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and MELISSA SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ERIK SMITH, as an individual on behalf of himself and on behalf of all others similarly situated,

Plaintiff,

v.

PREMIER PACKING, LLC, a Kentucky limited liability company; and DOES 1-100, inclusive,

Defendants.

Case No.: CIVSB2406078

Assigned for All Purposes to:
Hon. Wilfred J. Schneider, Jr.
Dept. S32

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

Date: October 15, 2025
Time: 8:30 a.m.
Dept.: S32

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I. INTRODUCTION

Plaintiffs Erik Smith and Melissa Sanchez hereby move 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 185 individuals employed by Defendant Premier Packing, LLC ("Premier" or "Defendant") as non-exempt employees who worked for Defendant in California during the Class Period of February 21, 2020 to May 11, 2025. The proposed $245,000 settlement will provide at least $96,033 in estimated combined cash payments to the settlement class, plus additional amounts under PAGA. The balance of approximately $148,967 will cover modest enhancement awards to the named Plaintiffs, 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 Plaintiffs' pre- and post-filing investigation, extensive formal and informal discovery, and arms-length and adversarial negotiations overseen by experienced and well-regarded mediator Steve Mehta, Esq.

As demonstrated below, the settlement is within the "range of reasonableness" for preliminary approval, and is fair, reasonable and adequate. Plaintiffs' counsel believe the settlement is a significant result for the class given the substantial risks inherent in this matter. Accordingly, Plaintiffs request 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, PC, as Class Counsel; (4) appointing plaintiffs Erik Smith and Melissa Sanchez as the Class Representatives; (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 Premier Defendant manufactures, distributes, and designs packaging, and operates four locations in the United States, including one in Santa Fe Springs, California, where Plaintiff worked. Plaintiff Smith was employed by Defendant as a non-exempt Warehouse Associate/Forklift Driver from approximately August 2022 to May 2023. During this period, he typically worked 8 to 12 hours per shift, five days a week, and he was compensated with an hourly wage and received various bonuses, including attendance and productivity bonuses. Plaintiff Sanchez worked for Defendant as an hourly employee from around March to December 2024 out of the Salinas location. [Declaration of Sepideh Ardestani ("Ardestani Decl."), ¶ 4.]

Plaintiffs allege Premier violated California wage and hour law in several respects. First, they allege a failure to pay all minimum wages, and claim class members regularly performed "off the clock" work, both before and after the start of their shifts, for tasks such as waiting in line to clock in, finishing up daily tasks, etc. Plaintiffs further allege Defendant failed to pay for sick pay and meal period premiums at the correct regular rate of pay. Next, Plaintiffs allege Premier also failed to provide compliant meal periods as meal periods frequently were not fully compliant due to various "de facto" violations and that meal breaks regularly were missed, untimely, or cut short. Plaintiffs also allege Defendant failed to provide legally compliant rest periods, and allege rest periods were oftentimes interrupted or late. They further claim Defendant did not reimburse business expenses incurred by Class Members for the use of their personal cellular phones. Lastly, they allege Defendant failed to provide accurate, itemized wage statements and failed to pay all wages owed upon the separation of employment. [Ardestani Decl., ¶ 5.]

Based on these general allegations, Plaintiff Smith filed a PAGA complaints against Premier on February 20, 2024, after appropriate notice to the LWDA and Defendant and exhausting administrative remedies. He also filed a separate class action complaint against Defendant on February 21, 2025. [Ardestani Decl., ¶ 6; Exh. 2.]

Premier has at all times denied Plaintiffs' 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 the opportunity to take all required meal and rest breaks or paid the required premiums when necessary. Additionally, Premier contends its timekeeping and payroll policies accurately track and pay for all hours worked by its employees and at the correct rates of pay. Premier similarly argued that there was no need for employees to use their cell phones for work purposes and accordingly no reimbursement is warranted. 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. [Ardestani Decl., ¶ 7.]

Since filing of the two complaints, the Parties initiated discovery, and after various meet and confer discussions regarding discovery, potential law and motion, and case management, ultimately agreed to attempt a global mediation. The Parties further agreed to extensive informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. Consequently, Plaintiffs' counsel reviewed payroll records, personnel policies/handbooks, meal and rest break policies, personnel files, and paystubs and time records for around 25% of the putative class members. 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. Plaintiffs 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. [Ardestani Decl., ¶ 8.]

The Parties then engaged Steve Mehta, Esq., a highly respected mediator with extensive wage and hour class action experience and, in March 2025, participated in a full day global mediation with Mr. Mehta. 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 were able to reach agreement on all major issues, and thereafter jointly prepared the Settlement Agreement now before the Court for approval. [Ardestani Decl., ¶ 9.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Premier will pay the Gross Settlement Amount of $245,000 into a common fund. Reasonable attorney's fees of up to $81,666.67 (1/3 of the GSA), litigation costs of up to $20,000, modest enhancement awards to Plaintiffs of up to $10,000 each ($20,000 in total), settlement administration costs of no more than $7,300, and $20,000 for civil penalties under PAGA (of which 75%, or $15,000, will go to the Labor & Workforce Development Agency, and 25%, or

$5,000, will go to the PAGA Members) all will be paid from the Gross Settlement Amount. The remainder of approximately $96,033 will be allocated among the Participating Class Members based on their total pay periods worked during the Class Period. No portion of the Gross Settlement Amount will revert to Premier. [Ardestani Decl., ¶ 10.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all non-exempt employees who worked for Defendant in California during the Class Period of February 21, 2020 to May 11, 2025. The Settlement Class consists of at least 185 individuals. For purposes of PAGA, the Aggrieved Employees include all non-exempt employees who worked for Defendant in California during the PAGA Period of December 17, 2022 to May 11, 2025. There are about 156 Aggrieved Employees. [Ardestani 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. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses reimbursement, penalties and interest. Premier 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. [Ardestani Decl., ¶ 12.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Premier 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 alleged unpaid wages, unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Premier 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 off the clock work. The average class settlement award will be approximately $519, and the average PAGA award will be about $32. [Ardestani Decl., ¶ 13.]

C. Settlement Administration

Subject to the Court's approval the Parties agreed on Simpluris, Inc. ("Simpluris") as the Settlement Administrator. [Ardestani Decl., ¶ 14.] Simpluris is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Simpluris has agreed to cap its fees and costs at $7,300. 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 Michael Bui, ¶¶ 2-8; Exhs. A-C.]

D. The Class Notice

The proposed Notice (Exhibit 2 to the Ardestani 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. Coupled with the notice procedure, the proposed Notice provides the Class with the best notice practicable. [Ardestani Decl., ¶ 15.]

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. [Ardestani Decl., ¶ 16.]

F. Release of Claims

All Participating Class Members will release Premier 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 PAGA notice for the PAGA claims. Only Plaintiffs are entering into a full general release of all claims and waiver of Civil Code § 1542. [Ardestani Decl., ¶ 17.]

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

The settlement provides Defendant will not oppose a request for attorney's fees not to exceed 1/3 of the Gross Settlement Amount, or $81,666.67, nor will it oppose a request for reimbursement of litigation costs and expenses of up to $20,000. Defendant also will not oppose a request for an enhancement award to Plaintiffs of not more than $10,000.00 each (totaling $20,000) in recognition of their time spent on this matter, the risks they undertook on behalf of the class, the benefit conferred to the class, and their agreement to provide a broad general release of all claims against Defendant, as set forth in their respective declarations filed herewith. Plaintiffs' 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. [Ardestani Decl., ¶ 18.]

H. PAGA Penalties and Notice to the LWDA

As noted, the Parties allocated $20,000 from the GSA to resolution of Plaintiffs' alleged claims for PAGA civil penalties, and Plaintiffs submit that amount is fair, reasonable and adequate, and furthers PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiffs gave notice of the settlement and the preliminary approval hearing to the LWDA via its online portal. [Ardestani Decl., ¶ 19; Exh. 3.]

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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 if 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 generally 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 at least 185 individuals, and ascertainable by reference to Premier's personnel and payroll records. [Ardestani Decl., ¶ 20.]

Next, Plaintiffs all are adequate class representatives, as their claims do not conflict with and are not antagonistic to the claims of other class members. For these reasons, Plaintiff contends they are adequate class representatives. [Ardestani Decl., ¶ 21; Declaration of Erik Smith, ¶¶ 2-9; Declaration of Melissa Sanchez, ¶¶ 2-9.] Further, their claims are typical given each is a member of the class and their respective claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [Id.] Their counsel are experienced and adequate class counsel. [Ardestani Decl., ¶¶ 37-42.]

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the alleged failure to pay for sick pay and meal premium pay at the correct "regular rate," and subject to the same meal and rest break policy that allegedly resulted in “de facto” meal and rest period violations Since the focus of the claims against Premier concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Premier’s policy of paying for sick pay and break premiums at the base hourly rate instead of the regular rate 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 the class one way or another. [Ardestani 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. [Ardestani Decl., ¶ 23.]

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator Steve Mehta, Esq., who has extensive experience both litigating and mediating wage and hour class actions. [Ardestani Decl., ¶ 9.] Plaintiffs’ counsel at Crosner Legal, PC have years of experience litigating wage and hour class actions. Plaintiffs’ counsel is well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Ardestani Decl., ¶¶ 37-42.]

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. 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 informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding Premier's payroll practices, a sampling of pay stubs and time records, meal and rest break policies, employee handbooks, etc., and information from Defendant regarding class size and breakdown, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiffs' counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Ardestani 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 weighed the risks of continued litigation against the benefits of the proposed settlement and determined settlement to be the most reasonable option.

Using that data, Plaintiffs ran various calculations under different theories of liability and estimated Premier's maximum exposure on the class claims at approximately $2,281,400, including approximately $75,055 on the off the clock claims, $52,670 on the regular rate claim, $661,520 on the meal break claims, $678,545 on the rest break claims, $52,670 on the expense reimbursement claims, $331,950 on the wage statement claims, and $376,320 on the waiting time penalty claims. [Ardestani Decl., ¶¶ 25-26.] Plaintiffs substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation.

First, on the unpaid wage claims, Plaintiffs alleged Premier failed to pay employees for all hours worked, particularly because employees frequently were required to work after clocking out if, for example, a truck arrived and needed to be unloaded. Per Plaintiffs this resulted in a modest but regular loss of hours worked due this time spent subject to employer control while "off the clock." Frlekin v. Apple Inc. (2002) 8 Cal.5th 1038, 1047, reh'g denied (May 13, 2020); Morillion v. Royal Packing Co. (2000) 22 Cal.4th 575, 583.) As held by the California Supreme Court, even small amounts of unpaid time can add up over time and accordingly should be accounted and paid for. In response, Defendant emphasized its payroll and timekeeping policies accurately recorded and paid for all hours worked, and that its written policies strictly prohibited off the clock work. Thus, per Defendant, if any off the clock work even occurred it was against intermittent and aberrational and against company policy. Defendant also argued that class certification on this issue would be impossible since it would require innumerable individualized inquiries to determine if any off the clock work occurred and the reasons therefore. [Ardestani Decl., ¶ 27.]

Plaintiffs' also allege Defendant failed to pay for overtime pay, sick time pay and break premiums at the employees' "regular rate of pay" as required under California law. Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.5th 858. Likewise, pursuant to Labor Code § 246(l)(1), "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Here, Class Members received various forms of extra remuneration such as bonuses and other incentive pay and, during pay periods where additional compensation was paid and overtime, sick pay and/or meal period premiums were owed, Plaintiffs contend Defendant failed to factor in the non-discretionary remuneration into the regular rate of pay and accordingly underpaid Class Members for their overtime, sick pay or break premium pay. [Ardestani Decl., ¶ 28.]

Plaintiffs next alleged Premier failed to provide required meal breaks on a fully compliant basis. Here, Plaintiffs argued that Defendant's meal break policy was non-compliant for at least part of the class period, until Premier issued a "California supplement" to its regular break policies in and around 2024. Regardless, Plaintiffs contend they had to continuously monitor their two-way radios and regularly were called away from breaks to assist with unloading recently arrived trucks even though clocked out for lunch. Plaintiffs further noted that, while Premier did apparently pay some meal period premiums, it was only for a small fraction of the violations evident in the time records (and the premiums were underpaid as addressed above). For rest breaks, Plaintiffs likewise contended regular “de facto” violations where rest breaks were missed completely or otherwise non-compliant, again largely because Plaintiffs remained tethered to their radios and “on call” to work at any moment. [Ardestani Decl., ¶ 29.]

Defendant denied Plaintiff’s contentions, claiming it made meal and rest breaks available to Class Members in compliance with California law. Defendant contended its meal and rest break policies are lawful, that Class Members were frequently reminded they were required to take all meal and rest breaks and that were able to do so, and that many employees waived their breaks in writing when appropriate. Premier further noted it paid a substantial number of meal premiums, as reflected in the class members’ payroll records. Finally, Defendant argued 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 periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant contends these claims are vulnerable to a ruling that class treatment is not appropriate. [Ardestani Decl., ¶ 30.]

As with meal breaks, Defendant argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks. Further, per Defendant, in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make a trial unmanageable since each alleged missed rest break would have to be tested on a case by case basis to determine compliance. [Ardestani Decl., ¶ 31.]

On the expense reimbursement claim, Plaintiffs allege that employees were required to use their personal cell phones in order to communicate with supervisors and other employees during work hours. However, Defendant did not reimburse Plaintiffs and the class members for this expense. Cochran v. Schwan’s Home Serv., Inc. (2014) 228 Cal.App.4th 113. On the other hand, Defendant argued there would be no conceivable need for employees to use their phones for work, especially considering they were provided with 2-way radios while on the job, and that any use of employee phones was purely for personal convenience and therefore not reimbursable as a "reasonable and necessary" expense. [Ardestani Decl., ¶ 32.]

Plaintiff also alleged derivatively that, as a result of the above alleged violations, Defendant failed to provide accurate wage statements and failed to timely pay all wages that were due and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff's derivative claims would also fail. Defendant also contends it would not be liable for waiting time penalties because 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 that Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of employment. Defendant contends that any failure to pay wages upon separation was not willful. [Ardestani Decl., ¶ 33.]

As far as potential PAGA liability, the Aggrieved Employees theoretically are entitled to penalties totaling upwards of $1.8 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue for every single pay period. [Ardestani Decl., ¶ 34.] As with the class claims, Plaintiff discounted the potential PAGA penalties since the Court possesses 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 $20,000 to PAGA penalties, which amount Plaintiff submits 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 Plaintiff 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. While Plaintiff is confident in the merits of his 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. [Ardestani Decl., ¶ 35.]

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 $245,000 recovery represents a significant percentage of Defendant's potential exposure and, given the risks addressed above, a total recovery for the class of $245,000, which will result in average award of some $519 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. [Ardestani Decl., ¶ 36.]

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., 696 F.3d 811, 819 (9th Cir. 2012) ("[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 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 his counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

IV. 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: August 20, 2025

CROSNER LEGAL, PC

By: ______________________

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Sepideh Ardestani, Esq.
Zachary M. Crosner, Esq.
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