

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

DAVTYAN LAW FIRM, INC.

Emil Davtyan (SBN 299363)

support@davtyanlaw.com

880 E. Broadway

Glendale, CA 91205

Telephone: (818) 875-2008/Facsimile: (818) 722-3974

Attorneys for Plaintiff Gail Wilkerson, on behalf of herself, and all other similarly-situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

GAIL WILKERSON, on behalf of herself
and all other similarly-situated employees,

Plaintiff,

v.

INTUIT, INC., a Delaware Corporation; and
DOES 1 through 100, Inclusive,

Defendants.

Case No. 37-2020-00030371-CU-OE-CTL
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Gregory W. Pollack
Department C-71

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT AND
ENTERING JUDGMENT**

Hearing Set By Court Order ROA # 59

Date: February 3, 2023

Time: 9:30 a.m.

Dept: C-71

Judge: Honorable Gregory W. Pollack

[IMAGED FILE]

Complaint filed: August 28, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiff Gail Wilkerson, (“Plaintiff”), seeks final approval of a \$150,000.00 non-reversionary wage and hour class and Private Attorney Generals Act (“PAGA”) settlement with Defendant Intuit Inc. (“Defendant” or “Intuit”) on behalf of 99 non-exempt “Tax Support” employees (Job Code “CTS11”) employed by Intuit in the State of California at any time from August 28, 2016 to August 7, 2020 (“Class Period”). Declaration of Isam C. Khoury, (“Khoury Decl.”), ¶10.

On November 4, 2022, the Court-approved Notice of Class Action Settlement was mailed to 100 Class Members informing them of their rights and benefits under the Settlement, including how the estimated amount of Settlement Payments are calculated, and the right to request exclusion or submit a written objection to the Settlement by December 19, 2022. Declaration of Taylor Mitzner on behalf of Phoenix Settlement Administrators, (“Phoenix Decl.”), ¶5, Exh A.

Support for the Settlement is strong. No Class Member objected and only one requested exclusion. Participating Class Members can expect to receive an average estimated payment of \$666.67, with the highest payment estimated to be \$2,810.73. Khoury Decl. ¶11; Phoenix Decl. ¶¶8, 9, 13.

II. THE PARTIES

A. Plaintiff

Plaintiff Gail Wilkerson was employed by Intuit as a seasonal, remote Tax Support employee (job code CTS11) from January 2020 through March 2020. Khoury Decl. ¶12; Declaration of Gail Wilkerson, (“Wilkerson” Decl.), ¶3.

B. Defendant

Intuit is a leading financial technology company that helps consumers and small businesses overcome important financial challenges by offering a wide range of resources and products, including TurboTax, QuickBooks, and Mint. Khoury Decl. ¶13.

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C. The Class, Aggrieved Employees, and Prior *Shumway* Settlement

The Class is defined as all non-exempt employees employed by Intuit Inc. in the State of California in the role of “Tax Support” (job code CTS11) from August 28, 2016 to August 7, 2020. There are 99 Participating Class Members who worked 1,268 pay periods during the Class Period. Khoury Decl. ¶14. PAGA Employees means Class Members employed during the time period of August 27, 2019 through August 7, 2020 (“PAGA Period”). There are 53 PAGA Employees who worked a combined 479 pay periods during the PAGA Period. Khoury Decl. ¶15; Phoenix Decl. ¶¶11, 14.

The parameters of the Class Members and Class Period at issue in the Joint Stipulation of Class and PAGA Representative Action Settlement and Release, (“Settlement Agreement”), not only are informed by the period from December 14, 2017, through August 7, 2020 when the Tax Support role (job code CTS11) existed, but also a prior class and PAGA settlement – *Wade Shumway v. Intuit*, Santa Clara Superior Court Case No. 18-cv-330368 (the “*Shumway* action”) – which included a release that covered many of Plaintiff’s claims in this action. Khoury Decl. ¶16.

On February 14, 2020, the Santa Clara Superior Court granted final approval of a previous statewide class and PAGA settlement in the *Shumway* action. The *Shumway* action primarily involved a technical wage calculation claim stemming from Intuit’s peer to peer recognition program where employees could reward coworkers for exemplifying the company’s values, and redeem them for a variety of gift cards from a third-party vendor. The *Shumway* plaintiffs also alleged various related wage and hour claims, including for direct and indirect wage statement violations and waiting time penalties. The case ultimately settled shortly after Intuit filed a motion for summary judgment while the motion was still pending. The release in the approved *Shumway* settlement included a Civil Code section 1542 release as to all claims that were alleged or could have been alleged, including claims for direct or indirect wage statement violations, waiting time penalties, and related PAGA penalties. The *Shumway* release covered all non-exempt California employees of Intuit from before the beginning of the limitations period in this case through February 14, 2020. Khoury Decl. ¶17.

III. PROCEDURAL HISTORY

Plaintiff submitted a notice letter to the California LWDA on August 27, 2020, (in an effort to exhaust her required administrative remedies to bring a PAGA claim) before filing this lawsuit. Khoury Decl. ¶18.

On August 28, 2020, Plaintiff filed a putative class action complaint alleging Defendant: (1) failed to pay all minimum, regular, and overtime wages; (2) failed to provide meal periods or premiums; (3) failed to provide rest periods or premiums; (4) failed to provide one day's rest in seven; (5) made unlawful deductions; (6) failed to reimburse business expenses; (7) failed to provide accurate wage statements; and (8) failed to timely pay all final wages; which are (8) violations of California's Unfair Competition Laws. Khoury Decl. ¶19. On November 2, 2020, Plaintiff filed a First Amended Complaint ("FAC") adding claims and causes of actions under PAGA. Defendant filed an Answer on or about December 1, 2020. *Id.*

As part of the proposed Settlement, on October 5, 2022, Plaintiff filed a Second Amended Complaint that more directly specifies claims related to expense reimbursement for use of home office by the tax support employee settlement Class Members during the Class Period, which were raised and investigated prior to and during the Parties' mediation. Khoury Decl. ¶20. More specifically, the filed Second Amended Complaint asserts: (1) a separate PAGA claim based on the same underlying allegations and violations set forth in Plaintiff's Complaint, FAC, and August 27, 2022 letter to the Labor & Workforce Development Agency ("LWDA"); and (2) Plaintiff's allegations (raised prior to and during mediation) in support of her expense reimbursement claim that she and other Class Members are entitled to reimbursement for use of their residence and a reasonable portion of all related expenses (e.g., utilities, mortgage/rent, etc.). Khoury Decl. ¶21.

IV. INVESTIGATION AND MEDIATION

Plaintiff's counsel provided Intuit with a detailed list of requests for data, documents and policies related to each of Plaintiff's claims. On April 1, 2021, Intuit provided a production that included responsive documents and policies related to Plaintiff's claims (e.g., Intuit's meal/rest period, timekeeping, and expense reimbursement policies, Intuit's meal period

1 acknowledgement form, etc.) as well as key case statistics, including without limitation: the
2 number of Tax Support employees employed by Intuit in California during the relevant time
3 period, the number of Tax Support employee separations, the average base hourly pay rate for
4 these employees, and the number of workweeks and pay periods worked by these employees
5 during the relevant time period. Intuit also provided expense reimbursement information
6 confirming that from February 2020 through August 2020, (when the CTS11 role was
7 eliminated prior to Wilkerson's lawsuit), the average monthly reimbursement payment(s) to Tax
8 Support employees was approximately \$49.50 (primarily for internet reimbursement). Prior to
9 mediation, Intuit also provided Wilkerson's counsel with a copy of its mediation brief, which
10 included data and information related to the analysis of a random sample of 10 Tax Support
11 employees' pay and time records (e.g., how many times the sample employees worked 7
12 consecutive days, their reimbursement information, etc.). The brief also provided data regarding
13 how often all Tax Support employees received pay for work conducted in a different pay period
14 (generally due to late time entries by the employees), which related to Plaintiff's wage
15 statement, unpaid wages and overtime claims. Khoury Decl. ¶22.

16 The Parties agreed to mediate with Michael D. Young, Esq., with Judicate West, an
17 experienced and respected wage and hour class action mediator. Khoury Decl. ¶23. As noted
18 above, to prepare, the Parties exchanged documents and data, including relevant policies and
19 procedures for the class period; personnel file, pay data and time-keeping records for Plaintiff;
20 pay information on wages, workweeks, pay period totals and limitations (i.e., the *Shumway*
21 settlement) for the limited class period and the limited number of remote, CA-based, CTS11
22 Tax Support employees at issue in this litigation. Plaintiff retained a consultant to analyze the
23 time and pay data and create a class-wide damage model. *Id.*

24 With significant investigation, research, informal discovery, and analysis of the data and
25 information by Plaintiff and her damages consultant, the Parties mediated with Mr. Young on
26 May 13, 2021. After a full day of arms'-length negotiations facilitated by Mr. Young, the
27 Parties eventually reached an agreement with a memorandum of understanding, which the
28 parties eventually finalized in the proposed Settlement Agreement. Khoury Decl. ¶24.

V. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

The Parties agreed, subject to Court approval, Defendant will pay \$150,000.00, the Total Settlement Amount (“TSA”), which includes: (a) attorneys’ fees up to \$50,000.00 (one-third of the TSA) to compensate Class Counsel for work performed and work remaining to secure final Court approval [Plaintiff consented to apportion fees: 66 2/3% to Cohelan, Khoury & Singer, and 33 1/3% to Davtyan Law Firm, Inc. Khoury Decl. ¶26]; (b) litigation costs of \$8,000.00; (c) Class Representative Service Award of \$10,000.00; (d) PAGA Payment of \$10,000.00 [\$7,500.00 to the LWDA (75%) /\$2,500.00 to Aggrieved Employees (25%)] and (e) Phoenix Settlement Administrators’ (“Settlement Administrator”) costs in an amount not to exceed \$6,000.00. Khoury Decl. ¶25. In addition to the TSA, Defendant will pay the employer-sided taxes due on the wage component of the Individual Settlement Payments. Khoury Decl. ¶27.

After all Court-approved deductions from the TSA, the remaining Net Distribution Fund (“NDF”) estimated to be \$66,000.00 will be distributed to Participating Class Members based on the number of Pay Periods worked at any time during the Class Period without the need to return a claim form. Khoury Decl. ¶28; Phoenix Decl. ¶12. The \$2,500.00 PAGA Award will be distributed to PAGA Employees based on the number of Pay Periods worked at any time during the PAGA Period. Khoury Decl. ¶29; Phoenix Decl. ¶14.

The 99 Participating Class Members will receive an average estimated payment of \$666.67, with a highest payment of \$2,810.73, upon Approval. Plaintiff’s estimated individual settlement amount is \$171.81. Khoury Decl. ¶30; Phoenix Decl. ¶¶11, 13, 15.

Individual Settlement Payments will be characterized as 20% for payment of wages and reported using IRS Form W-2, and 80% for payment of penalties, interest and unpaid business expense reimbursement and will be reported using IRS Form 1099. Khoury Decl. ¶31.

After 180 days of issuance, all proceeds from uncashed checks will be forwarded to Race Forward, a non-profit organization whose mission includes supporting youth education to help ensure racial equality as well as developing research and recommendations for racially equitable communications in workforce development. Khoury Decl. ¶32; *see also*

<https://www.raceforward.org/>.

B. Preliminary Approval, Notice to the Class, and Its Response

1. Preliminary Approval of Class Notice

On September 30, 2022, the Court preliminarily approved the proposed Settlement and Notice of Class Action Settlement. Khoury Decl. ¶33. On November 4, 2022, after searching the National Change of Address database, and updating Class Member addresses, the Settlement Administrator mailed the Notice of Class Action Settlement to 100 Class Members. The Notice informed them of the (1) pendency of the Action; (2) proposed settlement terms; (3) automatic payment of Settlement shares unless a Class Member requests exclusion; (4) released claims; (5) right to object or request exclusion, and (6) date, time and place of the final approval hearing. Khoury Decl. ¶34; Phoenix Decl. ¶¶4, 5, Exh. A.

2. The Class' Response to the Notice

The Class response to the Settlement was extremely favorable. No class member submitted an objection and only a single request for exclusion was received. Khoury Decl. ¶¶11, 35; Phoenix Decl. ¶¶8, 9.

The Court determined the first three Dunk factors were met when it granted preliminary approval: (1) the settlement was reached through arm's-length bargaining; (2) investigation and discovery allowed counsel and the court to act intelligently; and, (3) counsel was experienced in similar litigation. The fourth factor could not be known until the Class had notice and an opportunity to respond. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801-1802 (1996).

The fourth *Dunk* factor was established when the Class, after receiving notice, and having an opportunity to respond, overwhelmingly approved the Settlement.

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Preliminary Approval Motion thoroughly analyzed the terms of the proposed Settlement in light of *Dunk*, (establishing factors supporting a presumption of fairness); and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008), (establishing factors determining whether a settlement is in the Class' best interest, is adequate, and reasonable). The Court carefully reviewed and ruled on these analyses and they are fully incorporated here by

reference. *See*, Preliminary Approval Motion, at 14:21 – 22:12 (ROA #42).

Nothing has changed since Preliminary Approval to negate the presumption of fairness and Class Counsel remains convinced the Settlement is in the Class’ best interest.

VII. ATTORNEYS’ FEES ARE REASONABLE AND SHOULD BE AWARDED

Class Counsel requests attorneys’ fees of \$50,000.00, one-third of the TSA, and actual litigation costs not to exceed \$8,000.00. Class Counsel have expended 120.9 hours, a lodestar of \$77,521.00. Khoury Decl. ¶36, Exh. 1 –Summary of Class Counsel’s Time & Costs; Exh. 2 – Itemized Costs; Declaration of Emil Davtyan, (“Davtyan Decl.”), ¶9-11.

A. The Results Achieved Support the Fee Request

The most important factor to consider in granting a fee award is the success obtained. *In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475 (RCx), 2005 U.S. Dist. LEXIS 13627, at *27 (C.D. Cal. June 10, 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). An excellent result was achieved, enforcing the law and providing benefits to the Class.

The Class was provided notice of all settlement terms, including that Counsel would request an award of attorneys’ fees up to one-third of the TSA, \$50,000.00. Phoenix Decl. ¶5, Exh. A, I. No Class Member objected to the attorneys’ fees award. *Id.* at ¶9.

B. A Fee Award Based on a Percentage of the Common Fund is Appropriate

The California Supreme Court recognized it is appropriate to award attorneys’ fees based on a percentage of the total value of benefits to Class Members from the settlement, also known as the “common fund” method. *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503 (2016); see also, *Serrano v. Priest*, 20 Cal.3d 25, 34 (*Serrano III*) (1977); *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769 (9th Cir. 1977). (California courts may look to federal authority analyzing class issues for guidance. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239-40 (2001)).

“Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.” *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 27 (2000); *Dunk*, at 1808 (attorneys’ fees may be calculated as percentage of common fund where settlement amount is certain or easily calculable).

1 A common fund fee award is proper here as it spreads the attorneys' fees among all
2 beneficiaries of the fund, aligns the incentives between Plaintiff's counsel and the class, better
3 approximates market conditions in a contingency case, and encourages class counsel to seek
4 early settlement and avoid unnecessarily prolonging litigation. *Laffitte*, 1 Cal.5th at 503.

5 A lodestar "cross-check" is not required, but may be used at the trial court's option to
6 double check "reasonableness of the percentage fee through a lodestar calculation." *Id.* at 504.

7 With the guiding principle that early class action settlements are favored and may not
8 diminish an award of attorneys' fees, Class Counsel submits the fee request should be awarded,
9 based on substantial hours expended, risks and complexities of prosecuting the action, the
10 contingent nature of any fee, their experience in handling cases of this type, fees commonly
11 awarded in these cases, and vindication of the Class' rights.

12 The purpose of the common fund approach is to "spread litigation costs proportionally
13 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
14 *Vincent, supra*, 557 F.2d at 769. "[O]ne who expends attorneys' fees in winning a suit which
15 creates a fund from which others derive benefits may require those passive beneficiaries to bear
16 a fair share of the litigation costs." *Quinn v. State of California*, 15 Cal.3d 162, 167 (1995). The
17 common fund doctrine has been applied "consistently in California when an action brought by
18 one party creates a fund in which other persons are entitled to share." *City and County of San*
19 *Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995).

20 Class Counsel undertook representation at their own expense, with compensation wholly
21 contingent upon providing a Class benefit. Class Members will benefit from the proposed
22 Settlement and receive monetary payments. Based on the defined and clearly traceable Class
23 benefit, the Court may award a percentage of the common fund as attorneys' fees.

24 **C. One-Third of the Common Fund is a Reasonable Fee**

25 "California courts routinely award attorneys' fees of one-third of the common fund."
26 *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214, *28 (S.D. Cal. Sept. 28, 2017).
27 Several studies of class action fee awards have found the median common fund fee award is
28 approximately one-third of the total settlement fund. See, e.g., *Chavez v. Netflix, Inc.*, 162 Cal.

App. 4th 43, 66, n.11 (2008) (“fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546 (1998); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) (attorneys’ fees in class litigation “were generally in the traditional range of approximately one-third of the total settlement”).

Counsel’s request for one-third of the common fund is in the mid-range of awards which commonly range from 20% to 50%, and is fair compensation for undertaking complex, risky, litigation on a contingent basis, and for the result achieved for the Class. Khoury Decl. ¶37.

Some courts have found an award of 33% of a common fund is the “benchmark” in California. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist. LEXIS 6049, *14 (S.D. Cal. Jan. 14, 2013) (“These percentages compare favorably with” the California (33%) benchmark.); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMC), 2013 U.S. Dist. LEXIS 163118, at *7 (S.D. Cal. Nov. 14, 2013). Counsel’s fee request is in line with awards in similar California cases and is consistent with market rates. Khoury Decl. ¶38.

D. Optional Lodestar Cross-Check Confirms Reasonableness of Fee

Courts are not required to cross-check a common fund fee award against a lodestar increased by a risk multiplier, and many Courts decline to do so. See, *Glass v. UBS Financial Services, Inc.*, No. 06-4066-MMC, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 26, 2007) (“no need to conduct a lodestar cross-check [as] [c]lass counsel’s prompt action in negotiating a settlement while the state of the law remained uncertain should be fully rewarded”); *Lopez v. Youngblood*, No. 07-0474-DLB, 2011 U.S. Dist. LEXIS 99289 (E.D. Cal. Sep. 1, 2011) (“lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference.”)

When it is used, the cross-check “calculation need entail neither mathematical precision nor bean-counting,” is not intended to be a “full-blown lodestar inquiry,” and “can be performed with a less exhaustive cataloguing and review of counsel’s hours.” *Barbosa v. Cargill Meat Solutions Corp*, 297 F.R.D. 431, 451 (E.D. Cal. July 2, 2013).

Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorneys. *Serrano v. Priest*, *supra*, at 48. The court then enhances the lodestar by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.*, at 49; see also *Ketchum v. Moses*, Cal.4th 1122, 1132-36 (2001).

Class Counsel’s lodestar is \$77,521.00, \$27,521.00 greater than the \$50,000.00 fee award sought. If the fee award were calculated using the lodestar, rather than the common fund method, no multiplier would be needed. Class Counsel’s work to obtain a class settlement was reasonable and necessary and is reflected in the excellent result achieved for Class Members. Khoury Decl. ¶41.

E. Counsel’s Hourly Rates Are Reasonable

Class Counsel is entitled to hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Ketchum*, *supra* at, 1133; *Children’s Hospital and Med. Center v. Bonta*, 97 Cal. App. 4th 740, 783 (2002) (affirming rates as “within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work”). When determining reasonable rates, Courts may consider the attorney’s skill and experience, the nature of the work performed, and the relevant area of expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632 (1998).

Class Counsel’s skill and experience support their hourly rates and are in line with rates typically approved in California wage and hour class actions. Cohelan Khoury & Singer’s practice is limited to litigating class and representative actions on behalf of employees and consumers, and has been appointed Class Counsel or co-Class Counsel in over 200 such cases. Khoury Decl. ¶¶2-9, 42. Mr. Davtyan’s office almost exclusively represents plaintiffs in wage and hour actions with the same or similar causes of actions brought forth in the matter pending before this Court. Davtyan Decl. ¶¶3-5.

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As leading attorneys in the field, Class Counsel monitors prevailing market rates and sets billing rates to follow attorneys and staff of comparable skill, qualifications and experience. Class Counsel's skill and experience support their hourly rates ranging from \$595 to \$900. (Cohelan Khoury & Singer: Founding Partner, Isam C. Khoury - \$900; Managing Partner, Michael D. Singer - \$900; Former Associate Attorney, J. Jason Hill - \$600. Davtyan Law Firm, Inc.: Managing Attorney, Emil Davtyan - \$695). These rates are in line with those typically approved in wage-and hour class action litigation in California. In fact, the Laffey Matrix would provide for an increase of hourly rates. (Cohelan Khoury & Singer: Founding Partner, Isam C. Khoury, 20+ years' experience - \$997; Managing Partner, Michael D. Singer 20+ years' experience - \$997; Former Associate Attorney, J. Jason Hill 20+ years' experience - \$997. Davtyan Law Firm, Inc.: Managing Attorney, Emil Davtyan 8-10 years' experience - \$733). Khoury Decl. ¶44, Exh. 3 - Laffey Matrix; Davtyan Decl. ¶10.

F. Plaintiff's Counsel's Total Hours are Reasonable

Hours are reasonable if, "at the time rendered, [they] would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest." *Moore v. Jas. H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982). *Norman v. Housing Auth.*, 836 F.2d 1292, 1306 (11th Cir. 1988) ("The measure of reasonable hours is determined by the profession's judgment of the time that may be conscionably billed and not the least time in which it might theoretically have been done").

G. Litigation Expenses Are Reasonable

The Settlement allows Class Counsel to recover \$8,000.00 in costs. Although counsel's costs of \$8,577.14 exceed this amount, the request remains \$8,000.00. These costs were reasonable and necessary. Khoury Decl. ¶45, Exh. 2 – Costs; Davtyan Decl. ¶11.

VIII. THE PROPOSED PAGA PAYMENT IS REASONABLE

The settlement of PAGA penalties for \$10,000.00, of which \$7,500.00 (75%) will be paid to the LWDA and \$2,500.00 (25%) to aggrieved employees, is reasonable and appropriate. The Parties negotiated a good faith amount for PAGA penalties, which was not the result of self-interest at the expense of Class Members. Khoury Decl. ¶46. Where a "good faith amount"

1 is negotiated and “there is no indication that this amount was the result of self-interest at the
2 expense of other Class Members,” it is generally considered reasonable. *Hopson v.*
3 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 U.S. Dist. LEXIS 33900, at *25 (N.D. Cal. Apr.
4 3, 2009).

5 The amount allocated to PAGA is within the range, or higher, than other settlements.
6 See *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona*
7 *v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000
8 PAGA penalties in settlement of \$900,000), recommendation adopted, 2015 U.S. Dist. LEXIS
9 25730 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal.
10 2014) (\$10,000 PAGA penalties, \$1.25m settlement); *Franco v. Ruiz Food Prods.*, 2012 U.S.
11 Dist. LEXIS 169057, *5-6 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA penalties, \$2.5m
12 settlement); *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal.
13 2012) (\$10,000 PAGA, \$3.7m settlement).

14 Class Counsel provided the LWDA with the Motion for Preliminary Approval and the
15 Settlement Agreement. The LWDA raised no objection. Khoury Decl. ¶47, Exh. 4 – LWDA
16 March 29, 2022 Confirmation of Receipt. The LWDA was served with this Final Approval
17 Motion when filed. Khoury Decl. ¶49, Exh. 5 – LWDA Confirmation.

18 **IX. THE SERVICE AWARD IS REASONABLE AND SHOULD BE AWARDED**

19 Service awards “are fairly typical in class action[s],” “to compensate class
20 representatives for work done on behalf of the class, to make up for financial or reputational risk
21 undertaken in bringing the action.” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th
22 1380, 1394. The Court preliminarily granted a \$10,000.00 service award to Plaintiff.

23 “Modern society seems increasingly to expose men to . . . group injuries for which
24 individually they are in a poor position to seek legal redress, either because they do not know
25 enough or because such redress is disproportionately expensive. If each is left to assert his rights
26 alone if and when he can, there will at best be a random and fragmentary enforcement, if there
27 is any at all. This result is not only unfortunate in the particular case, but it will operate
28 seriously to impair the deterrent effect of the sanctions which underlie much contemporary law.

1 The problem of fashioning an effective and inclusive group remedy is thus a major one.”
2 *Vasquez v. Superior Court*, 4 Cal. 3d 800, 807 (1971).

3 Enforcement of laws protecting California employees would be “random and
4 fragmentary,” or non-existent, if no one was willing to come forward and spend time to work on
5 behalf of others, and perhaps most importantly, take risks those others do not bear.

6 Courts have concluded class action plaintiffs, not class members, take the risk of a
7 judgment for defendant’s costs. “Those who choose to take the risks of litigation should be the
8 ones who bear the cost when they are unsuccessful.” *Earley v. Superior Court*, 79 Cal.App.4th
9 1420, 1433 (2000). The *Earley* court contended this risk was balanced by potential reward.

10 “While imposition of the entire cost burden on the named plaintiffs may have a chilling
11 effect on the willingness of plaintiffs to bring class action suits, this effect easily may be
12 outweighed by the potential recovery.” *Id.* The recovery for a plaintiff in a class action will
13 always be less than an individual action, and take much longer to obtain, with no potential for
14 early settlement, as in some individual cases, which may settle even before filing a public
15 complaint.

16 So, if “[t]hose who choose to take the risks of litigation should be the ones who bear the
17 cost when they are unsuccessful,” how can that risk be offset? *Id.* An adequate Service Award.

18 Ms. Wilkerson more than satisfied her obligation to be available when asked and work
19 with counsel to protect the interests of the Class and place them above her own. Wilkerson
20 Decl. ¶¶2, 4-7. Accepting the risk of judgment for Defendant’s costs, the potential loss of
21 employment opportunities, or achieving an excellent result for the Class, are each sufficient to
22 support a Class Representative Service Payment of \$10,000.00. Together, they are more than
23 sufficient.

24 It is impossible to know, or intervene, each time a class action plaintiff loses an
25 employment opportunity, making it essential to compensate them adequately at final approval,
26 the only time that the risk they accepted on behalf of the Class can be at least slightly offset and
27 they can be rewarded for their contribution.

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1 The Class received notice Plaintiff would request \$10,000.00 for “for service as a named
2 Plaintiff and in consideration of her agreeing to a general release of all claims.” Phoenix Decl.
3 ¶5, Exh. A, I. No Class Member objected. *Id.* at ¶9; Khoury Decl. ¶48.

4 **X. CONCLUSION**

5 The Settlement favorably resolves what would otherwise be uncertain litigation. Class
6 Counsel respectfully requests the Court grant final approval of the proposed Settlement,
7 approve the Service Payment, attorneys’ fees and costs, and administration expenses as
8 requested.

9 Respectfully submitted,

10 COHELAN KHOURY & SINGER
11 DAVTYAN LAW FIRM, INC.

12 Dated: January 11, 2023

13 By: 
14 Isam C. Khoury
15 Attorneys for Plaintiff GAIL WILKERSON
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