BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff MICHAEL GOLDBERG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

MICHAEL GOLDBERG, on behalf of the State of California and all Aggrieved Employees and Class Members, Plaintiff, v. GENERAL PRODUCTION SERVICE OF CALIFORNIA, INC., a California Corporation; and DOES 1-100, inclusive, Defendants.	Case No.: BCV-24-102628 Hon..: T. Mark Smith Dept. T-2 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: May 29, 2025 Time: 8:30 a.m. Dept. T-2

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I. INTRODUCTION

Plaintiff Michael Goldberg 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 837 individuals who are or previously were employed by Defendant in California and classified as non-exempt employees at any time during the Class Period of March 8, 2022 through April 27, 2025. The proposed $650,000 settlement will provide about $349,833 in cash payments to the class, with an average award currently estimated at about $418. The balance of approximately $300,167 will cover reasonable attorney's fees and actual litigation costs, civil penalties to the state, settlement administration costs, and an enhancement award to plaintiff. The settlement is the product of Plaintiff's pre-filing investigation, formal discovery and a pre-mediation exchange of information, and arms-length negotiations overseen by experienced mediator Kevin Barnes, 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 Michael Goldberg 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 GPS provides various services to the oil industry throughout the San Joaquin Valley, Ventura, and the Central Coast. Plaintiff Michael Goldberg ("Plaintiff") worked for GPS for only a short while from March 29, 2023 until he resigned the morning of May 9, 2023. Plaintiff's employment covered a four-week training period at Defendant's training yard in Taft, California and then a single day out in the oil field before he resigned. [Declaration of Brandon K. Brouillette ("Brouillette Decl."), ¶ 4.]

Plaintiff alleges a number of wage and hour violations by Defendant. First, he alleges

Defendant's failure to provide off-duty meal and rest breaks during the training portion of his employment Defendant's failure to provide a third rest break for shifts greater than 10 hours (covering 194,862 class member shifts Defendant's failure to pay meal period premiums when employees worked shifts greater than 10 hours and did not expressly agree to waive their right to a second meal period Defendant's failure to provide wage statements that accurately listed the total hours worked when vacation wages were paid (covering 2,537 class member pay periods) Derivative wage statement and waiting time penalties Based on these allegations, and after notice the LWDA and GPS, Plaintiff On August 6, 2024, Plaintiff filed a class and representative action complaint against Defendant in the Superior Court of the State of California, County of Kern, seeking civil penalties pursuant to Labor Code § 2699, et seq. for alleged violations of the Labor Code, as well as seeking damages for those alleged labor code violations, among others. [Brouillette Decl., ¶ 5; Exh. 3.]

GPS 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 provided employees with required meal and rest breaks or paid the required compensation for any documented meal/rest violations. Additionally, GPS 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, that such breaks were non-compliant, or that class members had to sue their own phones for work it was intermittent and infrequent and evidence of such missed breaks or phone use would be anecdotal, and therefore individualized issues would predominate. [Brouillette Decl., ¶ 6.]

Once the matter was at issue, the Parties began meeting and conferring regarding discovery, law and motion, and other case management issues, and ultimately 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. 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 Kevin Barnes, Esq., a respected professional neutral with substantial wage and hour and class action experience. In February 2025, the Parties participated in a full day mediation with Mr. Barnes. 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 Class Action and PAGA Settlement ("Settlement Agreement") setting forth the settlement terms now before the Court for approval. [Brouillette Decl., ¶ 8.] A fully-executed, true and correct copy of the Settlement Agreement is attached to the Brouillette Declaration as Exhibit 1.

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, GPS will pay $650,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $216,666.67 (1/3 of the GSA), litigation costs of up to $20,000, settlement administration costs of no more than $13,500, a service award to Plaintiff of no more than $10,000, and PAGA civil penalties of $40,000, all will be paid from the GSA. The balance of around $349,822 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 GPS. [Brouillette Decl., ¶ 9.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all individuals employed by GPS in California and classified as non-exempt who worked for Defendant during the Class Period of June 16, 2019 to July 13, 2024. The Settlement Class consists of about 837 individuals. [Brouillette Decl., ¶ 10.]

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates GPS to pay $650,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $349,833 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> 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. Fifteen percent of each settlement share will be allocated to wages and the remaining eighty-five percent will be allocated to penalties and interest, which allocation is consistent with GPS's potential liability. GPS 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.]

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, and the settlement awards further will account for whether the individual signed an arbitration agreement – members of the arbitration agreement subclass will receive a reduced pro rata amount relative to the non-arbitration agreement subclass by a factor of fifty percent to account for Defendant's contention that such individuals are excluded from participating in a class action. 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, and further will account for the arbitration issue. 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 GPS in California and the number of missed/non-compliant meal breaks and/or rest breaks, inaccurate wage statements, etc. The average award is estimated to be around $418. [Brouillette Decl., ¶ 12.]

C. <u>Settlement Administration</u>

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 $13,500. 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. [Brouillette Decl., ¶ 13; Declaration of Michael Moore, ¶¶ 2-6; Exhs. A-C.]

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 GPS and the Released Parties (including the Clorox Defendants) from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations 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 operative 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 Net Settlement Amount for distribution to the Participating Class Members. [Brouillette Decl., ¶ 17; Declaration of Michael Goldberg, ¶¶ 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 $216,666.67 and reimbursement of actual costs and expenses of up to $20,000.00. 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 Net Settlement Amount for distribution to the Participating Class Members. [Brouillette Decl., ¶ 18.]

I. PAGA and Notice to the LWDA

As noted, the Parties allocated $40,000 to resolution of Plaintiff's alleged claims under PAGA. Consistent with PAGA, $30,000 of that amount will go to the LWDA for the State's share of the civil penalties, while the remaining $10,000 will be distributed pro rata to eligible 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. 4.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via a two-step process to determine, under all 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 837 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. [Goldberg 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., ¶¶ 36-46.]

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 missed/non-compliant meal and rest breaks, etc. Since the focus of the claims against GPS concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, GPS's policies regarding meal and rest breaks during training either resulted on "on duty" breaks or they did not. Regardless of that determination, 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 Kevin Barnes, Esq., who has extensive experience mediating wage and hour class actions. [Brouillette Decl., ¶ 9.] 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., ¶¶ 36-46.]

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 GPS'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.]

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.

Using that data, Plaintiff ran various calculations and estimated GPS's likely maximum exposure on the class claims at approximately $15,633,150, including approximately $5,323,700 on the meal period claims, about $5,323,700 on the rest period claims, around $2,241,650 on the wage statement claims, and $2,444,100 on the waiting time penalty claims. While Plaintiff's complaint alleges claims for unpaid wages, his investigation and discovery did not suggest any potentially widespread violations for unpaid wages that could be addressed via a class or representative action. Accordingly no value was attributed to those claims for purposes of settlement. [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 considerable risks posed by proceeding with the litigation.

On the meal and rest break claims, Plaintiff alleged multiple violations. First, he argued that during four weeks of training to learn the technical and safety requirements of the job, Defendant provided Plaintiff with a timely 30-minute meal period and two rest breaks for shifts that were generally 8 hours long. However, Plaintiff alleges that per company policy he and other trainees were not permitted to leave the premises for these meal and rest breaks and Defendant failed to provide Plaintiff meal and rest period premiums to compensate for these breaks during which Plaintiff and class members were not relieved from all duty. Unlike working in an oil field, the training was not in a remote setting – it was in Taft with multiple restaurants and gas stations nearby – and there were no practical limitations that would have prevented employees from leaving the training site for a meal and rest break. Moreover, Plaintiff argued the training would not satisfy the requirements for an on-duty meal period and, regardless GPS did not require written on-duty meal period agreements as mandated by the applicable Wage Order. Wage Order 16, § 10(D). [Brouillette Decl., ¶ 27.]

Next, Plaintiff alleged Defendant failed to provide employees with second breaks when they worked greater than 10 hours and maintained a policy that entitlement to a second meal break was "dependent upon their work schedule." Further, there was no evidence that GPS obtained blanket meal waivers from its employees as part of its onboarding process. Rather, its meal policy provided that second meal breaks may be waived, in some circumstances, by the mutual consent of GPS and the employee but must be disclosed on the time card. Thus, per Plaintiff, under Defendant's own policy an employee's failure to state they waived a meal period on the time card would invalidate any voluntary waiver argument made by Defendant. [Brouillette Decl., ¶ 28.]

In addition, Plaintiff argued Defendant maintained an unlawful rest period policy that only provided employees with two 10-minute rest breaks per shift and did not provide for the required third break on shifts of 10+ hours. Nothing in the policy indicated that employees ever were entitled to or provided with more than two rest breaks if they work shifts more than 10 hours, all in violation of the Labor Code and Wage Orders. [Brouillette Decl., ¶ 29.]

In response, GPS argued its written meal and rest break policies are fully compliant, and that it provided employees with the opportunity to receive all required breaks, including second meal breaks and third breaks. On the second meal break claim, GPS also argued employees regularly waived their second break, regardless of whether it was noted on a time card or not, and that determining whether a waiver occurred would require innumerable individualized inquiries that would render class certification impossible on that issue. Defendant also argued were not subject to employee control while on a break, including during their training period, and otherwise were permitted to leave the work premises as appropriate. On the rest break issue, GPS also noted the applicable Wage Order provides that rest periods "shall take place at employer designated areas, which may include or be limited to the employees' immediate work area." Wage Order 16, § 11(A). Lastly, GPS 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, and accordingly these issues again would not be amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. [Brouillette Decl., ¶ 30.]

On the inaccurate wage statement claim, Plaintiff contended Defendant issued wage statements that failed to correctly list the total hours worked when vacation wages were paid. For example, for pay date May 12, 2023, Plaintiff worked 11.75 hours and was paid out 3.08 hours of vested vacation time. However, the wage statement states in inaccurate total for the total hours worked by Plaintiff, providing 14.83 total hours worked, presumably due to a systematic error to include certain non-working hours, including vacation time as 'hours worked.' Accordingly, per Plaintiff, each wage statement that included any vacation pay automatically misstated the actual hours worked for that pay period, in violation of Laobr Code section 226 (a)(2). [Brouillette Decl., ¶ 31.]

The claims under Labor Code sections 203 and 226 also are derivative of the primary claims for failure to pay premium wages for meal/rest break violations, 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 $6 million in civil penalties should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections as to each and every pay period at issue. [Brouillette Decl., ¶ 33.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).

Accordingly, the Parties allocated $40,000 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 $650,000 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $650,000, which will result in average award of over $418 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: May 6, 2025

CROSNER LEGAL, P.C.

By: ______________________________

Zachary M. Crosner
Brandon K. Brouillette
Attorneys for Plaintiff Michael Goldberg