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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

RAOUL MIRANDA, as an individual and on behalf of all others similarly situated, Plaintiff, v. REXEL USA, INC., a California corporation; and DOES 1-100, inclusive, Defendants.	Case No.: 37-2024-00022544-CU-OE-CTL Assigned for All Purposes to: Hon. Hon. Gregory Pollack Dept. C-71 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT Date: April 30, 2027 Time: 9:30 a.m. Dept.: C-71 Reservation No.: 103497

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Rexel" or Defendant" 2

I. INTRODUCTION

Plaintiff Raoul Miranda 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 765 individuals employed by defendant Rexel USA, Inc. ("Rexel" or Defendant") in California current and former non-exempt employees who worked either directly or via a staffing agency for Defendant at any location in California at any time within the Class Period of August 25, 2022 to January 19, 2026. The proposed $970,000 settlement will provide about $555,677 in cash payments to the class, with an average award currently estimated at about $726. The balance of approximately $414,323 will cover reasonable attorney's fees and actual litigation costs, settlement administration costs, an enhancement award to plaintiff, and civil penalties to the State. The settlement is the product of Plaintiff's pre- and post-filing investigation and discovery, a pre-mediation exchange of information, and arms-length negotiations overseen by experienced mediator Craig Ackermann, 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, Jamie K. Serb and Nikki Trenner, and Crosner Legal, P.C. as Class Counsel; (4) appointing Plaintiff Raoul as the Class Representative; (5) appointing Apex Class Action, LLC 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 Rexel provides electrical apparatus and wiring equipment and supplies to customers nationwide, with more than 70 locations in California. Plaintiff Raoul Miranda was employed in Defendant's San Diego location as a non-exempt warehouse associate in Defendant's counter sales department from 2011 to 2023. Plaintiff's average hourly rate during the Class Period was $21.46. From 2020 to 2023, Plaintiff was paid bonuses in the form of gift cards, as well as commission payments. [Declaration of Nikki Trenner ("Trenner Decl."), ¶ 4.]

On May 15, 2024, Plaintiff filed a class action complaint in the San Diego County Superior Court alleging (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to reimburse business expenses; (6) failure to provide itemized wage statements; (7) failure to timely pay all wages upon separation of employment; and (8) violations of the Unfair Competition Law. Defendant removed the matter to the Southern District under CAFA on June 17, 2024. The Parties later remanded the action back to the San Diego County Superior Court by stipulation. On August 16, 2024, Plaintiff filed a PAGA action complaint in the San Diego County Superior Court. The PAGA action is currently pending before the Honorable Joel R. Wohlfeil. [Trenner Decl., ¶ 5; Exh. 3.]

Rexel has at all times denied Plaintiff's allegations and maintained its timekeeping and payroll policies and procedures comply with all applicable state and federal law, and that it accurately paid the putative class members all wages due. Additionally, Rexel strongly contends the case cannot be maintained as a class action, arguing for example that to the extent class members allegedly worked off the clock it was intermittent and infrequent and evidence of such off the clock work would be anecdotal and therefore individualized issues would predominate. [Trenner Decl., ¶ 6.]

Once both matters were filed and once the class action was remanded from federal court, the Parties initiated discovery and began meeting and conferring regarding discovery, law and motion, and other case management issues, and ultimately agreed to attempt 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 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. [Trenner Decl., ¶ 7.]

The Parties then engaged Craig Ackermann, Esq., a respected professional neutral with substantial wage and hour and class action experience. In November 2025, the Parties participated in a full day mediation with Mr. Ackermann. 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. A fully-executed, true and correct copy of the Settlement Agreement is attached to the Trenner Declaration as Exhibit 1. [Trenner Decl., ¶ 8.]

III. <u>THE PROPOSED SETTLEMENT TERMS</u>

Under the settlement, Rexel will pay $970,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $323,333.33 (1/3 of the GSA), litigation costs of up to $35,000, settlement administration costs of no more than $10,990, a service award to Plaintiff of no more than $10,000, and PAGA civil penalties of $35,000 (allocated $22,750.00 (65%) to the LWDA and $12,250.00 (35%) to the Aggrieved Employees), all will be paid from the GSA. The balance of around $555,677 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 Rexel. [Trenner Decl., ¶ 9.]

A. <u>Certification of the Settlement Class</u>

The settlement provides for conditional certification of a settlement class including all current and former non-exempt employees who worked either directly or via a staffing agency for Defendant at any location in California at any time within the Class Period of August 25, 2022 to January 19, 2026.[1] The Settlement Class consists of about 765 individuals. [Trenner Decl., ¶ 10.]

B. <u>The Benefit Conferred on the Settlement Class</u>

As noted, the settlement obligates Rexel to pay $970,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $555,677 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. One-third of each settlement share will be allocated to wages and the remaining two-thirds will be allocated

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[1] The Class Period beings on August 25, 2022 in light of release period in a prior class action. [Trenner Decl., ¶ 10.]

to expense reimbursement, penalties and interest, which allocation is consistent with Rexel's potential liability. Rexel 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 California State Controller's Unclaimed Property Fund. [Trenner 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. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unreimbursed expenses, 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 Rexel in California and the amount of unpaid off the clock work, unreimbursed expenses, etc., they are allegedly owed. The average award is estimated to be around $726. [Trenner Decl., ¶ 12.]

C. Settlement Administration

Subject to the Court's approval, the Parties have agreed on Apex Class Action, LLC ("Apex") as the Settlement Administrator. Apex is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Apex's fees and costs will not exceed $10,990. 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. [Trenner Decl., ¶ 13; Declaration of Michael Sutherland, ¶¶ 2-7; 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. [Trenner 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. [Trenner Decl., ¶ 15.]

F. Release of Claims

All Participating Class Members will release Rexel and the Released Parties 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. Similarly, Plaintiff, acting on behalf of the LWDA, will release all claims for PAGA penalties alleged or that could have been alleged in the operative complaint for the PAGA Period. [Trenner 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. [Trenner Decl., ¶ 17; Declaration of Raoul Miranda ("Miranda Decl."), ¶¶ 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 $323,333.33, and reimbursement of actual costs and expenses of up to $35,000.00. 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. [Trenner Decl., ¶ 18.]

I. PAGA and Notice to the LWDA

As noted, the Parties allocated $35,000 to resolution of Plaintiff's alleged claims under PAGA, and Plaintiff submits that amount is fair, reasonable and adequate, and furthers with PAGA's underlying purposes. Consistent with PAGA, $22,750 of that amount will go to the LWDA for the State's share of the civil penalties, while the remaining $12,250 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. [Trenner Decl., ¶ 19; Exh. 5.]

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IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via a two-step process to determine, under all 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 765 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Trenner 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. [Miranda Decl., ¶¶ 2-9; Trenner 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. [Trenner Decl., ¶¶ 36-42.]

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 resulted in alleged unpaid wages, alleged meal and rest break violations, etc. For instance, whether Defendant properly calculated the regular rate of pay, and correctly paid for sick pay and meal premiums, presents a common issue that, once resolved, will decide liability for all Class Members one way or the other. [Trenner 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. [Trenner 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 Craig Ackermann, Esq., who has extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 8.] Plaintiff's counsel Nikki Trenner, Jamie Serb 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. [Trenner Decl., ¶¶ 36-42.]

California law recognizes several factors bearing on the fairness, adequacy, and reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128. 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 and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Rexel's payroll practices, pay stubs and time records for a sampling of class members, meal 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 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. [Trenner Decl., ¶¶ 7, 24.]

Using that data, Plaintiff ran various calculations and estimated Rexel's likely maximum exposure on the class claims at approximately $17,217,390, including about $620,100 on the unpaid wage/off the clock claim, $259,700 on the regular rate claim, $1,707,300 on the meal period violation claim; $9,225,240 on the rest period violation claim, $390,000 on the unreimbursed expense claim, $3,207,550 on the wage statement claims, and $1,807,500 on the waiting time penalty claims. [Trenner 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.

Plaintiff first alleges Defendant required Plaintiff and the Class Members to frequently work off the clock before clocking in for their shifts and after clocking out from their shifts each day. Namely, before they were able to clock in for their shifts, Plaintiff and the Class Members were required to travel through the facilities to their workstations, turn on the computer at their desks, wait for the computers to boot up, log into the timekeeping software, and clock in. This process generally took about 5 minutes. Again, after clocking out from their shifts at the end of the workday, Plaintiff and the Class Members were required to clear all counters, shut and lock the front doors, and shut and lock the roll down gate. Plaintiff contended class members worked about 5 minutes per shift on this alleged "off the clock" work. [Trenner Decl., ¶ 27.]

Plaintiff also contends Defendant underpaid employees for their sick leave and for meal period premiums. Here, California law requires employers to calculate their employees' sick leave pay based on the employee's "regular rate of pay," if applicable, instead of the base hourly rate. Lab. Code § 246(*l*)(1)-(3). Employers also must pay premium payments to employees for missed meal, rest, and recovery periods at the employee's "regular rate of compensation." Labor Code

§ 226.7(c); Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.5th 858. Although Defendant was required to pay sick leave and meal period premiums to Plaintiff and the Class Members at their regular rates of pay, Defendant instead paid sick leave and meal period premiums to all employees at their base hourly rates. Plaintiff and other Class Members received performance-based bonuses and commission payments that Defendant failed to incorporate into the regular rates of pay for purposes of pay sick leave and meal period premiums. [Trenner Decl., ¶ 28.]

In response Rexel argued that it properly tracked and paid for all hours worked by its employees, and that its policies strictly prohibited any off the clock work. Per Defendant, to the extent any such work occurred, it was against company policy, and done without the employer's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). For these reasons, per Defendant, class certification of this issue would be impossible because innumerable individual inquires would be required to determine what "off the clock" occurred and if it was compensable. [Trenner Decl., ¶ 29.]

Plaintiff next alleged Defendant failed to provide compliant meal periods and rest periods to employees during the Class Period in several ways. On the meal period violations, Plaintiff primarily alleges "de facto" violations where Defendant's own records show missed, short, or untimely meal periods. Plaintiff's expert's review of the records produced by Defendant suggested (1) 17% of shifts had late first meal periods; (2) 38% of shifts over 12 hours had completely missed second meal periods; and (3) and 4% of all meal periods recorded were automatically deducted. On the rest period claims, Plaintiff argued that due to the demanding nature of the job, employees were rarely, if ever, provided with rest periods when working 8 hours or more and he further argued management was aware that employees were not provided with rest periods during their shift in order to increase productivity. [Trenner Decl., ¶ 30.]

On the meal and rest break claims, Defendant emphasized its written policies are compliant and that it authorized and permitted employees to take all required breaks and thus met all obligations under the law.Defendant further argued the records accurately reflect that employees took timely and compliant meal breaks. Defendant also noted that, in light of the compliant policies and records, whether an employee missed a meal period, received a late meal period, or missed a rest break, would have been aberrational and against company policy. Thus, per Defendant, these issues are not amenable to representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. [Trenner Decl., ¶ 31.]

On the expense reimbursement claim, Plaintiff alleges that he and the class members regularly had to use their own cell phones for work purposes, Plaintiff was constantly contacted by his supervisors on his personal cell phone regarding work-related matters, but was not reimbursed part of his cell phone expenses by Defendant, in violation of Labor Code section 2802. Cochran v. Schwan's Home Services, Inc. (2014) 228 Cal. App. 4th 1137. In response, Defendants argued there would be no need for the class members to use their personal phones for work, and if they did so it would have been purely for personal convenience or preference, was not necessary to their employment, and therefore was not reimbursable. [Trenner Decl., ¶ 32.]

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. [Trenner Decl., ¶ 33.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling around $15 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. [Trenner 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 $35,000 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. [Trenner Decl., ¶ 34.]

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 $970,000 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $970,000, which will result in average award of some $726 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. [Trenner 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: August 3, 2026

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