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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CONNOR ANGEL, as an individual and on behalf of all other similarly situated Class Members, Plaintiff, v. ELLIOTT HOMES, INC., an Arizona Corporation; and DOES 1-100, inclusive, Defendants.	Case No. 24CV019402 (Lead Case) 24CV023595 (Consolidated Case) Assigned for All Purposes to: Hon. Lauri A. Damrell Dept. 22 MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT Date: February 20, 2026 Time: 9:00 a.m. Dept.: 22 Reservation No.: A-19402-001

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I. INTRODUCTION

Pursuant to Local Rule 2.99.05, Plaintiff Connor Angel 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 61 individuals employed by Defendant Elliott Homes, Inc. ("Elliott" or "Defendant") as current and former non-exempt employees at any location in California at any time during the Class Period of September 26, 2020 to April 16, 2025. The proposed $225,000.00 settlement will provide about $91,500 in cash payments to the class, with an average award currently estimated at about $1,500. The balance of approximately $133,500 will cover reasonable attorney's fees and actual litigation costs, settlement administration costs, civil penalties under PAGA, and a reasonable 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 Scott Radovich, 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 Crosner Legal, PC as Class Counsel; (4) appointing Plaintiff Connor Angel as the Class Representative; (5) appointing Simpluris, Inc. 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. BACKGROUND

Defendant Elliott Homes is an Arizona corporation operating as a residential home builder and developer in California. Defendant maintains its principal place of business in Folsom, California, and conducts operations across multiple California locations. Plaintiff worked for Elliott as a non-exempt detailer from February 4, 2020 to February 16, 2024. During his employment, Plaintiff worked at various locations including Rancho, Folsom, Galt, and Elk Grove. Plaintiff began his employment at a wage rate of $27.00 per hour and received increases over time, reaching a final rate of $32.00 per hour. [Declaration of Nikki Trenner ("Trenner Decl."), ¶ 4.]

On September 26, 2024, Plaintiff filed a class action complaint against Defendant alleging various wage and hour violations. First, Plaintiff alleged Elliott failed to pay minimum and overtime wages by requiring "off the clock" work and paying employees per schedule rather than actual hours worked and requiring Plaintiff and the Class Members to perform work off the clock during unpaid meal periods. Plaintiff further alleges Defendant underpaid wages by failing to incorporate non-discretionary bonuses in Plaintiff's and the Class Members' regular rate of pay and thus paid for overtime and sick pay at the incorrect rate of pay. Plaintiff also claimed Defendant failed to provide all required meal and rest breaks on a fully-compliant basis, and failed to reimburse expenses incurred for the use of personal vehicles, personal cell phones, and the tools necessary to perform the job. Based on these allegations, Plaintiff's class action complaint alleged claims for minimum wage violations, overtime violations, meal and rest break violations, failure to reimburse expenses, failure to provide accurate wage statements, failure to pay all wages due on separation of employment, and unfair competition under Bus. & Prof. Code §§ 17200, et seq. After exhausting administrative remedies, on November 15, 2024, Plaintiff filed a separate PAGA-only complaint against Elliott based on the same alleged violations. The Court later consolidated both matters. [Trenner Decl., ¶ 5; Exh. 2.]

In response, Elliott denied Plaintiff's allegations in their entirety. Elliott argued its meal break and payroll policies and procedures comply with California law, that it provided its employees with required meal and rest breaks, that it properly tracked employee time and paid Plaintiff and all other employees all wages due at the correct hourly and overtime rates, and reimbursed all reasonable and necessary expenses. Additionally, Elliott strongly contended the case cannot be maintained as any kind of class or representative action, arguing that to the extent class members missed meal breaks, that such breaks were non-compliant, or that any unpaid "off the clock" work occurred, it was intermittent and infrequent and evidence of such violations would be purely anecdotal, and therefore individualized issues predominate and trial would be unmanageable. [Trenner Decl., ¶ 6.]

After the matter was at issue, both sides began engaging in meet and confer discussions regarding case management, discovery and potential law and motion, 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. Plaintiff had that information reviewed and analyzed by a consulting expert to assist with evaluating potential liability and creating a damages model. [Trenner Decl., ¶ 7.]

The Parties then engaged Scott Radovich, Esq., a respected professional neutral with substantial wage and hour and class action experience. In April 2025, the Parties participated in a mediation with Mr. Radovich. 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 and Representative PAGA Action Settlement Agreement ("Settlement Agreement") setting forth the settlement terms now before the Court for approval. [Trenner Decl., ¶ 8.] A fully-executed, true and correct copy of the Settlement Agreement is attached to the Trenner Declaration as Exhibit 1. Finally, in order to fully implement the proposed settlement, Plaintiff filed a first amended complaint incorporating the PAGA claims and otherwise conforming the complaint the terms of the proposed settlement. The FAC is the operative complaint for settlement purposes.

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Elliott will pay $225,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $75,000 (33.3% of the GSA), litigation costs of up to $30,000, settlement administration costs of no more than $8,500, a service award to Plaintiff of no more than $10,000, and PAGA civil penalties of $10,000 (of which 65%, or $6,500 will go to the LWDA and 35%, or $3,500, will go to the Aggrieved Employees on a pro rata basis), all will be paid from the GSA. The balance of around $91,500 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 Elliott.

[Trenner Decl., ¶ 9.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all current and former non-exempt employees of Elliott at any location in California at any time during the Class Period of September 26, 2020 to April 16, 2025. The Settlement Class consists of about 61 individuals. [Trenner Decl., ¶ 10.]

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Elliott to pay $225,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $91,500 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. One-third of each settlement share will be allocated to wages and the remaining two-thirds percent will be allocated to penalties, expenses, and interest, which allocation is consistent with Elliott's potential liability. Elliott will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. [Trenner Decl., ¶ 11.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total pay periods 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 Elliott in California and the amount unpaid/underpaid overtime, the number of missed or non-compliant meal breaks and rest breaks, etc. The average class award is estimated to be around $1,500, based on approximately $9.36 per work week (net), and the average PAGA award is estimated at about $70, based on approximately $1.83 per pay period (net). [Trenner Decl., ¶ 12.]

C. Settlement Administration

Subject to the Court's approval, the Parties have agreed on Simpluris, Inc. ("Simpluris") as the Settlement Administrator. Simpluris is qualified and has significant experience administering class action settlements, including numerous wage and hour matters. Simpluris's fees and costs will not exceed $8,500.00. If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Trenner Decl., ¶ 13; Declaration of Michael Bui, ¶¶ 2-9; 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 proposed Class Notice will be available in Spanish in addition to English. 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 under the California Rules of Court. Coupled with the notice procedure, the Notice provides the best notice practicable. [Trenner Decl., ¶ 14.; Exh. 2.]

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

Class Members will have sixty (60) days to dispute the information in their Notice used to calculate their settlement award, and also have 60 days to submit any objections to the settlement or to request exclusion. 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. PAGA Members may not opt out or otherwise exclude himself or herself from the release of PAGA claims. [Trenner Decl., ¶ 15.]

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F. Release of Claims

All Participating Class Members will release Elliott 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 FAC. [Trenner Decl., ¶ 16.]

G. Plaintiff's Enhancement Award

A modest incentive award for Plaintiff is appropriate under applicable law. He devoted time and resources to the litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in preparing for the mediations. The service payments 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 respective declarations filed herewith. 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).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., ¶ 17; Declaration of Connor Angel, ¶¶ 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 33.3% of the MSA, or $75,000, and reimbursement of actual costs and expenses of up to $30,000.00. In Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260, the California Supreme Court approved calculating attorney's fees using the percentage-of-the-common-fund method in wage-and-hour cases, and further approved an award of 1/3 of the total common fund in that matter. Further, counsel's requested 1/3 fee is justified in this matter considering the amount of work performed and the excellent result achieved. The percentage requested likewise comports with fee awards calculated on a percentage-of-the-benefit basis as a review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

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, will provide the Court with appropriate information and evidence regarding hourly rates, tasks performed, and time expended on the case, and further argument supporting the fees requested. 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 $10,000 to resolution of Plaintiff's alleged claims under PAGA, and respectfully submit that amount is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. Consistent with PAGA, $6,500 of that amount will go to the LWDA for the State's share of the civil penalties, while the remaining $3,500 will be distributed pro rata to eligible PAGA Members. 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.]

J. Uncashed Funds

Class Members and PAGA Members have one hundred and eighty (180) days to cash

Individual Settlement Payments. Any Settlement checks not cashed after 180 days from the date of mailing of Individual Settlement Payments shall be sent to the State of California Unclaimed Property Fund in the Class Members' or PAGA Members' name. [Trenner Decl., ¶ 20.]

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. Elliott 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 61 individuals, and ascertainable by reference to Defendant's personnel and payroll records. [Trenner Decl., ¶ 21.] 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. [Trenner Decl., ¶ 22; Angel Decl., ¶¶ 2-4.] 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 are experienced and adequate class counsel. [Trenner Decl., ¶¶ 39-45.]

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 alleged off the clock work, underpaid overtime, missed/non-compliant meal and rest breaks, etc. Since the focus of the claims against Elliott concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Elliott's compensation scheme either properly paid the class members for overtime hours worked or it did not. Regardless of that determination, it will decide liability for all Class Members one way or another. [Trenner Decl., ¶ 23.]

By now it is well-settled a theory of recovery asserting the existence of a uniform policy violating California law is sufficient to satisfy the requirements for class certification. Jones v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment"); Williams v. Superior Court (2013) 221 Cal.App.4th 1353 ("A company-wide practice can sustain a common question 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., ¶ 24.]

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 Scott Radovich, who has extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 8.] Plaintiff's counsel Zach Crosner, Jamie Serb and Nikki Trenner have years of litigation experience, including litigating dozens of wage and hour class/PAGA actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Trenner Decl., ¶¶ 39-45.]

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 informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Elliott's payroll practices, pay stubs and time records for a sampling of about 65% of the 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. 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, 25.]

Using that data, Plaintiff ran various calculations and estimated Elliott's likely maximum exposure on the class claims at approximately $3,545,800, including about $139,308,750 on the off the clock/unpaid wage claims, around $35,580 on the regular rate claims, approximately $1,396,74600 on the meal period claims, about $1,396,746 on the rest period claims, about $305,400 on the expense reimbursement claims, around $188,200 on the wage statement claims, and $83,820 on the waiting time penalty claims. [Trenner Decl., ¶¶ 26-27.] 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 wage claims focus primarily on Elliott's alleged failure to pay Class Members at least minimum wages and/ or overtime wages for all of their hours worked. Plaintiff alleges, for example, that employees regularly performed pre-shift and post-shift work which time was not always recorded or paid for because Defendant paid based on their scheduled hours only rather than actual hours worked. Per Plaintiff, employees also frequently had to work during unpaid meal breaks depending on the press of business and need to meet project deadlines. Plaintiff alleges all of this off the clock work resulted in the loss of at least 1 hour of compensable time per workweek. [Trenner Decl., ¶ 28.]

Plaintiff also alleged Defendant failed to incorporate all forms of compensation into their regular rate of pay calculations when paying overtime as required by <u>Alvarado v. Dart Container Corp.</u> (2018) 4 Cal.5th 542 (the "regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned.") Here, Plaintiff alleges class members regularly received performance-based bonuses but that Elliott failed to pay the required overtime on those payments. Plaintiff's analysis suggested about that over 7,000 hours of overtime and sick time were underpaid due to Elliott's alleged miscalculation of the regular rate of pay. [Trenner Decl., ¶ 29.]

In response, Elliott argued its payroll policies are fully compliant, that it properly tracked and paid for all hours worked at the appropriate hourly wage. 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). [Trenner Decl., ¶ 30.]

On the meal and rest break claims, Plaintiff contends Elliott's written policies are not fully compliant, and regardless the time and pay records show substantial "de facto" violations for non-compliant meal breaks. For example, Plaintiff argued Defendant's policies failed to inform employees that a first meal break must start before the end of the fifth hour of work, that employees were entitled to a second meal break on shifts over ten hours, or that employees are owed premium pay for a missed or non-compliant meal period. Regardless of the policies, per Plaintiff Elliott also failed to track the start/stop times for lunch breaks for much of the class period, and accordingly violations will be presumed unless Defendant can affirmatively rebut the presumption. Donohue v. AMN Services, LLC (2021) 11 Cal.5th 58. [Trenner Decl., ¶ 31.]

In response, Elliott argued its written policies are fully compliant, and that it provided employees with the opportunity to receive all required meal breaks and thereby met its obligations under the Labor Code and applicable Wage Order. Further, Defendant argued to the extent employees missed a break or took a non-compliant break, any such discrepancies were aberrational and against company policy and a myriad of individual issues would be required to determine whether the potential violation resulted from employee choice or some other reason. Consequently, per Defendant, individualized inquiries would dominate on this issue and render class certification of the meal break claim inappropriate. [Trenner Decl., ¶ 32.]

For rest breaks, Plaintiff again argued that there were numerous "de facto" violations where class members didn't receive a break (especially third breaks), or didn't receive a compliant break/had their breaks interrupted by supervisors. As with meal breaks, Defendant argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks. Defendant further contended that, in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make class certification and a trial unmanageable since the number of instances an employee missed a rest break, or had a break interrupted, would have to be tested on a case by case basis to determine compliance. [Trenner Decl., ¶ 33.]

Plaintiff also alleged that he and the class members incurred substantial business expenses that went unreimbursed. First, he alleged employees had to use their personal cell phones for work purposes without any reimbursement. As such, employees are entitled to unreimbursed costs for the use of their cell phones. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137. Plaintiff also claims employees used personal vehicles for work but did not receive full reimbursement as required under Gattuso v. Harte-Hanks Shoppers, Inc. (2007) 42 Cal.4th 554. Here, while Plaintiff acknowledges he received a set monthly amount for gas/automobile expense he also claims that amount was insufficient to fully reimburse for the number of miles driven for work purposes. Finally, Plaintiff alleges he and other employees had to purchase and maintain the tools necessary to complete home construction projects, such as drills, saws, screwdrivers, measuring tapes, nail guns, palm sanders, and other hand tools (totaling over $1,000 per employee) even though the class members didn't always receive at least two times the applicable minimum wage. Wage Order 16-2001, § 8(B). Defendant on the other hand argued that its policies prohibited use of cell phones while working for safety reasons, particularly given the class members performed physical labor, used power tools, etc. Elliott argued that any use of personal mobile devices was unnecessary to perform the job and therefore was purely for personal convenience. If so, then the expense was neither reasonable nor necessary, and no reimbursement was required. Labor Code § 2802. On the mileage issue, Defendant argued the mileage allowance it paid adequately and fully reimbursed for all reasonable and necessary business travel. Finally, Defendant argued that any tools not provided were simply basic hand tools ordinarily used in the trade, and therefore no reimbursement was owed as the employees were paid appropriately. [Trenner Decl., ¶ 34.]

The claims under Labor Code section 226 are derivative violations, as are the claims under Labor Code sections 201, *et seq*., and which claims are subject to the same risks and uncertainties posed by the merits claims address above. These claims further are subject to 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 claims, they also are subject to additional defenses. [Trenner Decl., ¶ 35.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling around $970,000 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, and recover the maximum allowable penalties. [Trenner Decl., ¶ 36.] 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 $10,000 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 recognized proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Trenner Decl., ¶¶ 37-38.]

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. They 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 $225,000 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $225,000, which will result in average award of some $1,500 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., ¶ 38.]

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 afElliotted 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.

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