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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

DANIELLA MARQUEZ, as an individual
on behalf of herself and on behalf of all
others similarly situated,

Plaintiff,

vs.

S & G DISCOUNT OUTLET, INC., a
California Corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: Case No.: 23CV005687

Assigned for All Purposes to:
Hon. Hon. Jill H. Talley
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 Nikki Trenner, Daniella
Marquez, and Sean Hartranft; [Proposed] Order

Date: July 19, 2024
Time: 9:00 a.m.
Dept. 23

Reservation No.: A-05687-001

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1 **I. INTRODUCTION**

2 Plaintiff Daniella Marquez hereby moves the Court for an order granting preliminary
3 approval to a proposed non-reversionary class action settlement to resolve wage and hour claims
4 on behalf of approximately 356 individuals including all current and former non -exempt
5 employees who worked either directly or via a staffing agency for Defendant S&G Discount
6 Outlet, Inc. (“S&G” or “Defendant”) at any location in California during the Class Period.of
7 July 28, 2019 to February 6, 2024. The proposed \$370,000 settlement will provide about
8 \$191,667 in cash payments to the class, with an average award of about \$538. The balance of
9 approximately \$178,333 will cover a modest enhancement award to Plaintiff, reasonable
10 attorney’s fees and actual litigation costs, settlement administration costs, and payment of civil
11 penalties to the State. The settlement is the product of Plaintiff’s pre- and post-filing
12 investigation, a pre-mediation exchange of information, and lengthy arms-length negotiations
13 overseen by experienced mediator the Hon. Brian Walsh (Ret.).

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

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

25 S&G is a flooring retailer that operates numerous retail locations throughout California
26 including Rancho Cordova, Rocklin, Elk Grove, Dublin, Santa Clara, San Jose, and Cupertino.
27 Plaintiff was employed by S&G as a non-exempt customer service assistant from January 28,
28 2023 to June 30, 2023, at S&G’s Rancho Cordova location. During her employment, Plaintiff

1 typically worked at least 8 hours per day, 5 days per week. [Declaration of Nikki Trenner
2 (“Trenner Decl.”), ¶ 4.]

3 Plaintiff alleges S&G violated California wage and hour law in several respects. First, she
4 alleges she and the class members worked off the clock by having to communicate with
5 supervisors while at home or away from the store, and while getting to/from the time clocks in
6 order to punch in. She further alleges Defendant failed to include non-discretionary, non-hourly
7 pay in the “regular rate” and thus underpaid for overtime and sick time. She next contends meal
8 and rest periods were not completely free from employer control because S&G placed restrictions
9 on how employees could use their lunch time and they were not allowed to leave the premises.
10 She further claims she had to use her personal cell phone for business purposes without
11 reimbursement. [Trenner Decl., ¶ 5.]

12 Based on these allegations, on July 28, 2023, Plaintiff commenced this action by filing a
13 complaint alleging causes of action against Defendant for (1) recovery of unpaid minimum wages
14 and liquidated damages; (2) recovery of unpaid overtime wages; (3) failure to provide meal
15 periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu
16 thereof; (5) failure to provide accurate, itemized wage statements; (6) failure to timely pay all
17 wages due upon separation of employment; (7) failure to reimburse business expenses; and (8)
18 violations of the Unfair Competition Law. On September 21, 2023, after notice to the LWDA and
19 exhausting administrative remedies, Plaintiff filed a First Amended Complaint adding an
20 additional cause of action against Defendant under PAGA based on the same alleged Labor Code
21 violations. [Trenner Decl., ¶ 6; Exh. 2.]

22 S&G has at all times denied Plaintiff’s allegations and maintained its timekeeping and
23 payroll policies accurately track and pay for all hours worked by its employees at the correct rates
24 of pay. Defendant further argues it paid the class members appropriately for all hours worked,
25 maintains compliant meal and rest break policies, and provided class members with all required
26 meal and rest breaks on a fully compliant basis or compensated them appropriately for any missed
27 breaks. It also strongly contends the case cannot be maintained as any kind of class or
28 representative action, arguing for example that to the extent class members worked off the clock

1 or missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and
2 infrequent and evidence of such alleged violations be purely anecdotal, and therefore
3 individualized issues predominate and trial on a representative basis would be unmanageable.
4 [Trenner Decl., ¶ 7.]

5 Since Plaintiff filled the initial complaint, and after agreeing to participate in early
6 mediation, the Parties engaged in formal and informal discovery to facilitate an exchange of
7 information necessary to engage in a meaningful mediation. Consequently, Plaintiff's counsel
8 reviewed payroll records, personnel policies/handbooks, compensation policies, personnel files,
9 and a random of sampling paystubs and time records for about 25% of the pay periods at issue.
10 Defendant also provided documents reflecting its wage and hour policies and practices, and data
11 regarding the total number of current and former employees, the estimated total amount of
12 workweeks and pay periods they worked, and average hourly pay rates, among other relevant
13 data. Plaintiff had that information reviewed and analyzed by Berger Consulting Group to assist
14 with evaluating things such as time allegedly lost to off the clock work, meal period violation
15 rates, etc., and to prepare a damages model. [Trenner Decl., ¶ 8.]

16 The Parties then engaged the Hon. Brian Walsh (Ret.), a highly respected mediator with
17 extensive wage and hour class action experience and, in November 2023, participated in a full
18 day mediation with Judge Walsh. Throughout the day, the arms-length negotiations were hard-
19 fought and adversarial as the Parties exchanged extensive information on their legal and factual
20 positions, and made numerous offers and counter-offers. After a full day of negotiations, the
21 Parties reached agreement on all major issues and thereafter prepared the Settlement Agreement
22 now before the Court for approval. [Trenner Decl., ¶ 9.]

23 **III. THE PROPOSED SETTLEMENT TERMS**

24 Under the settlement, S&G will pay \$370,000 into a common fund, the Gross Settlement
25 Amount. Reasonable attorney's fees of up to \$123,333.00 (33.33% of the GSA), litigation costs
26 of up to \$20,000, an enhancement award to Plaintiff of up to \$5,000, settlement administration
27 costs of no more than \$10,000, and \$20,000 for civil penalties under PAGA (of which 75%, or
28 \$15,000, will go to the Labor & Workforce Development Agency, and 25%, or \$5,000 will go to

1 the Aggrieved Employees) all will be paid from the Gross Settlement Amount. The remainder of
2 approximately \$191,667 will be allocated among the Participating Class Members based on their
3 total weeks worked during the Class Period. No portion of the Gross Settlement Amount will
4 revert to S&G. [Trenner Decl., ¶ 10.]

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

6 The settlement provides for conditional certification of a settlement class including all
7 current and former non -exempt employees who worked either directly or via a staffing agency
8 for S&G at any location in California during the Class Period of July 28, 2019 to February 6,
9 2024. The Settlement Class consists of approximately 356 individuals.¹ [Trenner Decl., ¶ 11.]

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

11 This is a cash settlement that does not require Participating Class Members to submit a
12 claim form to receive their settlement share. Participating Class Members will receive their
13 settlement checks automatically via First Class U.S. Mail. Eighty percent of each settlement share
14 will be allocated to wages and the remaining twenty percent will be allocated to expenses
15 reimbursement, penalties and interest. S&G will pay any and all applicable employer-side payroll
16 taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval,
17 any amounts not claimed (because a class member does not cash his or her settlement check) will
18 be forwarded to the State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 12.]

19 Each Participating Class Member will receive a share of the Net Settlement Amount based
20 on his or her total weeks worked for S&G during the Class Period while employed in a non-
21 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
22 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid
23 premium wages for missed meal and rest breaks, and potential statutory penalties under applicable
24 law. These methods are intended to ensure each Class Member receives a portion of the available
25 settlement funds corresponding to the relative value of his or her potential claims. The proposed
26

27 ¹ The "Aggrieved Employees" all current and former non-exempt employees who worked either directly
28 or via a staffing agency for Defendant at any location in California during the PAGA Period of June 28,
2022 to February 6, 2024. There are approximately 178 Aggrieved Employees. [Trenner Decl., ¶ 11.]

1 allocation provides a reasonable way to compensate Class Members based on the amount of time
2 they worked for S&G and the number of instances they missed a meal break and/or rest break,
3 were not provided compensation in lieu of such missed breaks, or lost pay due to the alleged off
4 the clock work and regular rate issues. The average class settlement award will be approximately
5 \$538. [Trenner Decl., ¶ 13.]

6 **D. Settlement Administration**

7 Subject to the Court's approval, and after obtaining multiple bids, the Parties agreed on
8 Apex Class Action LLC ("Apex") as the Settlement Administrator. [Trenner Decl., ¶ 14.] Apex
9 is qualified and has significant experience administering class action settlements, including
10 numerous wage and hour matters. Apex estimates its fees at \$9,587, and they are capped at
11 \$10,000. If the Court approves less than the above amount, the difference will remain in the Net
12 Settlement Amount for distribution to the Participating Class Members. [Declaration of Sean
13 Hartranft, ¶¶ 2-8; Exhs. A-B.]

14 **E. The Class Notice**

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

27 /////

28 /////

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

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

7 **G. Release of Claims**

8 All Participating Class Members will release S&G from all claims alleged in the operative
9 FAC, or that could have been brought based on the factual allegations in the FAC during the Class
10 Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the PAGA notice to
11 the extent alleged in the FAC. The Class and PAGA releases are limited to the claims that were
12 actually pleaded or could have been pleaded based on the alleged facts in the FAC, and PAGA
13 notice for the PAGA claims. Only Plaintiff will provide a full general release of all claims.
14 [Trenner Decl., ¶ 17.]

15 **H. Attorney's Fees and Costs, and Plaintiff's Enhancement Award**

16 The settlement provides Defendant will not oppose a request for attorney's fees not to
17 exceed 33.33% of the Gross Settlement Amount, or \$123,333.00, nor will it oppose a request for
18 reimbursement of litigation costs and expenses of up to \$20,000.00. Defendant also will not
19 oppose a request for an enhancement award to Plaintiff of not more than \$5,000.00 in recognition
20 of her time spent on this matter, the risks she undertook on behalf of the class, and the benefit
21 conferred to the class, as set forth in her declaration filed herewith. Plaintiff's counsel will
22 provide the Court with appropriate summaries and evidence of their efforts and time records in
23 anticipation of the Final Approval Hearing. If the Court approves less than the above amounts,
24 the difference will remain in the Net Settlement Amount for distribution to the Participating Class
25 Members. [Trenner Decl., ¶ 18.]

26 **I. Notice to the LWDA**

27 As noted, the Parties allocated \$20,000 to resolution of Plaintiff's claims under PAGA,
28 and Plaintiff submits that amount is fair, reasonable, and adequate, and consistent with PAGA's

underlying purposes. As required by Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and the approval hearing to the LWDA. [Trenner Decl., ¶ 43; Exh. 3.]

IV. ARGUMENT

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

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

The first step is a motion for preliminary approval, through which the parties present the court with the proposed settlement and seek a determination that it is sufficiently fair and reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the “range of reasonableness” and if notice should be provided to the class regarding the settlement’s proposed terms and conditions, and whether a final fairness hearing should be scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins. Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class actions, courts 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.

1 If the court grants preliminary approval, it then orders the class be given notice in an
2 appropriate manner, establishes a schedule and procedures for class members to request exclusion
3 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney's
4 fees and costs, and any enhancement for the class representative(s), is filed subsequent to
5 preliminary approval and heard with the motion for final approval, as part of the second step of
6 the two-step approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

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

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

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

17 In the present matter, conditional certification is proper since this matter satisfies all
18 requirements for class certification under Code of Civil Procedure section 382. First, the class is
19 sufficiently numerous, consisting of approximately 356 individuals. The class also is
20 ascertainable by reference to Defendant's personnel and payroll records. [Trenner Decl., ¶ 20.]

21 Plaintiff also is an adequate class representative, as her claims do not conflict with and are
22 not antagonistic to the claims of other class members. Further, her claims are typical given she is
23 a member of the class and their claims arise from the same employment practices and course of
24 conduct giving rise to the claims of the other class members. [Trenner Decl., ¶ 21; Declaration of
25 Daniella Marquez, ¶¶ 2-7.] Lastly, Plaintiff's counsel are experienced and adequate class counsel.
26 [Trenner Decl., ¶¶ 36-41.]

27 Next, common questions of law and fact predominate – particularly for purposes of a
28 settlement class – as the Class Members all were subject to the same meal and rest break policy,

1 were subject to the same policies and practices resulting in alleged off the clock work, and the
2 same policy that allegedly miscalculated the regular rate of pay. Since the focus of the claims
3 against S&G concerns the legality of common policies applied uniformly to the entire class,
4 common issues predominate over individualized inquiries concerning liability. For instance,
5 S&G's calculation of the regular rate of pay was a company-wide policy applied equally and
6 consistently to all class members, and overtime was either paid consistent with California law or
7 it was not. Regardless of that determination, it will decide liability for all class members one way
8 or another. Similarly, whether personal cell use was necessary raises another question common
9 to all class members. [Trenner Decl., ¶ 22.]

10 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
11 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
12 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 ("Claims alleging that a uniform policy
13 consistently applied to a group of employees is in violation of the wage and hour laws are of the
14 sort routinely, and properly, found suitable for class treatment"); Williams v. Superior Court
15 (2013) 221 Cal.App.4th 1353 ("A company-wide practice can sustain a common question of fact
16 or law that supports commonality for class certification"). Lastly, a class action is superior to
17 other means for the fair and efficient adjudication of this controversy. [Trenner Decl., ¶ 23.]

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

20 The proposed settlement resulted from serious, arms-length negotiations facilitated by
21 respected mediator, the Hon. Brian Walsh (Ret.), who has extensive experience mediating wage
22 and hour class actions. [Trenner Decl., ¶ 9.] Plaintiff's counsel Zachary M. Crosner, Jamie Serb,
23 and Nikki Trenner, all have years of experience litigating wage and hour class actions. Plaintiff's
24 counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or
25 settling the matter. [Trenner Decl., ¶¶ 36-41.]

26 Next, California law recognizes several factors bearing on the fairness, adequacy, and
27 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
28 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 both formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding S&G's payroll practices, a representative sampling of pay stubs and time records for about 25% of the class members, applicable compensation plans, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown, number of work weeks/pay periods, average rates of pay, and other information used to formulate a damages model. Plaintiff then had that information reviewed with the assistance of a consulting expert. Plaintiff's counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Trenner Decl., ¶¶ 8, 24.]

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. Through the information exchanged and analysis undertaken, Plaintiff and counsel weighed the risks of continued litigation against the benefits of the proposed settlement and determined settlement to be the most reasonable option.

Using the data obtained from Defendant, Plaintiff ran various calculations and estimated S&G's likely maximum exposure on the class claims at approximately \$7.673 million, including about \$347,270 on the unpaid wage/off the clock claim, \$151,300 on the underpaid overtime/regular rate claim, \$2,725,425 on the meal period violation claim, \$2,960,655 on the rest break claim, \$131,045 on the unreimbursed expense claim, \$398,450 on the wage statement claims, and \$958,930 on the waiting time penalty claims. [Trenner Decl., ¶¶ 25-26.] Plaintiff

1 substantially discounted these theoretical maximums, however, based on S&G multiple
2 procedural and merits defenses.

3 First, on the unpaid wage claims, Plaintiff alleges she and the class members worked off
4 the clock for several reasons, including losing several minutes of time during the process of
5 clocking in for a shift, returning company cell phones to the office after clocking out, and having
6 to communicate with supervisors and co-workers while off duty and away from the store. As a
7 result, per Plaintiff, she and the class members lost as much as 1-2 hours of compensable time
8 each week due to this off the clock and uncompensated work. In response, Defendant argued its
9 timekeeping and payroll policies accurately tracked and paid for all employee time. It also argued
10 that its policies prohibited any “off the clock” work. Accordingly, per S&G, if any off the clock
11 work occurred it was intermittent and infrequent, against company policy, and done without the
12 employer’s knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d
13 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). For
14 these reasons, S&G contends class certification of this issue would be impossible because
15 innumerable individual inquires would be required to determine what “off the clock” occurred
16 and if it was compensable. [Trenner Decl., ¶ 27.]

17 For the unpaid overtime claim, Plaintiff contends S&G paid commissions to putative class
18 members but failed to incorporate these payments into the regular rate of pay when calculating
19 overtime, sick pay, and premium payments for noncompliant meal and rest periods. Alvarado v.
20 Dart Container Corp. (2018) 4 Cal.5th 542, 534, 550 (“Regular rate of pay, which can change
21 from pay period to pay period, includes adjustments to the straight time rate, reflecting, among
22 other things, shift differentials and the per-hour value of any non-hourly compensation the
23 employee has earned.”). S&G contended on the other hand that its payroll policies fully and
24 properly compensated employees at the correct rates of pay. [Trenner Decl., ¶ 28.]

25 On the meal and rest break claims, Plaintiff alleges S&G’s policies prohibited Class
26 Members from certain behaviors while on a break, such as napping, “malingering,” or leaving the
27 premises without authorization. As a result, Plaintiff argued S&G does not provide duty-free rest
28 periods to employees because it fails to relinquish control over how Plaintiff and the Class

1 Members utilize their meal and rest period time. Plaintiff also alleged she and other class
2 members were asked to work during their lunch breaks on occasion, and that S&G nevertheless
3 “auto-deducted” 30 minutes from their time regardless of whether they actually received a
4 complete and uninterrupted break. [Trenner Decl., ¶ 29.]

5 In response, S&G contended its meal and rest break policies are fully compliant with
6 California law, and that it provided employees with the opportunity to take all required breaks. It
7 further contended all breaks were completely free from employer control, and that its policies
8 regarding sleeping or leaving the premises applied only while employees were clocked in and on
9 duty and not to break times. S&G further argued it paid tens of thousands in meal period premiums
10 for documented meal violations and, accordingly, complied with obligations to provide meal and
11 rest periods. [Trenner Decl., ¶ 30.]

12 On the expense reimbursement claim, Plaintiff alleges that use of her personal cellular
13 phone was necessary and consequential to her employment duties for purposes of communicating
14 with supervisors and co-workers. Defendant did not reimburse employees for the cost associated
15 with the use of the personal cellular phones for Defendant’s benefit. Cochran v. Schwan’s Home
16 Serv. (2014) 228 Cal.App.4th 1137, 1144. In response, S&G argued it provided employees with
17 company phones for use while on duty, and there would be no need to use of personal phones at
18 any other time. Per S&G, to the extent employees used their own phones, it was purely for
19 personal convenience, was not necessary to their employment, and therefore was not
20 reimbursable. [Trenner Decl., ¶ 31.]

21 Plaintiff also alleges S&G’s wage statements were inaccurate and that it failed to timely
22 pay all wages due on separation of employment. These derivative claims are based on the unpaid
23 wage claims and will rise or fall along with those primary claims, in addition to being subject to
24 “good faith” and other defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008)
25 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor
26 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to
27 pay living wages). Defendant argued further that the wage statements accurately contained all
28 required information, and that acted in good faith all times with respect to payment of wages.

1 Accordingly, Plaintiff discounted these claims significantly in light of these multiple potential
2 defenses. [Trenner Decl., ¶ 32.]

3 As far as potential PAGA liability, the alleged aggrieved employees theoretically are
4 entitled to penalties totaling about \$2.2 million should Plaintiff prevail on all claims, establish
5 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all
6 claims as to all pay periods at issue. [Trenner Decl., ¶ 33.] As with the class claims, Plaintiff
7 discounted the potential PAGA penalties based on Defendant's various defenses on the merits
8 and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award
9 penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
10 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was
11 upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S.
12 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated
13 \$15,000 to PAGA penalties. [Trenner Decl., ¶ 33.]

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

26 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims,
27 anyone of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to
28 raise all these defenses at trial. The settlement obviates the significant risk that this Court may

1 find any kind of class or representative resolution unachievable or deny certification of all or
2 some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all or some of
3 the claims, continued litigation would be lengthy and expensive as the parties pursued merits
4 discovery, a probable motion to decertify, as well as trial and possible appeals, and would
5 substantially delay any recovery by the class with no assurance of recovering significantly more
6 than the proposed settlement. While Plaintiff is confident in the merits of these claims,
7 legitimate controversies exist regarding each one of them. Likewise proving the amount of
8 wages and penalties due each Class Member would be an expensive, time-consuming, and
9 uncertain proposition. [Trenner Decl., ¶ 34.]

10 Although Plaintiff and counsel believe they could have prevailed, there was no such
11 guarantee. When the risks of certifying the class, maintaining certification through trial,
12 prevailing at trial on the merits on all claims, securing 100% of the theoretical damages and civil
13 penalties, and prevailing on any post-judgment appeals all are factored into the equation, the
14 settlement value is reasonable and supported. Plaintiff discounted the value of the class claims
15 consistent with the risks discussed above, and carefully weighed the likelihood of the class
16 receiving substantially greater benefit if the litigation continued. Plaintiff concluded – in light
17 of these very real and substantial risks – settlement on the proposed terms and without
18 prolonged and costly litigation was in the best interests of the class, as the overall \$370,000
19 recovery represents a significant percentage of Defendant's potential exposure. Given these
20 risks, a total recovery for the class of \$370,000, which will result in average award of some
21 \$538 per class member, is a significant result well within the range of reasonableness
22 considering all potential outcomes, and it will provide direct monetary awards to all Class
23 Members in short order. [Trenner Decl., ¶¶ 34-35.]

24 Importantly, the mere fact that a settlement does not provide the same recovery as might
25 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
26 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
27 settlement process...even if the relief afforded by the proposed settlement is substantially
28 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class

1 settlement because the public interest may indeed be served by a voluntary settlement in which
2 each side gives ground in the interest of avoiding litigation”); 7-Eleven Owners for Fair
3 Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed
4 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
5 that the proposed settlement is grossly inadequate and should be disapproved”); White v. Experian
6 Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention
7 settlement was not fair and reasonable even though it represented 99% discount off the maximum
8 value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question
9 whether a settlement is fundamentally fair . . . is different from the question whether the settlement
10 is perfect in the estimation of the reviewing court”). Importantly as well, the proposed settlement
11 is non-reversionary and will provide immediate benefits to the Class Members without a claims
12 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action
13 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
14 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
15 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
16 within the “range of reasonableness,” and is fair and adequate for the Class.

17 **V. CONCLUSION**

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

21
22 Dated: June 17, 2024

CROSNER LEGAL, P.C.

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