Code violations. After notice to the LWDA and Defendants and after
17 exhausting her administrative remedies, on March 27, 2023, Plaintiff filed a separate PAGA
18 lawsuit in Alameda County. Plaintiff based her PAGA-only complaint on the same Labor Code
19 violations alleged in the class complaint. On May 23, 2023, Plaintiff amended her class action
20 lawsuit to include her PAGA claims and dismissed the separately filed PAGA action without
21 prejudice. [Jones Decl., ¶ 5; Exh. 2.]

22 Defendants have at all times denied Plaintiff’s allegations and maintained their meal and
23 rest break and payroll policies and procedures comply with California law, that they paid the class
24 members all wages due, and provided them with required meal and rest breaks. Defendant also
25 contends there would be no need for any class member to use their own phone on company
26 business and therefore no reimbursement is owed. Additionally, Defendants strongly contend the
27 case cannot be maintained as a class action, arguing for example that to the extent class members
28 missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and

1 infrequent and evidence of such missed breaks would be anecdotal, and therefore individualized
2 issues would predominate. [Jones Decl., ¶ 6.]

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

15 The Parties then engaged Michael Young, Esq., a respected professional neutral with
16 substantial wage and hour and class action experience and, in January 2024, the Parties
17 participated in a full day mediation with Mr. Young. Throughout the day, the arms-length
18 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
19 their legal and factual positions, made numerous offers and counter-offers, and ultimately were
20 able to reach an agreement with the mediator's assistance. The Parties then collaboratively
21 drafted the Class Action and PAGA Settlement Agreement ("Settlement Agreement") setting
22 forth the settlement terms now before the Court for approval. A true and correct, fully-executed
23 copy of the Settlement Agreement is attached to the Jones Declaration as Exhibit 1. Finally, in
24 order to fully effectuate the proposed settlement, Plaintiff will file a Second Amended Complaint
25 setting forth all allegations and claims being settled. [Jones Decl., ¶ 9.]

26 **III. THE PROPOSED SETTLEMENT TERMS**

27 Under the settlement, YZER will pay \$1,000,000 into a common fund, the Gross
28 Settlement Amount ("GSA"). Attorney's fees of up to \$333,333.33 (33.3% of the GSA), litigation

1 costs of up to \$20,000, settlement administration costs of no more than \$15,000, a service award
2 to Plaintiff of no more than \$10,000, and \$35,000 for alleged PAGA civil penalties, all will be
3 deducted from the GSA. The balance of around \$586,667 will be allocated pro rata to the Class
4 Members based on their weeks worked during the Class Period. No portion of the GSA will
5 revert to Defendants. [Jones Decl., ¶ 10.]

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

7 The settlement provides for conditional certification of a settlement class including all
8 current and former non-exempt individuals who worked for YZER in California at any time
9 within Class Period of July 26, 2021 to April 17, 2024, and all current and former non-exempt
10 individuals who worked for YZER and who were issued wage statements by *PEOPLEASE* in
11 California at any time during the Class Period.¹ The Settlement Class consists of about 514
12 individuals. [Jones Decl., ¶ 11.]

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

14 As noted, the settlement obligates YZER to pay \$1,000,000 to resolve the Settlement
15 Class's claims, inclusive of attorney's fees and costs. At least \$586,667 from the GSA will be
16 distributed to the Participating Class Members. This is a cash settlement that does not require
17 Participating Class Members to submit a claim form to receive their settlement share.
18 Participating Class Members will receive their settlement checks automatically via First Class
19 U.S. Mail. Thirty-three point three percent (33.3%) of each settlement share will be allocated to
20 wages and the remaining 66.7% will be allocated to expenses, penalties, and interest, which
21 allocation is consistent with Defendants' potential liability. YZER will pay any and all applicable
22 employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's
23 approval, any amounts not claimed (because a class member does not cash their settlement check)
24 will be forwarded to the State Controller's Unclaimed Property Fund. [Jones Decl., ¶ 12.]

25 Each Participating Class Member will receive a share of the Net Settlement Amount based
26 on his or her total weeks worked in California for YZER during the Class Period. Thus, each
27

28 ¹ The Class Period begins on July 26, 2021, which is the date YZER began operating in California.

1 Class Member's Individual Settlement Payment will be calculated using criteria typically used in
2 determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and
3 rest breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These
4 methods are intended to ensure each Class Member receives a settlement award corresponding to
5 the relative value of their potential claims. The proposed allocation provides a reasonable way to
6 compensate Class Members based on the amount of time they worked for YZER in California
7 and the amount of unpaid overtime, the number of missed meal breaks and/or rest breaks, etc. The
8 average gross award is estimated to be around \$1,139. [Jones Decl., ¶ 13.]

9 **C. Settlement Administration**

10 Subject to the Court's approval, the Parties have agreed on Atticus Administration, LLC
11 ("Atticus") as the Settlement Administrator. Atticus is qualified and has significant experience
12 administering class action settlements, including numerous wage and hour matters. Atticus's fees
13 and costs will not exceed \$15,000.00. If the Court approves less than the above amount, the
14 difference will remain in the Net Settlement Amount for distribution to the Participating Class
15 Members. [Jones Decl., ¶ 14; Declaration of Chris Longley, ¶¶ 2-13; Exhs. 1-3.]

16 **D. The Class Notice**

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

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

2 Class Members will have sixty days to dispute the information in their Notice used to
3 calculate their settlement award, and also have 60 days to submit any objections to the settlement
4 or to request exclusion. If a Class Member disputes their individual information, the Settlement
5 Administrator will review the Class Member's records and any other information submitted, and
6 make a final determination. [Jones Decl., ¶ 16.]

7 **F. Release of Claims**

8 All Participating Class Members will release Defendants from all claims alleged in the
9 operative complaint, or that could have been brought based on the factual allegations in the
10 operative complaint during the Class Period. Plaintiff and the Aggrieved Employees likewise will
11 release all alleged claims under PAGA alleged in the operative complaint, or that could have been
12 brought based on the factual allegations in the operative complaint during the PAGA Period.
13 [Jones Decl., ¶ 17.]

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

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

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 33.3% of the GSA, or \$333,333.33 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. [Jones Decl., ¶ 19.]

10 **I. PAGA Claims**

11 As noted, the Parties allocated \$35,000 to payment of alleged civil penalties under PAGA,
12 which amount Plaintiff submits is fair, reasonable, and adequate, and furthers PAGA's underlying
13 purposes. As required by Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement
14 and the approval hearing to the LWDA via its online portal. [Jones Decl., ¶ 12; Exh. 3.]

15 **IV. ARGUMENT**

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

17 The law favors settlement, particularly in class actions where substantial resources can be
18 conserved by avoiding the time, costs, and rigors of formal litigation. H. Newberg & A. Conte, 4
19 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir.
20 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co.
21 (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not
22 unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court.
23 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co.
24 (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and
25 ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review
26 occurs via a two-step process to determine, under all the circumstances, if the proposed settlement
27 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 514 individuals, and ascertainable by
4 reference to YZER's personnel and payroll records. [Jones Decl., ¶ 20.] Next, Plaintiff is an
5 adequate class representative, as her claims do not conflict with and are not antagonistic to the
6 claims of other Class Members. [Declaration of Maria Guadalupe Hernandez, ¶¶ 2-9; Jones
7 Decl., ¶ 21.] Further, her claims are typical as she is a member of the class and her claims arise
8 from the same employment practices and course of conduct giving rise to the claims of the other
9 Class Members. [Id.] Lastly, her counsel is experienced and adequate class counsel. [Jones
10 Decl., ¶¶ 35-40.]

11 Next, common questions of law and fact predominate – particularly for purposes of a
12 settlement class – as the Class Members all were paid via substantially similar compensation
13 plans that underpaid them for overtime hours worked, and they were subject to the same policies
14 that resulted in missed/non-compliant meal and rest periods. Since the focus of the claims against
15 Defendants concerns the legality of common policies applied uniformly to the entire class,
16 common issues predominate over individualized inquiries concerning liability. For instance,
17 YZER's compensation plans either properly paid the class members for overtime hours worked
18 or they did not. Regardless of these determinations, it will decide liability for all Class Members
19 one way or another. [Jones Decl., ¶ 22.]

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

28 ////

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

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

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

15 Here, the proposed settlement falls within the range of reasonableness warranting
16 preliminary approval – it involves a significant sum that, when distributed, will confer direct
17 monetary benefits on the class members. Each class member will be entitled to a monetary
18 payment without having to file a claim and each payment will be relative to the value of his or her
19 potential claims.

20 Prior to the mediations, the parties engaged in both formal and informal discovery to
21 facilitate settlement discussions. Plaintiff reviewed documents and information regarding YZER's
22 payroll practices, a random sampling of pay stubs and time records from class members, a class
23 list, applicable compensation plans and expense reimbursement plans, meal and rest break
24 policies, arbitration agreements, etc., and information from YZER regarding class size and
25 breakdown, workweeks/pay periods, rates of pay, and other information used to formulate a
26 damages model. Plaintiff then had that information analyzed by a consulting expert to assist in
27 determining potential violation rates and other data used to formulate a damages model.
28 Plaintiff's counsel are confident they obtained sufficient information to understand the law and

1 facts of this case and make an informed decision regarding the proposed settlement and whether it
2 is fair and reasonable. [Jones Decl., ¶¶ 7, 24.]

3 Using this data, we estimated Defendants' maximum exposure at about \$6,024,000,
4 including about \$151,000 on the unpaid wage claims, about \$1,826,000 on the meal period
5 claims, about \$1,826,000 on the rest break claims, around \$120,000 on the expense
6 reimbursement claims, approximately \$978,000 on the wage statement claim, and about
7 \$1,123,000 on the waiting time penalties. Plaintiff significantly discounted these figures for
8 settlement purposes, however, after evaluating Defendants' counterarguments and defenses (of
9 which there are many) on both class certification and the merits. [Jones Decl., ¶¶ 32, 34.]

10 First, on the unpaid wage claims, Plaintiff first contends Defendants paid employees for
11 40 hours of work each week regardless of how many hours were reflected on employee time
12 punches. Per Plaintiff, she and other class members oftentimes worked over 8 hours on a shift
13 (for daily overtime) or over 40 hours in a week, but did not receive appropriate overtime
14 compensation. On the other hand, YZER argued its policies captured and paid for all time
15 accurately and at the correct rate, and further emphasized employees frequently worked less than
16 8 hours per shift and actually were overpaid for their time in many instances. [Jones Decl., ¶ 25.]

17 On the meal break claims, Plaintiff focused primarily on YZER's alleged failure to
18 maintain a California-compliant break policy and to provide Plaintiff and the class members
19 employees with all required meal periods. Per Plaintiff, YZER not only failed to maintain any
20 written policies, but also as a practical matter it was difficult if not impossible for employees to
21 take breaks because of their tight delivery schedules and a requirement that they remain with the
22 delivery vans and cargoes at all times. YZER countered that in many instances Class Members
23 actually took their meal breaks (including second meal breaks) even if not reflected on the time
24 sheets and, accordingly, class certification is not appropriate because individual inquiries would
25 be necessary to determine this question. For the same reasons, YZER contended the claim would
26 fail on the merits because it would be difficult for Plaintiff to show YZER's actual or constructive
27 knowledge that a particular class member worked through a specific lunch period. YZER also
28 contended it maintained a fully-compliant meal break policy at all times, and it always provided

1 the Class Members with the opportunity to take meal breaks and thus met the requirements
2 imposed by California law. Per YZER, if individuals did not take a meal period or rest period, it
3 was in violation of company policy and, once again, a multitude of individual inquiries would be
4 necessary to determine if an individual may have missed a meal break by personal choice or for
5 some other reason. [Jones Decl., ¶ 28.]

6 The claims for unreimbursed business expenses under Labor Code § 2802 revolved
7 around Plaintiff's allegations that Defendants required its non-exempt employees to use their
8 personal cell phones for business purposes and while driving their delivery routes without
9 reimbursement for these business expenses. Cochran v. Schwan's Home Services, Inc. (2014) 228
10 Cal. App. 4th 1137, 1144 (2014) ("[T]o be in compliance with section 2802, the employer must
11 pay some reasonable percentage of the employee's cell phone bill."). In response, YZER argued
12 there was no need for employees to use personal phones for legitimate work purposes, and that
13 any such use would have been purely for personal convenience. Thus, per YZER, use of personal
14 phones wasn't necessary and therefore not reimbursable. [Jones Decl., ¶ 30.]

15 Plaintiff's claims for penalties under Labor Code §§ 203 and 226 are derivative of the
16 underlying unpaid minimum and overtime wage and meal/rest break claims and, accordingly,
17 they would essentially rise or fall with Plaintiff's success or failure on her primary claims.
18 Further, Plaintiff had to account for the discretionary nature of such awards and the "good faith"
19 and other defenses available to YZER. For instance, as to Section 203 waiting time penalties,
20 raised a good faith defense to the waiting time penalties as it applies to both meal/rest periods and
21 underpaid overtime premiums. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-
22 4 (employer did not willfully fail to pay wages under Labor Code § 203 even though the class
23 prevailed on the merits for failing to pay living wages). [Jones Decl., ¶ 31.]

24 As far as potential PAGA liability, the alleged aggrieved employees theoretically are
25 entitled to penalties totaling about \$6 million should Plaintiff prevail on all claims, establish
26 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all
27 issues and all pay periods. [Jones Decl., ¶ 21.] As with the class claims, Plaintiff discounted the
28 potential PAGA penalties based on Defendants' various defenses on the merits and also

1 accounted for the Court's wide discretion to reduce such penalties, or to decline to award
2 penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
3 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was
4 upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S.
5 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated
6 \$35,000 to PAGA penalties.

7 Plaintiff submits this amount is reasonable under the circumstances and in line with
8 comparable settlements in other wage and hour class actions in California. E.g., Van Kempen v.
9 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
10 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
11 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
12 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
13 settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total
14 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the
15 settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D.
16 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA
17 penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA,
18 and the LWDA has not objected to the settlement."

19 Overall, Defendants raised various defenses to Plaintiff's claims on both class
20 certification and the merits that, if successful, could have negatively impacted Plaintiff's claims
21 or reduce potential damages. Accordingly, Plaintiff faced significant risks going forward with this
22 litigation, and given the need to secure and maintain class certification, prevail at trial, and deal
23 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff
24 and counsel discounted the value of the class claims consistent with the risks discussed above,
25 and carefully weighed the likelihood of the class receiving substantially greater benefit if the
26 litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial
27 risks – settlement on the proposed terms and without prolonged and costly litigation was in the
28 best interests of the class. The overall \$1,000,000 recovery represents a significant percentage of

1 Defendant's potential exposure and, given the multiple litigation risks addressed above, a total
2 recovery for the class of \$1,000,000, with an average award of over \$1,100 per class member, is a
3 fair result within the range of reasonableness considering all potential outcomes. [Jones Decl., ¶¶
4 32-34.]

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

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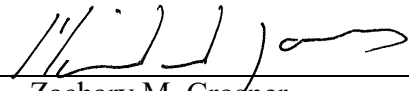
28 ////

1 **V. CONCLUSION**

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

5
6 Dated: July 16, 2024

CROSNER LEGAL, P.C.

7
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