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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

ARION NEILL and DAVE COLMENARES, on behalf of the State of California and Aggrieved Employees, Plaintiffs, v. BOOT BARN, INC., a Delaware Corporation; BOOT BARN HOLDINGS, INC., a Delaware Corporation; and DOES 1-100, inclusive, Defendants.	Case No.: CVRI2402537 Assigned for All Purposes to: Hon. Harold W. Hopp Dept. 1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 15, 2026 Time: 8:30 a.m. Dept.: 1 Reservation ID: 782944377556

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I. INTRODUCTION

Plaintiffs Arion Neill, Dave Colmenares and Catherine Garritson hereby move the Court for an order granting preliminary approval to a proposed non-reversionary class action and representative PAGA action settlement to resolve wage and hour claims on behalf of approximately 7,200 individuals who are or were employed by Defendant Boot Barn, Inc. ("Boot Barn" or "Defendant") in California and classified as a non-exempt employee and who received at least one wage statement during the Class Period of February 16, 2023 through the date of preliminary approval. The proposed $1,880,000 settlement will provide about $971,833 in cash payments to the class, with an average award of about $159. The balance of approximately $908,167 will cover modest enhancement awards to the Plaintiffs, reasonable attorneys' 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, a pre-mediation exchange of information, and lengthy arms-length negotiations overseen by experienced mediator Brandon McKelvey, Esq.

As demonstrated below, the settlement is within the "range of reasonableness" for preliminary approval. Plaintiffs' counsel believes the settlement is a fair 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 and representative PAGA action settlement and the Class and Representative PAGA Action Settlement Agreement ("Settlement Agreement"); (2) conditionally certifying the settlement class as defined below; (3) appointing Zachary M. Crosner, Jamie K. Serb, and Sepideh Ardestani of Crosner Legal, P.C. as Class Counsel; (4) appointing named Plaintiffs Arion Neill, Dave Colmenares, and Catherine Garritson as the Class Representatives; (5) appointing CPT Group, Inc. 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.

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II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Boot Barn is a nationwide retailer of western/cowboy themed shoe and clothing apparel. There are approximately 69 retail locations in California alone. [Declaration of Sepideh Ardestani ("Ardestani Decl."), ¶ 4.]

Plaintiff Neill is a current employee of Boot Barn. She has worked for Boot Barn since October 2022 at the stores located in Oceanside and Kearny Mesa. Over the duration of her employment, she has been both an hourly paid, non-exempt Sales Partner and Inventory Control Associate. Plaintiff Colmenares is also a current employee, and has worked for Boot Barn initially starting from September 2016 as an hourly paid, non-exempt Sales Partner at a store located in Clovis, with some breaks. Plaintiff Garritson is a former Sales Partner who worked at Boot Barn from April 9, 2022 through December 18, 2024, initially at the Oceanside store and then at the Escondido store. Plaintiffs all allege they were subject to various wage and hour violations while working for Boot Barn. [Ardestani Decl., ¶ 5.]

Based on these allegations, and after notice to the LWDA and Boot Barn and exhausting administrative remedies, Plaintiffs Neill and Colmenares filed a PAGA only action on May 3, 2024, alleging (1) Failure to Pay All Wages Owed, Including Minimum and Overtime Wages; (2) Failure to Provide Meal Periods; (3) Failure to Authorize and Permit Rest Breaks; (4) Unlawful Deductions; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Maintain Accurate Payroll Records; (7) Failure to Timely Pay Wages During Employment and Upon Separation; (8) Failure to Pay Reporting Time Pay; (9) Failure to Produce Employment Records; (10) Failure to Provide Suitable Resting Facilities; (11) Failure to Provide Suitable Seating; (12) Failure to Reimburse for All Necessary Business Expenses; (13) Failure to Provide Written Commission Agreements; (14) Violation of Labor Code section 226.2; (15) Violation of California Day of Rest Law; (16) Violation of Labor Code section 208; (17) Unlawful Agreements – Unlawful Criminal History Inquiries; (18) Violation of Labor Code section 432.6; (19) Failure to Pay Vested Vacation/Paid Time Off; and (20) Sick Leave Violations. [Ardestani Decl., ¶ 6; Exh. 5.]

Boot Barn 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 aggrieved employees with required meal and rest breaks. Additionally, Boot Barn 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 aggrieved employees 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.]

After subsequent meet and confer with Boot Barn's counsel, the Parties stipulated to stay the PAGA action and arbitrate Plaintiffs' claims. The PAGA action was stayed on September 16, 2024. Plaintiffs Neill and Colmenares filed their respective arbitration demands on October 3, 2024. Shortly thereafter, the Parties agreed to mediate all claims. They further agreed to exchange information and documents informally in advance of the mediation. Consequently, Plaintiffs' 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 30% of the pay periods at issue. Boot Barn also provided documents reflecting its wage and hour policies and practices, and data regarding the total number of current and former employees, and the estimated total amount of workweeks and pay periods they worked, among other relevant data. Plaintiff had that information reviewed and analyzed by Berger Consulting Group to assist with evaluating things such as meal period violation rates, etc., and to prepare a damages model. [Ardestani Decl., ¶ 8.]

The Parties then engaged Brandon McKelvey, Esq., a highly respected mediator with extensive wage and hour class action experience and, in March 2025, participated in a full day mediation with Mr. McKelvey. 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. Although the Parties did not settle that day, they continued to negotiate with Mr. McKelvey's assistance and ultimately reached agreement on all major issues and thereafter prepared the Settlement Agreement now before the Court for approval. [Ardestani Decl., ¶ 9.]

Furthermore, with Mr. McKelvey's assistance, the Parties agreed to resolve Plaintiffs' claims on a class-wide basis. Accordingly, Plaintiffs Neill and Colmenares amended their PAGA Complaint to add class allegations and add Plaintiff Catherine Garritson, a former employee of Boot Barn, as a party-plaintiff. On October 27, 2025, pursuant to Stipulation and Order, Plaintiffs filed their First Amended Class and Representative Action Complaint, which is the Operative Complaint for purposes of settlement. [Ardestani Decl., ¶ 10.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Boot Barn will pay $1,880,000.00 into a common fund, the Gross Settlement Amount ("the "GSA"). Reasonable attorney's fees of up to $626,666.67 (1/3 of the GSA), litigation costs of up to $25,000, enhancement awards to Plaintiffs of up to $10,000 each for Plaintiffs Neill and Colmenares, and up to $5,000 for Plaintiff Garritson ($25,000 total), settlement administration costs of no more than $41,500, and $190,000 for civil penalties under PAGA (of which 75%, or $142,500, will go to the Labor & Workforce Development Agency, and 25%, or $47,500 will go to the Aggrieved Employees) all will be paid from the Gross Settlement Amount. The remainder of approximately $971,833 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 Boot Barn. [Ardestani Decl., ¶ 11.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all current and former non-exempt employees who worked for Boot Barn in California and who received at least one wage statement during the Class Period of February 16, 2023 through the date the Court grants preliminary approval of the Settlement. The Settlement Class consists of approximately 7,200 individuals.[1] [Ardestani Decl., ¶ 12.]

[1] The "Aggrieved Employees" for purposes of PAGA include all current and former non-exempt employees who worked for Boot Barn in California and who received at least one wage statement during the PAGA

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 Individual Class Payment. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each Individual Class Payment will be allocated to wages and the remaining eighty percent will be allocated to interest on unpaid wages and statutory penalties; one hundred percent of each Individual PAGA Payment will be allocated to penalties. Boot Barn 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 transmitted to Voices for Children Riverside in accordance with California Code of Civil Procedure Section 384(b)(ii). [Ardestani Decl., ¶ 13.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her number of pay periods worked for Boot Barn 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 amount of time they worked for Boot Barn 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 regular rate issues. The average class settlement award will be approximately $159, and the Parties currently estimate the class awards will range from about $6on the low end to about $1,010 on the high end. The average PAGA award will be about $7.88 [Ardestani Decl., ¶ 14.]

C. **Settlement Administration**

Subject to the Court's approval, and after obtaining multiple bids, the Parties agreed on CPT

Period of February 16, 2023 to the date of preliminary approval. There are approximately 7,200 Aggrieved Employees. [Ardestani Decl., ¶ 12.]

Group, Inc. ("CPT") as the Settlement Administrator. [Ardestani Decl., ¶ 15.] CPT is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. CPT has agreed to cap its fees and costs at $41,500.00. 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 Julie Green, ¶¶ 2-10; Exhs. A-B.]

D. <u>The Class Notice</u>

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. Further, each notice packet will include a Request for Exclusion form and Objection Form (Exhibits 3 and 4 to the Ardestani Declaration) for use by the Class Members. 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. [Ardestani Decl., ¶ 16.]

E**. <u>Right to Correct Information, Opt Out, or Object</u>**

Class Members will have sixty (60) days to dispute the information in their Notice used to calculate their settlement award, and also have 60 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., ¶ 17.]

F. <u>Release of Claims</u>

All Participating Class Members will release Boot Barn from all claims alleged in the operative FAC, or that could have reasonably been brought based on the factual allegations in the

FAC during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the PAGA notice to the extent alleged in the FAC. The Class and PAGA releases are limited to the claims that were actually pleaded or could have reasonably been pleaded based on the alleged facts in the FAC, and PAGA notice for the PAGA claims. Only Plaintiffs are entering into a full general release of all claims and waiver of Civil Code section 1542. [Ardestani Decl., ¶ 18.]

G. Attorneys' Fees and Costs, and Plaintiffs' Enhancement Awards

The settlement provides Boot Barn will not oppose a request for attorney's fees not to exceed 1/3 of the Gross Settlement Amount, or $626,666.67, nor will it oppose a request for reimbursement of litigation costs and expenses of up to $25,000. Boot Barn also will not oppose a request for enhancement awards to Plaintiffs Neill and Colmenares of not more than $10,000.00, and to Plaintiff Garritson of not more than $5,000, in recognition of their time spent on this matter, the risks each undertook on behalf of the class, and the benefit conferred to the class, 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., ¶ 19.]

H. PAGA and Notice to the LWDA

As required by Labor Code section 2699(*l*)(2), Plaintiffs gave notice of the settlement and the approval hearing to the LWDA via its online portal. [Ardestani Decl., ¶ 20; Exh. 7.]

IV. ARGUMENT

C. 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 attorneys' 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 7,200 individuals, and ascertainable by reference to Boot Barn's personnel and payroll records. [Ardestani Decl., ¶ 21.] 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. Further, their claims are typical given each 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 Arion Neill, ¶¶ 3-9; Declaration of Dave Colemnares, ¶¶ 3-9; Declaration of Catherine Garritson, ¶¶ 3-9; Ardestani Decl., ¶ 22.] Lastly, Plaintiffs' 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 same meal and rest break policy, the same timekeeping policies, the same policy regarding calculation of the regular rate, and subject to the same dress code. Since the focus of the claims against Boot Barn concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Boot Barn'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 members lost compensation due to an incorrect regular rate calculation raises another question common to all class members. [Ardestani Decl., ¶ 23.]

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., ¶ 24.]

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, Brandon McKelvey, Esq., who has extensive experience mediating wage and hour class actions. [Ardestani Decl., ¶ 9.] Plaintiffs' counsel Zachary M. Crosner, Jamie Serb, Sepideh Ardestani, and Crosner Legal, PC, all 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. [Ardestani Decl., ¶¶ 37-42.]

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, Plaintiffs reviewed documents and information regarding Boot Barn's payroll practices, a representative sampling of pay stubs and time records for about 30% of the class members, applicable compensation plans, meal and rest break policies, etc., and information from Boot Barn regarding class size and breakdown, number of work weeks/pay periods, and other information used to formulate a damages model. Plaintiffs then had that information reviewed with the assistance of a consulting expert. Plaintiffs' 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. [Ardestani Decl., ¶¶ 8, 25.]

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, Plaintiffs 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 Boot Barn, Plaintiffs ran various calculations and estimated Boot Barn's likely maximum exposure on the class claims at approximately $50,542,380, including about $263,480 on the unpaid wage/regular rate claim, $2,760,500 on the meal break claims and $15,717,900 on the rest break claims, $610,000 on the unreimbursed expense claim, $14,695,000 on the wage statement claims, and $16,495,500 on the waiting time penalty claims. [Ardestani Decl., ¶ 26.]

First, on their unpaid wage claims, Plaintiffs allege Boot Barn failed to pay for overtime, sick pay, and break premiums based on the correct "regular rate of pay," and accordingly underpaid for such wages in many instances. Plaintiffs and the class members regularly earned non-discretionary, performance-based bonuses and allege Boot Barn failed to correctly account for this compensation in the "regular rate of pay." <u>Alvarado v. Dart Container Corp.</u> (2018) 4 Cal.5th 542. "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." *Id.* at 534. Because "regular rate of compensation" under Lab. Code § 226.7(c), means the same as "regular rate of pay" under Lab. Code § 510(a), an employer must include nondiscretionary incentive payments when calculating premium pay for meal or rest break violations. <u>Ferra v. Loews Hollywood Hotel, LLC</u> (2021) 11 Cal.5th 858. This same logic applies to Labor Code § 245 and payment of sick pay wages. [Ardestani Decl., ¶ 27.]

Although it appears Boot Barn made an effort to calculate the regular rate of overtime, premiums, and sick pay, according to Plaintiffs' expert Berger's analysis, it did not always do so correctly. Furthermore, it appears that any rest break premiums that were paid were only paid at the straight hourly rate – not the regular rate. According to Berger's analysis, approximately 29,205 meal break premiums were miscalculated, resulting in an underpayment of $40,863 (2.9% of pay periods); 2,035 rest break premiums were miscalculated, resulting in an underpayment of $10,934 (0.1% of pay periods); and 127,100 sick pay hours were miscalculated, resulting in an underpayment of $211,686 (3.3% of pay periods), for a total of about $263,480. [Ardestani Decl., ¶ 28.] Boot Barn disputes these calculations.

On the meal period claims, Plaintiffs first alleged Boot Barn's written policies were only partially compliant and, among other things, failed to inform employees that their meal break should start before the end of the fifth hour of work (or tenth hour for second lunches) and failed to inform employees of their entitlement to an additional hour of pay for a missed or non-compliant lunch break. They further argued that, regardless of the written policies, Boot Barn's records suggest a large number of "de facto" violations for missed, short, and untimely meal periods. Here, according to Plaintiffs' expert's analysis, 19,842 first meal breaks were recorded late (after the 5th hour), 90,683 shifts between 5 and 6 hours did not record a first meal break, and 10,037 shifts over 6 hours did not record a first meal break. Additionally, 1,365 shifts were less than 30 minutes. Second meal breaks were also not provided according to California law: 94.8% of shifts between 10 and 12 hours (or 16,758 shifts) did not have a second meal break recorded and 74.2% of shifts over 12 hours (1,030 shifts) did not have a second meal break recorded. Although Boot Barn's policies make mention that meal breaks may be waived, Boot Barn did not produce evidence of any meal break waivers. Overall, Berger calculated 17.5% of shifts, and about of 36.2% of the pay periods in the PAGA Period, contained a unique meal break violation (i.e. missed, short, or late first or second meal break) that did not have a corresponding paid meal premium. Plaintiff calculated Boot Barn's meal period exposure at about $2,760,500 in meal period premiums. [Ardestani Decl., ¶ 29.]

In response, Boot Barn 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, Boot Barn 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 Boot Barn, individualized inquiries would dominate on this issue and render class certification inappropriate. [Ardestani Decl., ¶ 30.]

For the rest break claim, Plaintiffs similarly argued that Boot Barn 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, would be stopped by customers with questions while going to the break room, and otherwise did not receive a net 10 minutes for many breaks. As with meal breaks, Boot Barn argued its rest break policies complied with California law and that it authorized and permitted employees to take all required rest breaks. Boot Barn further contended that, in light of the fact that it is not required to maintain a record of rest breaks, any evidence of failure to authorize and permit rest breaks and/or discouragement from taking rest breaks would be purely anecdotal and individual issues would predominate. Plaintiffs estimated Boot Barn's exposure here was at about $15,717,900**.** [Ardestani Decl., ¶ 31.]

On the expense reimbursement claim, Plaintiffs allege Boot Barn requires employees to dress in full western-themed clothing Friday – Sundays. Plaintiffs were required to purchase western-themed clothing to comport with Boot Barn's dress code (i.e. hat, boots, dress shirt, etc.). Uniforms are reimbursable expenses under Labor Code section 2802. <u>Dept. of Indus. Relations v. UI Video Stores, Inc.</u> (1997) 55 Cal.App.4th 1084 (DLSE filed action against Blockbuster, seeking reimbursements for purchases of uniforms on behalf of employees). Plaintiff Neill estimates spending $150 or so on two work-appropriate outfits and Plaintiff Colmenares estimates spending approximately $30/shirt. Although Boot Barn provides a discount to employees, employees still end up purchasing specific clothing from Boot Barn in order to comport with Boot Barn's dress code policies. But for a cowboy hat stipend at the time of the employee's hire, Boot Barn does not provide any funds or reimbursements for this required uniform, nor is it part of Boot Barn's reimbursement policy. In response, Boot Barn argued employees were not required to purchase or wear clothing from Boot Barn, and further argued dress code appropriate clothing, such as blue jeans, western shirts, cowboy boots, etc. are simply regular everyday clothing that could be worn anywhere and was not so highly specialized that reimbursement was necessary. Without taking into consideration any of Boot Barn's defenses to certification or on the merits, Plaintiffs' experts calculated Boot Barn's maximum exposure for this claim at about **$610,000**, based on $100 per class member in unreimbursed expenses. [Ardestani Decl., ¶ 32.]

Finally, Plaintiffs 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 Boot Barn. 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). Boot Barn argued further that the wage statements accurately contained all required information, and that it acted in good faith at all times with respect to payment of wages. Plaintiffs' experts estimated the exposure at about $14,695,000 on the wage statement claims, and $16,495,500 on the waiting time penalty claims. [Ardestani Decl., ¶ 33.]

As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled to penalties totaling about $51.9 million should Plaintiffs prevail on all claims, establish violations of the multiple Labor Code sections at issue, and secure the maximum penalty for each and every pay period. This includes Plaintiffs' claims for failure to provide suitable seating, as Plaintiffs allege Boot Barn did not make seats available to cashiers even though it could have, particularly during "'lulls in operation' when an employee, while still on the job, is not then actively engaged in any duties." LaFace v. Ralphs Grocery Co. (2022) 75 Cal.App.5th 338, 407. As with the class claims, Plaintiffs discounted the potential PAGA penalties based on Boot Barn'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 $190,000 to PAGA penalties. [Ardestani Decl., ¶ 34.]

Plaintiffs submit 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.

Taking into account all of the above-discussed risk factors, Plaintiffs calculated Boot Barn's exposure on the class claims at around **$8,555,430** on a risk-discounted basis. Given Boot Barn's multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $1,880,000, which will result in an average award of over $159 per class member, with a maximum award of over $1,000, 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., ¶¶ 35-36.]

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"); 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). Plaintiffs and their counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

D. Approval of Voices for Children Riverside as Cy Pres Recipient Is Appropriate.

The Parties believe that a cy pres recipient is necessary in this action due to the transient nature of employees in the retail industry, which makes it likely that a meaningful number of Class Members will not cash their settlement checks. The Parties selected Voices for Children Riverside as the *cy pres* recipient because of the organization's role as the CASA provider for Riverside, which is a mission both Parties were comfortable supporting. [Ardestani Decl., ¶ 13.] Voices for Children Riverside is a child advocacy program that satisfies the requirements of California Code of Civil Procedure Section 384. [Declaration of Jessica Munoz, ¶¶ 2-9.]

Plaintiffs, Class Counsel, Boot Barn, and Defense Counsel do not have any known relationship to Voices for Children Riverside. [Ardestani Decl., ¶ 13.]

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V. CONCLUSION

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

Dated: December 30, 2025

CROSNER LEGAL, PC

By: ______________________________

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