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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHAZLEY FOSTER, as an individual and on behalf of all others similarly situated, Plaintiff, v. AMERICAN HONDA MOTOR CO., INC., a California Corporation, and DOES 1 through 100, inclusive, Defendants.	Case No.: 23STCV22112 Assigned for all Purposes to: Hon. Timothy Patrick Dillon Dept. SSC-15 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: December 3, 2025 Time: 10:00 a.m. Dept.: SSC-15

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I. INTRODUCTION

Plaintiff Chazley Foster respectfully requests that the Court preliminarily approve Class Action and PAGA Settlement Agreement ("Agreement") entered into between Plaintiff and Defendant American Honda Motor Co. Inc. ("Honda" or "Defendant"). The proposed settlement seeks to resolve claims in the above captioned matter in exchange for a non-reversionary $985,000 Gross Settlement Amount. The settlement class is comprised of "all current and former non-exempt employees who were employed by Defendant at any location in California at any time during the Class Period" of September 13, 2019, to May 15, 2025.

The Agreement and notice distribution plan are the products of adversarial, arm's-length negotiations by informed counsel and parties, facilitated by an experienced mediator. The settlement is fair, reasonable, and adequate for all. Plaintiff has analyzed the strengths and vulnerabilities of the claims with Defendant's potential exposure and determined the $985,000 proposed settlement is well within the range of reasonableness and is in the Class Members' best interests. The length and risks of trial and perils of litigation that affect the values of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also considered by Plaintiff and counsel in negotiating the proposed settlement. Further, the proposed settlement satisfies the criteria for preliminary approval under California Rules of Court, Rule 3.769.

Accordingly, Plaintiff seeks: (1) preliminary approval of the settlement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Crosner Legal, PC as Class Counsel; (5) approval of the Parties' proposed Notice of Class Action Settlement ("Notice") and method of notifying the Class Members; (6) a hearing date for Plaintiff's Motion for Final Approval of Class Action Settlement; and (7) entry of an Order Granting Preliminary Approval of Class Action Settlement.

II. BACKGROUND/LITIGATION HISTORY

Defendant American Honda Motor Co., Inc. is responsible for the North American distribution, marketing and sales of Honda and Acura-branded products. Plaintiff Foster was employed by Defendant as a non-exempt material handler from 2011 to June 2023 at Defendant's Torrance warehouse. (Trenner Decl., ¶ 11.)

On September 13, 2023, Plaintiff filed a class action complaint against Honda alleging causes of action for (1) recovery of unpaid minimum wages and liquidated damages; (2) recovery of unpaid overtime wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to furnish accurate itemized wage statements; (6) failure to pay all wages due upon separation of employment; (7) failure to reimburse business expenses; and (8) unfair competition. On October 13, 2023, after notice to the LWDA and Defendant and exhausting administrative remedies, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for violations of the PAGA based on the same alleged Labor Code violations. (Trenner Decl., ¶ 12; Exh. 4.)

In March 2025, the Parties participated in mediation with Todd Smith, Esq., a respected wage and hour class action mediator. After a full day of mediation, the Parties were unable to reach an agreement, but ultimately both sides accepted a mediator's proposal issued by Mr. Smith shortly thereafter. The Parties then formally reduced the proposed settlement to the Agreement now before the Court for approval. The Agreement meets the requirements in the LASC Checklist for Preliminary Approval. (Trenner Decl., ¶ 13.)

III. INVESTIGATION

Prior to the mediation, Defendant provided Plaintiff with extensive informal discovery, including Plaintiff's personnel file, time and payroll records, and wage statements, a random sample of time and payroll records for Class Members covering 20% of the pay periods from the beginning of the class period until the records were produced in 2024,[1] Defendant's employee handbooks, including Defendant's policies and procedures regarding the payment of wages, the provision of

[1] Plaintiff's experts at Berger Consulting Group suggested the sampling was statistically significant and would enable them to extrapolate to the entire putative class. [Trenner Decl., ¶ 14.]

meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, expense reimbursement policies, as well as information regarding the number of putative Class Members who are current and former employees, the number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. From this information, Plaintiff was able to analyze Defendant's liability for the claims asserted in this case and, with the assistance of Plaintiff's experts at Berger Consulting Group, the potential exposure and damages. (Trenner Decl., ¶ 14.)

Based on this informal discovery, Plaintiff contends the Class Members were not paid all wages due, not provided with legally compliant meal and rest periods, did not receive compliant wage statements, did not receive required expense reimbursement, and did not receive all wages due on separation of employment. In considering the reasonableness of the proposed settlement, Plaintiff considered each of Defendant's counterarguments, which sharply contested Plaintiff's claims. Plaintiff and counsel weighed the strength of Defendant's arguments, including the risks of prevailing at class certification and on the merits, and determined that the proposed settlement is in the best interests of the Class. Although remaining confident in the strength of her claims, these factors led Plaintiff to discount the exposure analysis, as discussed below. (Trenner Decl., ¶ 15.)

IV. TERMS OF THE PROPOSED SETTLEMENT

A. Deductions from the Settlement

The Parties have agreed (subject to the Court's approval) to resolve this matter for the non-reversionary total sum of $985,000.00 ("Gross Settlement Amount" or "GSA") (Agreement, § 3.1.), which includes: (a) reasonable attorney's fees of up to $325,050 (33.33% of the GSA)[2] to compensate Class Counsel for work already performed and all work remaining to be performed (Agreement, § 3.2.2.); (b) actual litigation expenses as documented and not to exceed $35,000.00[3] (Agreement, § 3.2.2.); (c) an Enhancement Award to Plaintiff in an amount not to exceed $10,000.00

[2] The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one. *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in connection with Class Counsel's request for attorney's fees.

[3] At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class Counsel's request for reimbursement of actual expenses.

(Agreement, § 3.2.1.); (d) Administration Costs to Apex Class Action, LLC (the proposed settlement administrator) in an amount not to exceed $9,300.00 (Agreement, § 3.2.3.); and (e) PAGA penalties to the LWDA of $63,750 (which is 75% of the $85,000.00 PAGA Payment, with the remaining 25% or $21,250.00 to Aggrieved Employees) (Agreement, § 3.2.5.). Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendant separate and apart from the GSA. (Agreement, § 3.1.)

B. Calculation of the Individual Settlement Payments to Class and Aggrieved Employees

After all Court-approved deductions from the GSA, it is estimated that at least $520,650 ("Net Settlement Amount" or "NSA"), less all applicable employee-side taxes, will be distributed to the estimated 818 Class Members, with an average individual settlement amount of around $636.[4] Additionally, it is estimated that the 25% PAGA Payment ($21,250.00) will be distributed to the estimated 558 Aggrieved Employees, resulting in an average payment of $38[5] per Aggrieved Employees. (Trenner Decl., ¶ 17.) Under no circumstances will any portion of the Settlement revert to Defendant. (Agreement, § 3.1.)

Apex will calculate and issue Individual Class Payments to Participating Class Members by "(a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks." (Agreement, § 3.2.4.) Additionally, Apex will calculate and issue payments to Aggrieved Employees based (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($21,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods." (Agreement, § 3.2.5.1.)

Each Class Member's settlement award will be apportioned as follows: thirty percent wages and seventy percent penalties and interest. (Agreement, § 3.2.4.1.) Apex will be responsible for

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[4] $520,650 estimated NSA/818 Class Members

[5] $21,250 (25% PAGA Payment) /558 Aggrieved Employees

issuing Form W-2s for amounts deemed wages and Form 1099s for the portions allocated to penalties and interest. (Agreement, §§ 3.2.4.1. and 3.2.5.2.)

C. <u>Uncashed Funds to Unclaimed Property Fund</u>

Settlement checks must be cashed or deposited within 180 days after issuance. (Agreement, § 4.5.1.) In the event a settlement check remains uncashed, such uncashed funds shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the Participating Class Member and/or Aggrieved Employee. (Agreement, § 4.5.3.). Therefore, there will be no unpaid residue or unclaimed or abandoned Class Member funds under California Code of Civil Procedure section 384(a).

D. <u>Notice and Extended Response Deadline for Re-Mailed Notices</u>

Within 21 calendar days after entry of the Preliminary Approval Order, Defendant will provide Apex with the Class Data, which Apex will maintain as private and confidential. (Agreement, § 4.2.)

Prior to mailing, Apex will perform a search for updated addresses in the National Change of Address database and will use the NCOA database and skip traces to attempt to find current addresses for any Notice returned as undeliverable. (Agreement, § 7.4.2.) If Apex is unable to obtain a better address for a Class Member, it will be under no obligation to make further attempts to locate or notice the Class Member. (Agreement, § 7.4.4.) Within fourteen days after receipt of the Class Data, Apex will mail the Notice to all Class Members via First-Class mail. (Agreement, § 7.4.2.)

The contents of the Notice are consistent with the terms of the Agreement and California Rule of Court 3.769. The Notice informs Class Members how and when to request exclusion from or object to the settlement and of their estimated payment amount which they will automatically receive a settlement payment if they do nothing. (Trenner Decl., ¶ 23; Exh. 3.)

E. <u>Responses to the Settlement and Deadlines</u>

Class Members will have forty-five (45) days from the initial mailing of the Notice to respond to the settlement by submitting a challenge to the number of weeks or pay periods attributed to them, objecting, or requesting exclusion. (Agreement, § 1.44.) Class Members can object to the settlement in writing via mail or fax by submitting a document with their name, the words "Notice of Objection" or "Formal Objection" and a description of the arguments supporting their objection, or they may be heard at the Final Approval Hearing. (Agreement, § 7.7.)

Class Members can also request for exclusion from the settlement by mailing or faxing a written request, including his or her name, address, phone number or email address, last four digits of their Social Security Number or Employment Authorization number, and a statement demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.)

The Notice also informs the Class Members/Aggrieved Employees that they can dispute the number of workweeks/pay periods used to calculate their settlement payments by contacting Apex before the Response Deadline and providing documentation to support their dispute. Apex will investigate the dispute, request additional information from Defendant, and make a final decision as to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

F. Funding and Distribution of the Settlement

Defendant will fund the settlement within fourteen calendar days after the Effective Date, and Apex will disburse all payments required under this Settlement within fourteen (14) calendar days of receipt of the GSA. (Agreement, § 4.3-4.)

G. Release of Claims

Upon final approval, Participating Class Members shall forever release the Released Parties[6] for the Released Claims for the Class Period, including all claims pleaded in the Operative Complaint, and which could reasonably have been alleged, based on the Class Period facts, allegations, and/or claims stated in the Operative Complaint, for work performed during the Class Period, and as specifically detailed in Sections 5.2 of the Agreement. Additionally, the Aggrieved Employees will the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and PAGA Notice, and as more specifically detailed in Section 5.3 of the Agreement.

H. The Class Representative Service Award Is Justified Given the Risks and Should be Preliminarily Approved

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[6] "Released Parties" means Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates (Agreement, § 1.42.)

The Agreement provides for a service payment not to exceed $10,000 to Plaintiff (Agreement, § 3.2.1.), and in addition he has entered into a separate individual settlement with Honda regarding his alleged claims for racial discrimination. Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class litigation. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393 ("These awards are discretionary…and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."); *Bell v. Farmers Ins. Exch*. (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n. 971 (noting that service payments are warranted).

The requested service award is reasonable in light of the benefits Plaintiff conferred upon the entire Class, resulting in a benefit to all Class Members and the State of California, the time spent assisting counsel with the investigation and prosecution of these claims, commitment to responding to discovery, and consenting to the proposed Agreement. Furthermore, by attaching his name to this lawsuit, Plaintiff also took on the reputational risk that future employers would learn of his participation in this case and would unfairly associate them with costly litigation, costing them future employment opportunities. Any future employer could easily perform a simple Google search – an unauthorized simple background check unknown to Plaintiff that can still provide a plethora of information – and conclude that Plaintiff is not worth the risk of hiring given his prior involvement in a lawsuit against a former employer. This is the kind of reputational risk, borne only by Plaintiff, that the incentive award is meant to compensate. Furthermore, in pursuing this action on behalf of the Class, Plaintiff risked a judgment against him for attorney's fees and costs in the event this matter should Honda prevail. For these reasons, at final approval, Plaintiff will request the Court award him an enhancement payment in an amount that does not exceed $10,000. (Trenner Decl., ¶ 29; Declaration of Chazley Foster, ¶¶ 2-9.)

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IV. ARGUMENT

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217]. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were 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. *Id.* at 1802. As the following shows, all of these elements are present here and the Court should grant of preliminary approval.

A. The Settlement was Reached as a Result of Arm's Length Negotiations

The proposed settlement was reached as a result of arm's-length negotiations facilitated by a respected mediator. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive. Following mediation, counsel for the Parties conducted further extensive and arm's length negotiations on the settlement terms memorialized in the Agreement. (Trenner Decl., ¶ 30.)

While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation and understand the benefit of Class Members receiving significant settlement funds immediately as opposed to risking continued litigation in achieving class certification, the merits of the case before and after trial, the damages awarded and/or an appeal that can take several more years to litigate. (Trenner Decl., ¶ 31.)

B. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the strengths and weaknesses of their factual and legal arguments before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. The proposed settlement was only possible following significant analysis and evaluation of Defendant's relevant policies and procedures, as well as the data it produced for the putative Class. (Trenner Decl., ¶ 32.) This litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

C. Counsel for the Parties are Experienced in Similar Litigation

Counsel for the Parties are particularly experienced in wage and hour employment law, class actions and PAGA actions. Plaintiff's Counsel has prosecuted numerous cases on behalf of employees for wage and hour violations and thus are experienced and qualified to evaluate the class and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This experience informed Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.[7] (Trenner Decl. ¶¶ 4-10.)

D. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor into whether the settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal.App.4th at 129.

In weighing the strength of Plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." 168 Cal.App.4th at 133. Further, this analysis does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal. App. 4th at 409. Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-Clyde & Associates*

[7] The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

(1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties' investigation and discovery revealed several reasons to discount claims and agree to this settlement.

E. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation

The proposed settlement was only possible following significant analysis and evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant produced for the Class. This permitted Plaintiff's Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted resulted in Plaintiff's central theories of liability, which are based on Plaintiff's claims that Defendant failed to provide compliant meal and rest periods, failed to pay all minimum and overtime wages, failed to provide accurate, itemized wage statements and failed to pay all wages due on separation of employment As explained above, Defendant maintains that the discovery produced demonstrates it likely would prevail on both class certification and the merits. (Trenner Decl., ¶ 33.)

Plaintiff believes this case is suitable for certification as he contends there are company-wide policies that violate California law and uniformly affect the Class Members. Defendant's counterarguments, however, raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion, and decisions following *Sav-On* have reached different conclusions with respect to certification of wage and hour claims.[8] While remaining confident in the strengths of her claims, all of these factors led Plaintiff to discount the following maximum potential damage claims. (Trenner Decl., ¶ 34.)

1. The Settlement Amount is Reasonable

Defendant provided Plaintiff with class-wide data from which Plaintiff's Counsel extrapolated a damage analysis in preparation of mediation. At the time of the mediation, there were

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[8] *E.g.*, *Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144 Cal.App.4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.,* 141 Cal.App.4th 1422 (2006) (affirming denial of certification).

a total of about 818 Class Members who worked approximately 83,421 work weeks in the limitations period, and about 558 aggrieved employees and 20,872 pay periods within the PAGA Period. (Trenner Decl., ¶ 35.)

First, Plaintiff contends Defendant failed to pay all minimum and overtime wages due to the class members. Plaintiff alleges that, from approximately September 2019 to November 2022, Defendant improperly rounded/shaved hours from employee time punches, and that the rounding favored Defendant such that the class members lost substantial hours worked and corresponding pay. Per Plaintiff, his expert's review of the time and wage sampling provided by Defendant suggested the class members lost substantial hours worked (around 1600 hours total) due to rounding. Plaintiff further alleges Defendant required Class Members to frequently work off the clock because they had to travel through the warehouse to access the time clock when clocking in/out and which took, on average, about two minutes each shift. Additionally, Plaintiff and the Class Members were forced to wait in line to access the time clocks at the beginning of their shifts but were not compensated for this time. Finally, Plaintiff alleges Defendant automatically deducted thirty minutes of time from employees work hours every day for purported meal periods, regardless of whether meal periods were received or if meal periods were less than 30 minutes, which resulted in lost hours worked. (Trenner Decl., ¶ 36.)

For mediation purposes, and after accounting for the approximately 1600 hours of time lost due to rounding, Plaintiff's expert estimated class members lost about 1 hour per week working "off the clock," giving an estimated exposure of approximately **$1,215,445** for unpaid wages, exclusive of any of Honda's defenses to class certification or on the merits. Plaintiff also alleges Defendant failed to incorporate all forms of compensation into the regular rate of pay calculations when paying overtime and sick pay as required by *Alvarado v. Dart Container Corp.* (2018) 4 Cal.5th 542 (the "regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned.") Per Plaintiff's experts, the total exposure on this claim was around **$15,000**. (Trenner Decl., ¶ 37.)

In response, Honda argued its payroll and timekeeping policies are fully compliant, and that it properly tracked and paid for all hours worked at the appropriate hourly wage. Defendant also argued that any rounding was entirely neutral in its overall effect and accordingly allowed under California law. *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889. Beyond that, if any class members failed to record and report time, it was in violation of company policy prohibiting off the clock work and would have occurred on a haphazard and individual basis. Accordingly, Defendant argued the issue would not be certifiable since it would require individualized inquiries whether any compensable "off the clock" work occurred and why it was or was not documented and paid for. *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 liability to attach). Honda also argued that there were no lines to clock in/out for parts center employees (such as Plaintiff), as employees simply had to wave a badge over a scanner, and that only around 20 employees would clocking in at any one time such that clocking in or out took no measurable amount of time. Defendant further argued that the time clock was directly inside the entrance to the parts warehouse in which Plaintiff worked, and that employees were permitted to make their way to the time clock before the end of their shift. (Trenner Decl., ¶ 38.)

Next, Plaintiff contends Defendant failed to provide legally compliant meal and rest breaks. Specifically, as to meal breaks, Plaintiff contends Defendant "auto-deducted" 30 minutes from employee time for meal periods regardless of whether the meal period actually lasted a full 30 minutes, and that the time record produced showed over 71% of meal periods were for precisely 30 minutes. Plaintiff also contends his expert's review of the time records suggested substantial number of "de facto" violations for untimely first meal periods, and that second meal periods rarely were provided on shifts of 10+ hours. Per Plaintiff, the expert analysis suggests approximately a 25% violation rate for "de facto" first meal period violations and an almost 100% violation rate for second meal periods. (Trenner Decl., ¶ 39.)

Plaintiff also contends Defendant failed to provide duty-free rest periods to Class Members and that its written policies did not adequately inform employees they were entitled a net 10-minute break free from all employee control. As a result, per Plaintiff, employees did not receive a full 10 minutes since they would lose a minute or two getting across the warehouse floor to and from the break area. (Trenner Decl., ¶ 40.)

Defendant denies Plaintiff's contentions, claiming it made meal and rest breaks available to Class Members in compliance with California law. Defendant contends that its meal and rest break policies have been lawful throughout the class period, and that it provided employees with 15-minute rest breaks (which is a greater duration than required under California law). Defendant further contends that Class Members were frequently reminded that they were required to take all meal and rest breaks, and that taking meal and rest breaks was engrained in the Company's culture. Defendant asserts that in the parts warehouse where Plaintiff worked, meal and rest breaks were governed by a bell system, which signaled the start and stop for each break, that the timing and duration of the breaks were compliant with California law, and that because all operations for each shift ceased for meal breaks, automatic deductions were permissible pursuant to the applicable wage order. Defendant also contends that time records for employees outside of the parts warehouses demonstrate that these Class Members recorded compliant meal periods. Defendant further contends that its meal and rest break policies and practices comport with the flexibility the Brinker court held was integral to California's meal and rest period requirements.

In addition, Defendant contends that employees signed valid meal period waivers, which are enforceable under *Bradsbery v Vicar Operating, Inc.* (2025) 110 Cal.App.5th 899, and consequently many meal periods that Plaintiff contends were missed were in fact validly waived. Finally, Defendant argues that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest breaks, whether they voluntarily chose to forego their meal and rest breaks, and whether Defendant ever prevented them from taking meal and rest breaks. Accordingly, Defendant contends these claims are vulnerable to a ruling that class treatment is not appropriate.

Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff estimates Defendant faces around **$2,374,115** in damages for meal period violations. On the rest period claims, Plaintiff estimates around **$10,944,270** in damages, assuming a 100% violation rate. (Trenner Decl., ¶ 41.)

On the expense reimbursement claims, Plaintiff alleges employees were required to use their own personal cell phones to communicate with supervisors and other employees both while at work and away from work. Per Plaintiff, he did not receive any reimbursement for this. *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137, 1140. Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated Defendant's maximum exposure for unreimbursed expenses at about **$417,105.**

Defendant contends that employees who needed a cell phone for their job duties were provided with a company phone, and that there was no conceivable need for employees who worked in the warehouse, such as Plaintiff, to use their cell phones while clocked in and working in the warehouse and that its policies strictly prohibited employees from bringing cell phones into the parts warehouses. Per Defendant, to the extent that Plaintiff or any other warehouse employee did so, it was purely for personal convenience and therefore not reimbursable under Labor Code § 2802 as a "reasonable" or "necessary" expense. (Trenner Decl., ¶ 42.)

As a result of the above alleged violations, Plaintiff also derivatively alleges Defendant failed to provide accurate wage statements and further failed to timely pay all wages that were due and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff's claim for wage statement violations and waiting time penalties would also fail. Defendant contends that it timely pays final wages to terminating employees, and in any event, it would not be liable for waiting time penalties whenever a "good faith dispute" exists over the payment of past wages. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would have to prove Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of employment. (Trenner Decl., ¶ 46.) Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated Defendant's maximum exposure for inaccurate wage statements at about **$1,982,500**, and the exposure for waiting time penalties at about **$1,954,515** based on 550 former employees during the limitations period. (Trenner Decl., ¶ 43.)

As far as potential PAGA liability, the theoretical civil penalties are likely to be around $10 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue for each and every pay period. (Trenner Decl., ¶ 44.) 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 $85,000 to PAGA penalties. (Agreement, § 3.2.5.)

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.)

Thus, 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 $985,000 recovery represents a significant percentage of Defendant's potential exposure. Given Defendant's multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $985,000, which will result in average award of at least $636 per class member, plus additional sums under PAGA, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. (Trenner Decl., ¶¶ 45-46.)

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 v. Apple Computer* (2001) 91 Cal.App.4th 224, 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"); *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); *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"). Importantly as well, the proposed settlement is non-reversionary and will provide immediate 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.

F. Provisional Class Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. While a court must certify a class for settlement purposes if a class has not already been certified, "it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba*, 91 Cal.App.4th at 237-38.

1. The Proposed Class is Sufficiently Numerous and Ascertainable

First, the class is both sufficiently numerous, consisting of approximately 818 individuals, and ascertainable by reference to Defendant's personnel and payroll records. "There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous that 'it is impracticable to bring them all before the court.'" *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court* (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 (finding that "Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records."). Thus, the ascertainability requirement is met. (Trenner Decl., ¶ 47.)

2. The Typicality and Adequacy Requirements Are Met

The typicality requirement is met if the claims of the named representative are typical of those of the Class, though, "they need not be substantially identical." *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Here, Plaintiff's claims are typical of the Class Members' claims because they arise from the same factual basis and are based on the same legal theories applicable to the Class Members. Plaintiff further contends Defendant's policies applied to all Class Members and each Class Member is challenging the same policies and practices. As such, the typicality requirement is satisfied for purposes of settlement. (Foster Decl., ¶¶ 2-3; Trenner Decl. ¶ 48.)

Adequacy requires that the Plaintiff have no interests adverse to the interests of the proposed Class Members and be committed to vigorously prosecuting the case on behalf of the Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will continue to be committed to vigorously prosecuting this case, and he has no conflicts of interest with the Class. In this regard, his individual settlement for his alleged racial discrimination claim poses no obstacle to serving as the class representative for several reasons. First, his independent claim in no way impacted negotiation of the final class settlement which, as noted, was achieved following a mediator's proposal -- in other words the settlement amount represents a professional neutral's independent evaluation of the value of the case. Thus, Plaintiff has in no way placed his own interests ahead of the class members but instead has simply received fair value for his separate and independent non-wage hour claims in addition to securing a positive result for the absent class members. For these reasons, Plaintiff contends he is an adequate class representative. (Foster Decl., ¶¶ 3-9; Trenner Decl., ¶ 49.)

3. The Commonality Requirement is Met

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 policies and alleged "de facto" policies resulting in meal period violations, and similarly subject to the same improper time rounding policy. Since the focus of the claims against Defendant concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Defendant's meal and rest break policy is 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 the wage statements improperly tabulated employee hours worked is another question common to all class members. (Trenner Decl., ¶ 50.)

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. (Trenner Decl., ¶ 51.)

G. <u>Apex Should be Appointed as the Settlement Administrator</u>

The Parties agreed to use Apex Class Action, LLC as the Settlement Administrator in this matter. (Agreement, § 7.1.) Apex is highly qualified and experienced as a settlement administrator, committed to the security of data, carries insurance for the theft of money or data, and has no relationship with Counsel. (Declaration of Mike Sutherland, ¶¶ 2-9; Exhs. A-B; Trenner Decl., ¶ 52.)

V. <u>CONCLUSION</u>

Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court certify the class for settlement purposes, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint Apex Class Action, LLC as Settlement Administrator, approve the method of notice and the Notice to be sent to the Class, preliminarily approve the Settlement Agreement, enter the proposed order filed herewith, and set a Final Approval hearing date.

Dated: September 12, 2025

CROSNER LEGAL, PC

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