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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

SALVADOR RODRIGUEZ DE ANDA, on behalf of the State of California and all Aggrieved Employees,

Plaintiff,

v.

HORIZON AIR INDUSTRIES, INC., a Washington Corporation; ALASKA AIRLINES, INC., an Alaska Corporation; and DOES 1-100, inclusive,

Defendants.

SALVADOR RODRIGUEZ DE ANDA, as an individual and on behalf of all other similarly situated Class Members,

Plaintiff,

v.

HORIZON AIR INDUSTRIES, INC., a Washington Corporation; ALASKA AIRLINES, INC., an Alaska Corporation; and DOES 1-100, inclusive,

Defendants.

Case No. 24CV016239 (LEAD)
24CV015250

Assigned for All Purposes to
Hon. Peter K. Southworth, Dept. 8B

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

Date: November 13, 2026
Time: 9:00 a.m.
Dept. 8B
Reservation No: A-16239-001

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I. INTRODUCTION

Plaintiff Salvador Rodriguez De Anda hereby moves the Court for an order granting preliminary approval to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of approximately 750 individuals employed by Defendant Horizon Air Industries, Inc. ("Horizon" or "Defendant") as non- exempt, hourly-paid employees in the State of California at any time during the Class Period of July 30, 2020 through the date the Court enters the Preliminary Approval Order. The proposed $1,500,000 settlement will provide about $869,000 in cash payments to the class, with an average award currently estimated at about $1,159. The balance of approximately $631,000 will cover reasonable attorney's fees and actual litigation costs, settlement administration costs, PAGA civil penalties, and an enhancement award to Plaintiff. The settlement is the product of Plaintiff's pre-filing investigation, an extensive pre-mediation exchange of information, and arms-length negotiations overseen by experienced wage and hour mediator Tripper Ortman, Esq.

The proposed settlement is within the "range of reasonableness" for approval and Plaintiff's counsel submit the settlement is a fair result given the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court enter an order: (1) granting preliminary approval to the proposed class action settlement; (2) conditionally certifying the settlement class as defined below; (3) appointing Zachary M. Crosner and Brandon Brouillette, and Crosner Legal, P.C. as Class Counsel; (4) appointing Plaintiff Salvador Rodriguez De Anda as the Class Representative; (5) appointing Phoenix Settlement Administrators as the Settlement Administrator; (6) approving the form of notice to the class and the notice procedure; and (7) scheduling a final fairness hearing.

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant Horizon is a regional airline that is owned by Alaska Airlines, Inc.. Plaintiff De Anda worked for Defendant as a ground agent at the Sacramento airport from 2021-25. [Declaration of Brandon K. Brouillette ("Brouillette Decl."), ¶ 4.]

On July 30, 2024, Plaintiff filed a class action complaint in Sacramento Superior Court alleging claims for: (1) failure to pay all wages due, including minimum and overtime wages (2) failure to provide all required meal and rest breaks or compensation in lieu thereof; (3) failure to provide reimbursement for business expenses; (4) failure to provide accurate, itemized wage statements; (5) failure to pay all wages due upon termination of

employment, and (6) unfair competition premised on the same Labor Code violations. After notice to the LWDA and Defendant, and exhausting administrative remedies, on August 16, 2024 Plaintiff filed a separate PAGA-only complaint based on the same alleged Labor Code violations. The Court subsequently consolidated both matters for all purposes. [Brouillette Decl., ¶ 5.]

Horizon has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, that it paid the class member wages due, and provided them with required meal and rest breaks or paid the required compensation for any documented meal/rest violations. Additionally, Horizon strongly contends the case cannot be maintained as a class 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 anecdotal, and therefore individualized issues would predominate. [Brouillette Decl., ¶ 6.]

Once the matters were at issue, the Parties began meeting and conferring regarding discovery, law and motion, and other case management issues, and ultimately the Parties agreed to attempt early mediation. The Parties also agreed on a protocol for an exchange of additional documents and information before the mediation to facilitate the settlement discussions. Consequently, Plaintiff's counsel reviewed payroll records, compensation plans, personnel policies/handbooks, meal and rest break policies, personnel files, and a random of sampling of Class Member paystubs and time records. Plaintiff then had those records analyzed by consulting experts at Berger Consulting Group to look for, inter alia, violation rates for missed, late and/or short meal breaks, potential damages from unpaid overtime, etc. Defendant also provided data regarding the total number of putative class members, the estimated total amount of workweeks and pay periods they worked, average pay rates, and information regarding other non-hourly compensation, among other relevant data. [Brouillette Decl., ¶ 7.]

The Parties then engaged Tripper Ortman, Esq., a respected professional neutral with substantial wage and hour and class action experience. In September 2025, the Parties participated in a full day mediation with Mr. Ortman. 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, and ultimately reached agreement on all major issues. The Parties then collaboratively drafted the Joint Stipulation of Class and PAGA Settlement Release ("Settlement

Agreement") setting forth the settlement terms now before the Court for approval. A fully-executed, true and correct copy of the Settlement Agreement is attached to the Brouillette Declaration as Exhibit 1. [Brouillette Decl., ¶ 8.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Defendant will pay $1,500,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $500,000 (1/3 of the GSA), litigation costs of up to $30,000, settlement administration costs of no more than $11,000, a service award to Plaintiff of no more than $10,000, and PAGA civil penalties of $80,000,[1] all will be paid from the GSA. The balance of around $869,000 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Horizon. [Brouillette Decl., ¶ 9.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all individuals employed by Horizon as non- exempt, hourly-paid employees in the State of California at any time during the Class Period of July 30, 2020 through the date the Court enters the Preliminary Approval Order. The proposed Settlement Class consists of about 750 individuals. [Brouillette Decl., ¶ 10.]

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Horizon to pay $1,500,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $869,000 from the GSA will be distributed to the Participating Class Members. 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 penalties and interest, which allocation is consistent with Horizon's potential liability. Horizon will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Brouillette Decl., ¶ 11.]

[1] 75% of the PAGA penalties, or $60,000, will go to the LWDA, and the remaining $20,000 will go the PAGA Aggrieved Employees on a pro rata basis.

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a non-exempt employee during the Class Period. 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 settlement award corresponding to the relative value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Horizon in California and the amount unpaid overtime, the number of missed meal breaks and/or rest breaks, etc. The average gross award is estimated at around $1,159. [Brouillette Decl., ¶ 12.]

C. Settlement Administration

Subject to the Court's approval, the Parties have agreed on Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Phoenix's fees and costs will not exceed $11,000. If the Court approves less than the above amount, the difference will remain in the Class Payout Fund for distribution to the Participating Class Members. [Brouillette Decl., ¶ 13; Declaration of Jodey Lawrence, ¶¶ 2-22; Exhs. A-B.]

D. The Class Notice

The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language. The Notice also sets forth the individualized information used to calculate Class Members' 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, the procedure for submitting an objection to the Settlement, the procedure to request exclusion, and the fact that any final judgment will bind all class members who do not op out. Cal. Rules of Court 3.769(f) and 3.766(d). In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement and decide to participate in, opt out of, or object to the proposed Settlement, and meets all requirements imposed by the California Rules of Court. Coupled with the notice procedure, the Notice provides the best notice

practicable. [Brouillette Decl., ¶ 14.]

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

Class Members will have forty-five (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. If a Class Member disputes their individual information, the Settlement Administrator will review the Class Member's records and any other information submitted, and make a final determination. [Brouillette Decl., ¶ 15.]

F. Release of Claims

All Participating Class Members will release Horizon from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations or arising out of the same primary rights in the complaint during the Class Period. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the complaint. [Brouillette Decl., ¶ 16.]

G. Plaintiff's Enhancement Award

A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000). He devoted time and resources to the litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in preparing for mediation. The service payment provided to Plaintiff as the class representatives is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards 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."). Defendant will not oppose a request for an enhancement award to Plaintiff of not more than $10,000.00 in recognition of his time spent on this matter, the risks he undertook on behalf of the class, and the benefit conferred to the class, as addressed in his declaration filed herewith. If the Court approves less than the above amount, the difference will remain in the Class Payout Fund for distribution to the Participating Class Members. [Brouillette Decl., ¶ 17; Declaration of Salvador Rodriguez De Anda, ¶¶ 2-9.]

H. Attorney's Fees and Costs

The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an award of attorney's fees of up to one-third of the GSA, or $500,000 and reimbursement of actual costs and expenses of up to $30,000.00. Plaintiff's counsel will submit a request for attorney's fees and actual litigation costs at final approval per the terms of the Settlement Agreement and applicable law, and will provide the Court with appropriate information and evidence regarding hourly rates, tasks performed, and time expended on the case. If the Court approves less than the above amounts, the difference will remain in the Class Payout Fund for distribution to the Participating Class Members. [Brouillette Decl., ¶ 18.]

I. PAGA and Notice to the LWDA

As noted, the Parties allocated $80,000 to resolution of Plaintiff's alleged claims under PAGA, and Plaintiff submits that amount is fair, reasonable, and adequate, and furthers the purposes underlying PAGA. Consistent with PAGA, $60,000 of that amount will go to the LWDA for the State's share of the civil penalties, while the remaining $20,000 will be distributed pro rata to eligible PAGA Aggrieved Employees. Prior to filing this motion, Plaintiff provided notice of the proposed settlement of the PAGA claims and the approval hearing to the LWDA. [Brouillette Decl., ¶ 19; Exh. 2.]

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 of 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 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 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 690 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Brouillette Decl., ¶ 20.] Next, Plaintiff is an adequate class representative, as his claims do not conflict with and are not antagonistic to the claims of other class members. [De Anda Decl., ¶¶ 2-9; Brouillette Decl., ¶ 21.] Further, his claims are typical as he is a member of the class and his claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. [Id.] Lastly, his counsel is experienced and adequate class counsel. [Brouillette Decl., ¶¶ 37-47.]

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were paid via substantially similar company-wide policies that resulting in off the clock work, underpaid overtime, missed/non-compliant meal and rest breaks, etc. Since the focus of the claims against Horizon concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Horizon's compensation plans either properly paid the class members for overtime hours worked or they did not. Regardless of these determinations, it will decide liability for all Class Members one way or another. [Brouillette Decl., ¶ 22.]

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

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

The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator Tripper Ortman, who has extensive experience mediating wage and hour class actions.

[Brouillette Decl., ¶ 8.] Plaintiff's counsel Brandon Brouillette and Zachary Crosner, and Crosner Legal PC, have years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Brouillette Decl., ¶¶ 37-47.]

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 extensive formal informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Horizon's payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information then was analyzed by a consulting expert to look for meal and rest break violation rates, time spent working off the clock, etc., and other issues relevant to liability and damages. Plaintiff's 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. [Brouillette Decl., ¶¶ 7, 24.]

Using that data, Plaintiff ran various calculations and estimated Horizon's likely maximum exposure on the class claims at approximately $7,605,075, including about $160,000 on the unpaid wage/rounding claims, approximately $360,000 on the underpaid overtime/regular rate claims, about $682,240 on the meal period claims, about $3,492,600 on the rest period claims, around $237,235 on the expense reimbursement claims, approximately $ 1,239,000 on wage statement claims, and $1,434,000 on the waiting time penalty claims. [Brouillette Decl., ¶¶ 25-26.] Plaintiff and counsel substantially discounted the value of these claims, however, in light of Defendant's multi-layered defenses on both

class certification and on the merits, and the multiple and considerable risks posed by proceeding with the litigation.

The unpaid minimum wage claims focus primarily on Horizon's alleged "shaving" or "rounding" of time punches at the start of each shift. Here, Plaintiff alleges Defendant's confusing "grace time" policy resulted in regular instances where employees clocked in early and began working under the policy but nonetheless had that pre-shift work time "shaved" from their overall hours worked for the shift. Plaintiff's experts analysis of the sample time records suggested around 77% of shifts had time shaved at an average rate of around 3.2 minutes per shift. Recently, the Court of Appeal in Delmer Camp v. Home Depot USA, Inc., reversed a trial court's order granting Home Depot summary judgment holding that "[u]nder the guidance and direction of *Troester* and *Donohue*, which [the] court must follow as an intermediate court, if an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for 'all the time' worked." 84 Cal.App.5th 638 at 660 (review granted).

Plaintiff also alleges Defendant failed to properly pay for overtime, meal premium, and sick pay because it did not incorporate various forms of non-hourly compensation into the "regular rate of pay" calculations as required under California law. Alvarado v. Dart Container Corp. (2018) 4 Cal.5th 542 (overtime); Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.5th 858 (meal violation premiums); Flores v. Dart Container Corp. (E.D. Cal. May 28, 2020) No. 219CV00083WBSEFB, 2020 WL 2770073 (sick pay). Plaintiff claims he and the Class Members were paid non-discretionary bonuses, such as seasonal differentials, shift differentials, retention bonuses, shared rewards bonuses, and team captain differentials, all of which were not properly incorporated into the regular rates of pay for purposes of calculating overtime, meal period premiums, and sick pay. [Brouillette Decl., ¶ 28.]

In response to Plaintiff's unpaid wage claims, Horizon argued its payroll policies are fully compliant, that it properly tracked and paid for all hours worked at the appropriate hourly wage, including proper calculation of the "regular rate of pay" used to pay overtime, meal premiums, and sick pay. On the alleged rounding issue, Defendant also emphasized its grace period policy was similar to ones previously found compliant, and ensured that employees were paid for all hours worked. See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal.App.4th 889. Defendant also argued that, if any class members failed to

record and report time it was in violation of company policy 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., 497 F.Supp.2d 1080, 1083 (N.D. Cal. 2007) (employer must have actual or constructive knowledge of the off the clock work for liability to attach). [Brouillette Decl., ¶ 29.]

On the meal and rest break claims, Plaintiff contends that even if Horizon's written policies are compliant, as a practical matter it resulted in numerous "de facto" violations for missed and non-compliant breaks. Plaintiff's experts' review of the time and payroll records provided suggested as much, and showed a violation rate for meal periods of at least 10% and over 35,000 unique violations. Plaintiff similarly contended that rest breaks were non-compliant because employees lost break time getting to/from their work station to the break area and thus did not receive a full, net 10 minute break, and further that breaks frequently would be interrupted by work, calls from supervisors, etc. [Brouillette Decl., ¶ 30.]

In response, Horizon argued its written policies are fully compliant, and that it provided employees with the opportunity to receive all required meal and rest breaks on time and in full. Defendant further maintained that, in light of its compliant policies, whether a class member missed a meal period, received a late meal period, or missed a rest break would have been aberrational and against company policy. Thus, per Horizon, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. Finally, Horizon also emphasized that it paid thousands of meal break premium payments during the Class Period in compliance with the law. [Brouillette Decl., ¶ 31.]

On the expense reimbursement claim, Plaintiff alleged employees had to use their personal mobile phones for work purposes, including to respond to calls and texts from supervisors and to use apps to clock in and out or to access their pay records. Plaintiff and Class Members were not reimbursed for the use of their personal cell phones for business purposes. Cochran v. Schwan's Home Services, Inc. (2014) 228 Cal.App.4th 1137, 1144 ("[T]o be in compliance with section 2802, the employer must pay some reasonable percentage of the employee's cell phone bill."). In response, Horizon argued that its policies prohibited use of personal cell phones while working, and there would be no need for employees to use

their own phones to communicate while on duty. It further noted it provided electronic access to time and pay records as a convenience to its employees, and if an employee used their own phone to access those records it was purely by employee choices and not "required" or "necessary" business expense under Labor Code § 2802. [Brouillette Decl., ¶ 31.]

The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to take into account the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses. [Brouillette Decl., ¶ 32.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling around $7 million in civil penalties should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections for every single pay period at issue. [Brouillette Decl., ¶ 33.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).

Accordingly, the Parties allocated $80,000 to PAGA penalties, and Plaintiff submits this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will

be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

The settlement obviates the significant risk that this Court may find any kind of class or representative resolution unachievable or 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 lengthy and expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would further and 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 these claims, legitimate controversies exist regarding each one of them. Plaintiff also recognizes proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Brouillette Decl., ¶¶ 34-35.]

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, and the overall $1,500,000 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $1,500,000, which will result in average award of over $1,159 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Brouillette Decl., ¶ 35.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding

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

V. CONCLUSION

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

Dated: October 21, 2026

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