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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNADINO

PATRICIA ALVARADO, as an individual and on behalf of all others similarly situated, Plaintiff, vs. JC-4, INC., a California Corporation; and DOES 1-100, inclusive, Defendants.	Case No. CIVSB2314091 Assigned for all Purposes to the: Hon. Joseph T. Ortiz Dept. S-17 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 24, 2025 Time: 1:30 p.m. Dept.: S17

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff Patricia Alvarado hereby moves the Court for an order granting preliminary approval to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of approximately 1,637 individuals employed by Defendant JC-4, Inc. ("JC-4") in California and classified as a non-exempt hourly employee who worked for JC-4 during the Class Period of June 16, 2019 to December 15, 2024. The proposed $625,000 settlement will provide at least $310,667 in cash payments to the settlement class, with an average award of about $190, plus additional amounts under PAGA. The balance of approximately $314,333 will cover a modest enhancement award to the named Plaintiff, reasonable attorney's fees and actual litigation costs, settlement administration costs, and payment of civil penalties to the State. The settlement is the product of Plaintiff's pre- and post-filing investigation, extensive formal and informal discovery, and arms-length and adversarial negotiations overseen by experienced and well-regarded mediator Henry Bongiovi, Esq.

As demonstrated below, the settlement is within the "range of reasonableness" for preliminary approval, and is fair, reasonable and adequate. Plaintiff's counsel believe the settlement is a significant result for the class given the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court enter an order: (1) granting preliminary approval to the proposed class action settlement; (2) conditionally certifying the settlement class as defined below; (3) appointing Crosner Legal, P.C. as Class Counsel; (4) appointing plaintiff Patricia Alvarado as the Class Representative; (5) appointing Phoenix Settlement Administrators as the Settlement Administrator; (6) approving the form of notice to the class and the procedure for providing such notice; and (7) scheduling a final fairness hearing.

II. BACKGROUND/LITIGATION HISTORY

Defendant JC-4 is a McDonald's franchisee that owns and operates multiple McDonald's restaurants. Plaintiff has worked for JC-4 since approximately September 2021 at the restaurant in Rialto, California. (Declaration of Brandon Brouillette ("Brouillette Decl."), ¶ 4.)

Plaintiff alleges JC-4 violated California wage and hour law in several respects during the Class Period. First, she alleges a failure to pay all minimum and overtime wages by (1) utilizing an unlawful rounding policy resulting in the underpayment of wages (2) requiring Class Members to arrive 15 minutes early per shift to attend daily meetings before clocking in, and to clock out and continue to work at the end of a shift; and (3) requiring Class Members to receive work-related text messages and phone calls made to their personal resulting while on break. Next, Plaintiff alleges JC-4 also failed to provide compliant meal periods as meal periods were either interrupted or started late due to job demands. She also alleges Defendant failed to provide legally compliant rest periods, as rest periods were required to be taken on Defendant's premises, and were oftentimes interrupted or late. She further claims Defendant did not reimburse business expenses incurred by Class Members for the use of their personal cellular phones.. Lastly, she alleges Defendant failed to provide accurate, itemized wage statements and failed to pay all wages owed upon the separation of employment. [Brouillette Decl.), ¶ 5.]

Based on these allegations, on June 16, 2023, Plaintiff filed the underlying class action complaint on behalf of herself and the Class Members, asserting claims for (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to provide itemized wage statements; (6) failure to reimburse business expenses, (7) failure to pay all wages due at termination; and (8) unfair competition. After exhausting her administrative remedies, Plaintiff filed a First Amended Complaint adding claims under PAGA based on the same alleged Labor Code violations. [Brouillette Decl., ¶ 6.]

JC-4 has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, and that it provided the class members with required meal and rest breaks. Additionally, JC-4 contends its timekeeping and payroll policies accurately track and pay for all hours worked by its employees and at the correct rates of pay. It also strongly contends the case cannot be maintained as any kind of class or representative action, arguing for example that to the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and therefore individualized issues predominate and trial on a representative basis would be unmanageable. [Brouillette Decl., ¶ 7.]

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

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

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, JC-4 will pay $625,000.00 into a common fund, the Gross Settlement Amount.[1] Reasonable attorney's fees of up to $208,333.33 (1/3 of the GSA), litigation costs of up to $25,000, an enhancement award to Plaintiff of up to $10,000, settlement administration costs of no more than $21,000, and $50,000 for civil penalties under PAGA (of which 75%, or $37,500, will go to the Labor & Workforce Development Agency, and 25%, or $12,500 will go to the Aggrieved Employees) all will be paid from the Gross Settlement Amount. The remainder of approximately $310,667 will be allocated among the Participating Class

[1] Unless otherwise stated, all capitalized terms have the same meaning as those defined in the Settlement Agreement.

Members based on their total pay periods worked during the Class Period. No portion of the Gross Settlement Amount will revert to JC-4. [Brouillette Decl., ¶ 10.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all persons employed by JC-4 in California and classified as a non-exempt hourly employee who worked for JC-4 during the Class Period of June 16, 2019 to December 15, 2024. The Settlement Class consists of approximately 1,637 individuals.[2] [Brouillette Decl., ¶ 11.]

B. The Benefit Conferred on the Settlement Class

This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Ten percent of each settlement share will be allocated to wages and the remaining ninety percent will be allocated to expenses reimbursement, penalties and interest. JC-4 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. [Brouillette Decl., ¶ 12.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for JC-4 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

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[2] The "Aggrieved Employees" for purposes of PAGA includes all persons employed by Defendant in California and classified as a non-exempt hourly employee who worked for Defendant during the PAGA Period of June 21, 2022 to December 15, 2024. There are approximately 705 Aggrieved Employees. [Brouillette Decl., ¶ 11.]

amount of time they worked for JC-4 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. The average class settlement award will be approximately $190, and the average PAGA award will be about $17.73. [Brouillette Decl., ¶ 13.]

C. Settlement Administration

Subject to the Court's approval the Parties agreed on Phoenix Settlement Administrators as the Settlement Administrator. [Brouillette Decl., ¶ 14.] Phoenix is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Phoenix has agreed to cap its fees and costs at $21,000. If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Declaration of Jodey Lawrence, ¶¶ 2-16; Exhs. A-B.]

D. The Class Notice

The proposed Notice (Exhibit 2 to the Brouillette Declaration) sets out information about this case and explains the basic settlement terms in plain language, and meets all requirements under California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the individualized information used to calculate Individual Settlement Payments and each Class Member's estimated settlement award. The Notice likewise details the procedures for Class Members to dispute their individual information, for submitting an objection to the Settlement, and to request exclusion. In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement and provides fair opportunity to participate in, opt out of, or object to the proposed Settlement. Many Class Members are more comfortable in Spanish and accordingly the notice documents will be translated into Spanish in addition to English. Coupled with the notice procedure, the proposed Notice provides the Class with the best notice practicable. [Brouillette Decl., ¶ 15; Exh. 2.]

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

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

Settlement Administrator will review the Class Member's records as well as any additional information submitted, and make a final determination. [Brouillette Decl., ¶ 16.]

F. Release of Claims

All Participating Class Members will release JC-4 from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the PAGA notice to the extent alleged in the operative complaint. The Class and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint, and the PAGA notice for the PAGA claims. Only Plaintiff is entering into a full general release of all claims and waiver of Civil Code section 1542. [Brouillette Decl., ¶ 17.]

G. Attorney's Fees and Costs, and Plaintiff's Enhancement Award

The settlement provides Defendant will not oppose a request for attorney's fees not to exceed 1/3 of the Gross Settlement Amount, or $208,333.33, nor will it oppose a request for reimbursement of litigation costs and expenses of up to $25,000. Defendant also will not oppose a request for an enhancement award to Plaintiff of not more than $10,000.00 in recognition of her time spent on this matter, the risks she undertook on behalf of the class, and the benefit conferred to the class, as set forth in her declaration filed herewith. Plaintiff's counsel will provide the Court with appropriate summaries and evidence of their efforts and time records in anticipation of the Final Approval Hearing. If the Court approves less than the above amounts, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Brouillette Decl., ¶ 18.]

H. PAGA Penalties and Notice to the LWDA

As noted, the Parties allocated $50,000 from the GSA to resolution of Plaintiff's alleged claims for PAGA civil penalties, and Plaintiff submits that amount is fair, adequate and reasonable, and furthers PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and the preliminary approval hearing to the LWDA via its online portal. [Brouillette Decl., ¶ 19; Exh. 4.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

If the court grants preliminary approval, it then orders the class be given notice in an appropriate manner, establishes a schedule and procedures for class members to request exclusion or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney's fees and costs, 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 1,637 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Brouillette Decl., ¶ 20.] Next, Plaintiff is an adequate class representative, as her claims do not conflict with and are not antagonistic to the claims of other class members. Further, her claims are typical given she 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. [Declaration of Patricia Alvarado, ¶¶ 3-7; Brouillette Decl., ¶ 21.] Lastly, Plaintiff's counsel are experienced and adequate class counsel. [Brouillette Decl., ¶¶ 36-47.]

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 policies. Since the focus of the claims against JC-4 concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, JC-4's meal and rest break policy is a company-wide policy applied equally and consistently to all class members, and this policy is either compliant with California law or it is not. Regardless of that determination, it will decide liability for all class members one way or another. Similarly, whether class member's lost compensable time due to JC-4's alleged time rounding policy raises a question common to all class members. [Brouillette Decl., ¶ 22.]

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

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator, Henry Bongiovi, Esq., who has extensive experience mediating wage and hour class actions. [Brouillette Decl., ¶ 9.] Plaintiff's counsel Zachary M. Crosner and Brandon Brouillette have years of experience litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Brouillette Decl., ¶¶ 36-47.]

Next, California law recognizes several factors bearing on the fairness, adequacy, and reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2) the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated below, the proposed settlement satisfies these requirements.

Prior to mediation, the parties engaged in both formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding JC-4'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. [Brouillette 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's experts ran various calculations and estimated JC-4's likely maximum exposure on the class claims at approximately **$5,851,150**, including about $1,305,395 on the unpaid wage/off the clock claim, $121,930 on the meal break claims, $112,400 on the rest break claims, $388,755 on the unreimbursed expense claim, $1,658,000 on the wage statement claims, and $2,264,670 on the waiting time penalty claims. [Brouillette Decl., ¶¶ 25-26.] Plaintiff substantially discounted these numbers, however based on Defendant's many and varied potential defenses.

First, on the unpaid wage claims, Plaintiff alleges employees frequently had to work off the clock, including working while purportedly clock out on meal breaks and performing pre- and post-shift work before clocking in or after clocking out. As a result, Plaintiff contends she and the class members lost as much as 60 minutes of compensable time each week due to this off the clock work as well as lost time due to rounded off time punches. In response, Defendant argued its timekeeping and payroll policies accurately tracked and paid for all employee time. It also argued that its policies forbade any “off the clock” work and, accordingly, if any off the clock work occurred it was intermittent and infrequent, against company policy, and done without the employer’s knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). For these reasons, per JC-4, class certification of this issue would be impossible because innumerable individual inquires would be required to determine whether any compensable “off the clock” work occurred. [Brouillette Decl., ¶ 27.]

On the meal period claims, Plaintiff alleged several violations. First, she argued that, regardless of whether JC-4’s written policies were compliant, there were significant “de facto” violations for missed, late, and short meal periods. Per Plaintiff, her expert’s review of the sampling of time records produced suggested several thousand meal violations during the class period. Plaintiff further emphasized that, although the records show Defendant paid at least some meal break premiums, it did not start doing so until about half way through the class period. Thus, Plaintiff contends there were thousands of documented violations that went uncompensated. [Brouillette Decl., ¶ 28.]

In response, Defendant argued its break policies were fully compliant with California law, and that it provided all required meal periods and thereby met its obligations under the Labor Code and applicable Wage Order. Further, Defendant argued to the extent employees missed a break or took a non-compliant break, any such discrepancies were aberrational and against company policy and a myriad of individual issues would be required to determine whether the potential violation resulted from employee choice or some other reason. Consequently, per Defendant, individualized inquiries would dominate on this issue and render class certification inappropriate. Defendant also emphasized it paid thousands of dollars in meal premiums for documented alleged violations in its good faith efforts to comply. [Brouillette Decl., ¶ 29.]

For the rest break claim, Plaintiff similarly argued that Defendant frequently provided non-compliant rest breaks, as the Class Members often had to skip rest breaks or received shortened rest breaks due to the hectic nature of the work, had to be available to respond to texts/phone calls. Interestingly, JC-4 actually had its employees clock in/out for rest breaks, and Plaintiff contends those records reflect "de facto" violations similar to the meal break issue, where breaks either were untimely, short, or not recorded at all. As with meal breaks, Defendant argued its rest break policies complied with California law and that it authorized and permitted employees to take all required rest breaks, and again that individualized issues would predominate in determining why a rest break allegedly was missed or non-compliant. [Brouillette Decl., ¶ 30.]

On the expense reimbursement claim, Plaintiff alleges that use of personal cellular phones was necessary and consequential to employment with Defendant, including having to download an app for purposes of obtaining payroll information. Defendant did not reimburse employees for the cost associated with the use of the personal cellular phones for Defendant's benefit. Cochran v. Schwan's Home Serv. (2014) 228 Cal.App.4th 1137, 1144. In response, JC-4 argued it provided employees with all tools and equipment necessary to perform their job duties and, to the extent employees used their own phones, it was purely for personal convenience, was not necessary to their employment, and therefore was not reimbursable. [Brouillette Decl., ¶ 31.]

Finally, Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims are based on the unpaid wage claims and will rise or fall along with those primary claims, in addition to being subject to "good faith" and other defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Defendant argued further that the wage statements accurately contained all required information, and that acted in good faith all times with respect to payment of wages. Plaintiff estimated the exposure on these claims at about Accordingly, Plaintiff discounted the derivative claims significantly in light of these multiple potential defenses. [Brouillette Decl., ¶ 32.]

As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled to penalties totaling about $5.4 million should Plaintiff prevail on all claims, establish violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all claims for each and every pay period at issue. [Brouillette Decl., ¶ 33.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $50,000 to PAGA penalties.

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

The settlement obviates the significant risk that this Court may find any kind of class resolution unachievable or might deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued litigation would be expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would substantially delay any recovery by the class with no assurance of recovering significantly more than the proposed settlement. Overall, while Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes proving the amount of wages and penalties due each Class Member would be an expensive and uncertain proposition. [Brouillette Decl., ¶ 34.]

Plaintiff and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $625,000 recovery represents a significant percentage of Defendant's potential exposure and, given the risks addressed above, a total recovery for the class of $625,000, which will result in average award of some $190 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Brouillette Decl., ¶ 35.]

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

V. CONCLUSION

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

Dated: March 18, 2025

CROSNER LEGAL, P.C.

By: ______________________________
Brandon Brouillette
Attorneys for Plaintiff Patricia Alvarado