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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

EVA YANEZ, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

GARDNER FAMILY HEALTH
NETWORK, INC., a California corporation;
and DOES 1 through 10, Inclusive,

Defendants

Case No. 20CV364033

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Theodore C. Zayner
Department 19

CLASS ACTION

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

Hearing Set by September 21, 2023 Order

Date: December 6, 2023

Time: 1:30 p.m.

Dept: 19

Judge: Hon. Theodore C. Zayner

Complaint filed: February 24, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiff seeks final approval of a \$1,125,000 non-reversionary wage and hour class and Private Attorney Generals' Act (PAGA) settlement with Defendant Gardner Family Health Network, Inc. ("Defendant" or "Gardner"). Declaration of Jeff Geraci, ("Geraci Decl."), ¶10.

Support for the Settlement is strong. There are no objections, and with only four (4) Class Members requesting exclusion, a participation rate of 99.49%. Participating Class Members can expect to receive an average estimated payment of \$858, and highest payment of \$2,263 (rounded to nearest dollar amount). Geraci Decl. ¶¶11, 26; Declaration of Chantal Soto-Najera on behalf of CPT Group, Inc., ("CPT Decl."), CPT Decl. ¶¶10, 12, 13, 15.

II. THE PARTIES

A. Plaintiff

Eva Yanez worked as a Medical Assistant in San Jose starting in 2003. She became a Referral Clerk in 2005, and her employment ended in August 2019. Geraci Decl. ¶12.

B. Defendant

The health care provider that became Gardner Family Health Network, Inc., began in 1967, and after steady growth and a series of mergers and affiliations, now operates facilities in San Jose, Alviso, Atherton, and Gilroy. It provides medical, dental, mental health, optometry, pharmacy and other services. Geraci Decl. ¶13.

C. The Class and Aggrieved Employees

The Class is, "All non-exempt employees of Defendant who worked at any time from February 24, 2016, to March 18, 2022, in the State of California." Geraci Decl. ¶14.

PAGA Aggrieved Employees are non-exempt employees of Defendant who worked in California anytime January 24, 2019 to March 18, 2022 ("PAGA Period"). Geraci Decl. ¶15.

III. PLAINTIFF'S CLAIMS AND GARDNER'S DEFENSES

Plaintiff alleged employees were underpaid by Gardner's policy of paying based on rounded, rather than actual time. Plaintiff also alleged underpayment caused by rounding violated certain municipal minimum wage ordinances. Gardner stopped rounding in September 2020, and contended its policy had a neutral impact during the class period. Geraci Decl. ¶16.

1 Plaintiff argued Gardner did not provide compliant meal or rest periods and did not
2 adopt fully compliant written meal and rest policies until 2020. Gardner contended its policies
3 were compliant, it did not discourage employees from taking breaks, but employees were free
4 to, and did, choose not to take breaks at times, and few violations occurred throughout the class
5 period. Geraci Decl. ¶17.

6 Plaintiff alleged Gardner failed to include all compensation when calculating the regular
7 rate and underpaid overtime wages as a result. Gardner contended bonuses were modest and
8 infrequent and overtime was rare. Geraci Decl. ¶18.

9 **IV. PROCEDURAL HISTORY, INVESTIGATION AND INFORMAL DISCOVERY**

10 The action was filed February 24, 2020, alleging failure to provide: all wages; compliant
11 rest and meal periods; accurate wage statements; and timely final wages. PAGA claims for the
12 same violations were filed April 3, 2020. Geraci Decl. ¶19.

13 Plaintiff served form and special interrogatories, requests for admission and documents,
14 and noticed Gardner's deposition. After extensions, Gardner responded in December 2020,
15 producing over 1,000 pages of documents. Geraci Decl. ¶20.

16 The Parties agreed to mediate and exchanged information, including nearly 100% of the
17 time data for the period of February 20, 2016 to January 31, 2021 and nearly 100% of the class
18 payroll data from February 27, 2016 to January 23, 2022 (those few employees promoted to
19 exempt positions during the class period were not included, though they remain class members
20 while non-exempt); and, number of members (current and former) and aggregate workweeks
21 and pay period for the Class and PAGA Periods. Plaintiff's consultant analyzed the data and
22 created a damage model. Geraci Decl. ¶21.

23 With significant investigation, research, formal and informal discovery, and analysis of
24 data by Plaintiff and her consultant, the Parties mediated with Hon. Maria-Elena James (Ret.)
25 on March 18, 2022. After a full day of arms'-length negotiations, the Parties reached an
26 agreement in principle and signed a Memorandum of Understanding. The Parties continued to
27 negotiate all necessary terms and entered the Joint Stipulation of Settlement and Release of
28 Class Action, ("Settlement Agreement"), preliminary approved by the Court on May 16, 2023.

Geraci Decl. ¶22.

V. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

Subject to Court approval, Gardner will pay the maximum Gross Settlement Amount (“GSA”) of \$1,125,000, which includes: (a) attorneys’ fees of \$375,000 (one-third of the GSA) [apportioned 50/50 between Class Counsel with Plaintiff’s written consent]. Geraci Decl. ¶24); (b) actual litigation costs of \$20,303; (c) Class Representative Service Payment of \$5,000; (d) PAGA Payment of \$30,000 [\$22,500 to California Labor and Workplace Development Agency (LWDA) (75%); \$7,500 to Aggrieved Employees (25%)]; and (e) Settlement Administration costs of \$10,639.26. Gardner will pay the employer’s share of payroll taxes in addition to the GSA. Geraci Decl. ¶23; CPT Decl. ¶14.

After Court-approved deductions, the estimated Net Settlement Amount (“NSA”), \$684,057.74, will be distributed pro rata to Participating Class Members by dividing the number of weeks each Class Member worked during the Class Period by the number of Work Weeks all Class Members worked during the Class Period and multiplying that number by the Net Settlement Amount. Geraci Decl. ¶25; CPT Decl. ¶15.

Participating Class Members will receive average estimated payments of \$858, and highest payment of \$2,263. (Rounded to nearest dollar). Geraci Decl. ¶¶11, 26; CPT Decl. ¶15.

PAGA Aggrieved Employees will divide the 25% PAGA payment based on weeks worked in the PAGA period, even if they opt-out of the settlement. (Preliminary Approval briefing erroneously referred to the PAGA payment as based on “pay periods.” The Agreement and Class Notice correctly referred to work weeks.) Geraci Decl. ¶27; CPT Decl. ¶16.

Settlement payments are allocated 30% to wages, with normal payroll deductions taken and IRS W-2 Forms issued, and, 70% interest and penalties with IRS 1099 Forms issued. Checks uncashed 180 days after issuance will be sent to cy pres recipient, Legal Aid at Work, a non-profit provider of legal services. Geraci Decl. ¶¶28, 29.

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

1. Preliminary Approval and Class Notice

The Settlement was preliminarily approved on May 26, 2023. Geraci Decl. ¶30. On July 3, 2023, after receiving a data file from Defendant, and searching the National Change of Address database and updating Class Member addresses, the Settlement Administrator mailed a Class Notice to 738 Class Members, informing them of (1) the pendency of the Action; (2) proposed settlement terms; (3) automatic payment of Settlement shares if exclusion not requested; (4) released claims; (5) right to object or request exclusion, and (6) date, time and place of the final approval hearing, with notice the hearing may be rescheduled by the Court without further notice. Geraci Decl. ¶31; CPT Decl. ¶¶3, 6, Exh. A.

After the initial mailing, Defendant discovered 59 class members were inadvertently omitted from the data file provided to CPT. Pursuant to the Parties' Stipulation and Court Order, on September 15, 2023, Notice was mailed to 59 additional class members allowing disputes and objections to be submitted through October 30, 2023. (See September 21, 2023 Order). Geraci Decl. ¶32; CPT Decl. ¶7, Exh. B.

2. The Class' Response to the Notice

The Class response to the Settlement was extremely favorable. No objections and only four (4) requests for exclusion were received. Geraci Decl. ¶¶11, 33; CPT Decl. ¶¶10, 12.

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.

3. Released Claims

Released Claims are: "all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts alleged in the

Complaint, including: (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide meal periods; (d) failure to provide rest breaks; (e) failure to provide accurate itemized wage statements; (f) failure to timely pay wages due upon separation of employment; (g) Violations of the Unfair Competition Law; (h) civil penalties under PAGA.” The Released Claims include all claims for compensatory, consequential, incidental, liquidated, punitive, and exemplary damages; restitution; interest; costs and fees; injunctive or equitable relief; and any other remedies available at law or equity during the Class Period.

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Preliminary Approval Motion analyzed the terms of the Settlement in light of *Dunk’s* factors supporting a presumption of fairness, and the factors determining whether a settlement is in the Class’ best interest, and is adequate and reasonable, under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008). The Court carefully reviewed and ruled on these analyses and they are incorporated here by reference. *See*, Preliminary Approval Motion, at 7:13 – 12:3, and May 26, 2023 Order Granting Preliminary Approval of Class Action Settlement, at ¶¶2-3.

Nothing has changed since Preliminary Approval to negate the presumption of fairness. 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 \$375,000.00, one-third of GSA, and litigation costs of \$20,303. Counsel have expended 245.1 hours, a \$198,765 lodestar. Geraci Decl. ¶35, Exh. 1 – Consolidated Class Counsel’s Summary of Time & Costs; Exh. 2 - Costs; Declaration of Sahag Majarian II, (“Majarian Decl.”), ¶¶7, 8.

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, *27 (C.D. Cal. June 10, 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). An excellent result was achieved, ensuring Class benefits despite contested claims.

The Class was provided notice of all settlement terms, including Counsel’s request of

award of attorneys' fees up to one-third of the GSA. CPT Decl. ¶¶3, 7, Exhs. A and B, ¶3. No Class Member objected to the attorneys' fees award. *Id.* at ¶10.

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); *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 look to federal courts analyzing class issues. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239-40 (2001)).

"[T]he 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 percentage of common fund where settlement amount is certain or easily calculable).

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

A common fund fee award is especially appropriate here as it spreads the attorneys' fees among all beneficiaries of the fund; aligns incentives between counsel and the class; better approximates market conditions in a contingency case; and encourages class counsel to seek early settlement and avoid unnecessarily prolonging litigation, which prevents unnecessary use of judicial and party resources, and delay in compensating the class. *Laffitte*, 1 Cal.5th at 503.

With the guiding principle that early class action settlements are favored and may not diminish an award of attorneys' fees, Class Counsel submits the fee request should be awarded, based on the risks and complexities of prosecuting the action, the contingent nature of any fee,

1 their experience in handling cases of this type, fees commonly awarded in these cases, and
2 vindication of the Class' rights.

3 Class Counsel undertook representation at their own expense, with compensation wholly
4 contingent upon providing a Class benefit. Class Members will receive substantial benefits from
5 the proposed Settlement. Based on the defined and clearly traceable Class benefit, the Court
6 may award a percentage of the common fund as attorneys' fees.

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

8 "California courts routinely award attorneys' fees of one-third of the common fund."
9 *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214, *28 (S.D. Cal. Sept. 28, 2017).
10 Several studies of class action fee awards have found the median common fund fee award is
11 approximately one-third of the total settlement fund. See, e.g., *Chavez v. Netflix, Inc.*, 162 Cal.
12 App. 4th 43, 66, n.11 (2008) ("fee awards in class actions average around one-third of the
13 recovery."); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems:*
14 *Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 546 (1998); T. Willging, L.
15 Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final*
16 *Report to the Advisory Committee on Civil Rules*, 90 (1996) (attorneys' fees in class litigation
17 "were generally in the traditional range of approximately one-third of the total settlement").

18 Counsel's request for one-third of the common fund is in the mid-range of awards which
19 commonly range from 20% to 50%, and is fair compensation for undertaking complex, risky,
20 litigation on a contingent basis, and for the result achieved for the Class. Geraci Decl. ¶36.

21 Some courts have found an award of 33% of a common fund is the "benchmark" in
22 California. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist.
23 LEXIS 6049, *14 (S.D. Cal. Jan. 14, 2013) ("These percentages compare favorably with" the
24 California (33%) benchmark.); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMC), 2013 U.S.
25 Dist. LEXIS 163118, at *7 (S.D. Cal. Nov. 14, 2013).

26 Class Counsel's fee request is consistent with market rates, awards in similar California
27 cases, including to Class Counsel, is reasonable, and should be awarded. Geraci Decl. ¶37.

28 ///

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.”)

Even when used, a cross-check “calculation need entail neither mathematical precision nor bean-counting,” is not 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 is calculated from 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).

If the fee award were calculated using lodestar, rather than a common fund percentage, a multiplier of less than 1.9 would be applied. ($\$375,000/\$198,765 = 1.88$). Class Counsel’s work was reasonable and necessary and reflected in the excellent result achieved. Geraci Decl. ¶38.

E. Counsel’s Hourly Rates Are Reasonable

Class Counsel are 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 attorney skill and experience, 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 and previously awarded to Class Counsel in many courts, including this one. Cohelan Khoury & Singer's practice is limited to litigating class and representative actions on behalf of employees and consumers, and the firm has been appointed Class Counsel or co-Class Counsel in over 300 such cases. Geraci Decl. ¶¶2-9, 37, 43. Mr. Majarian has devoted a significant portion of his practice to employment law and class actions, and has been appointed co-class counsel for plaintiff in no less than 300 wage and hour class actions. Majarian Decl. ¶¶2-4.

Class Counsel's skill and experience support their hourly rates: **Cohelan Khoury & Singer**: Founding Partner Isam C. Khoury - \$925; Managing Partner, Michael D. Singer - \$925; Partner, Jeff Geraci - \$850; **Law Offices of Sahag Majarian II**: Principal, Sahag Majarian II - \$850. Geraci Decl. ¶44, Exh. 3 - Laffey Matrix; Majarian Decl. ¶¶2-4, 7.

F. Class 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. A Multiplier of the Lodestar Would Be Awarded

A lodestar may be enhanced by a multiplier for an appropriate fee award. *Serrano III*, 20 Cal.3d at 48. Factors determining level of enhancement include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Lealao* at 49. The list is not exhaustive and the Court may consider other factors it deems important in setting the multiplier. *Id.* at 40; *Ketchum*,

1 *supra* at 1139. “Multipliers ranging from one to four frequently are awarded in common fund
2 cases when the lodestar method is applied.” (Newberg on Class Actions §14.03 (4th ed. 2009)).
3 Counsel pursued difficult claims, presented them with skill based on experience prosecuting
4 employment class actions, and achieved an excellent result, on a contingent basis.

5 A 1.9 multiplier is reasonable and in line with those used in other cases, which may
6 range “from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. at
7 255; *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 U.S. Dist. LEXIS 10532, *16 (E.D.
8 Pa. June 2, 2004) (finding the average multiplier awarded in common fund cases from 2001 to
9 200, was 4.35).

10 Cohelan Khoury & Singer has been awarded a greater multiplier in many cases:
11 *McGrath v. Wyndham Resort Dev. Corp.*, (S.D.Cal. Jan. 30, 2018, No. 15cv1631 JM (KSC))
12 2018 U.S.Dist.LEXIS 16095*24 [Hon. Jeffrey T. Miller – approving attorneys’ fees of
13 \$2,416,666.67 and **4.8 multiplier**, one-third of \$7,250,000 settlement in a pre-certification
14 wage and hour class action]; *Jones v. Abercrombie & Fitch Trading Co.*, (C.D.Cal. Nov. 19,
15 2018, No. CV 15-0105 JGB (Ex)) 2018 U.S.Dist.LEXIS 198001 *24-25 [Hon. Jesus G. Bernal
16 – approving attorneys’ fees of \$2,400,000 and **3.7 multiplier**, one-third of \$9,600,000
17 settlement in a pre-certification wage and hour class action]; *Schaffer v. Rady Children’s*
18 *Hospital – San Diego, et al.*, San Diego County Superior Court, Case No. 2015-00022978 (Hon.
19 Joel R. Wohlfeil – approving attorneys’ fees of \$4,166,666 and **3.98 multiplier**, one-third of
20 \$12,500,000 settlement in a certified wage and hour class action); *Rodriguez v. Healthcare*
21 *Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313] Hon.
22 Kenneth Freeman – approving attorneys’ fees of \$2,000,000 and **5.05 multiplier**, one-third of
23 \$6,000,000 settlement in a pre-certification wage and hour class action]; *De Benning v. Costco*
24 *Wholesale Corporation*, Sacramento County Superior Court, Case No. 2021-00309030 [Hon.
25 Jill H. Talley – approving attorneys’ fees of \$3,000,000 and **7.99 multiplier**, one-third of
26 \$9,000,000 settlement in a pre-certification wage and hour class action]; *Tam v. Q Tech*
27 *Corporation*, Los Angeles County Superior Court, Case No. 21STCV18635 [Hon. Elihu M.
28 Berle – approving attorneys’ fees of \$216,666.67 and **3.49 multiplier**, one-third of \$650,000

1 settlement in a pre-certification wage and hour class action], and, *Myers, et al. v. Blue Shield pf*
2 *California Life & Health Insurance Company, et al.*, Los Angeles County Superior Court, Case
3 No. 19STCV09341 [Hon. Yvette M. Palazuelos – approving attorneys’ fees of \$936,666 and
4 **2.41 multiplier**, one-third of \$2,900,000 settlement in a pre-certification wage and hour class
5 action]. Geraci Decl. ¶39.

6 In *Lealao*, the Court held a trial court’s refusal to enhance the lodestar was an abuse of
7 discretion, opining a multiplier more than 3.5 was reasonable and not ruling out the original
8 request for 8.0. *Lealao, supra*, 82 Cal. App. 4th at 24, 52. See *SternwestCorp. v. Ash*, 183
9 Cal.App.3d 74, 76 (1986) (remanded with directions “to enhance the lodestar award by such
10 factor (two, three, four or otherwise) that the court, in its discretion shall deem proper”);
11 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (multiplier of 3.65); *Keith v.*
12 *Volpe*, 501 F.Supp.403, 414 (C.D. Cal. 1980) (multiplier of 3.5).

13 Although not required, to the extent a lodestar could be used to calculate the fee award,
14 a multiplier is supported by the difficulty of the questions involved, the skill displayed by Class
15 Counsel in addressing them, the statutory employee protections enforced, and the contingent
16 nature of any recovery.

17 **H. Litigation Expenses Are Reasonable**

18 The Settlement allows Class Counsel to recover up to \$21,500 in costs. Counsel seeks
19 \$20,303 in reasonable and necessary actual costs. Geraci Decl. ¶45, Exh. 2 – Costs; Majarian
20 Decl. ¶8.

21 **VIII. THE PROPOSED PAGA PAYMENT IS REASONABLE**

22 The Agreement allocates \$30,000 to PAGA claims, \$22,500 (75%) paid directly to the
23 LWDA, and the remaining \$7,500 (25%) to PAGA Aggrieved Employees. This was the result
24 of good-faith, mediated negotiations. Where PAGA penalties are negotiated in good faith, with
25 “no indication [the] amount was the result of self-interest at the expense of other Class
26 Members,” they are considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844,
27 (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *24; *see, e.g., Nordstrom Com.*
28 *Cases* (2010) 186 Cal. App. 4th 576, 579 (No abuse of discretion approving settlement

1 allocating \$0 to PAGA claims).

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

10 The LWDA was provided with the Motion for Preliminary Approval and the Settlement
11 Agreement. The LWDA raised no objection. Geraci Decl. ¶48, Exh. 4 – LWDA Confirmation
12 of Receipt, November 23, 2022. The LWDA was served with this Final Approval Motion when
13 filed. Geraci Decl. ¶49, Exh. 5 – LWDA Confirmation of Receipt.

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

15 Service awards “are fairly typical in class action[s],” “to compensate class
16 representatives for work done on behalf of the class, to make up for financial or reputational
17 risk undertaken in bringing the action.” *Cellphone Termination Fee Cases* (2010) 186
18 Cal.App.4th 1380, 1394.

19 Modern society seems increasingly to expose men to . . . group injuries for which
20 individually they are in a poor position to seek legal redress, either because they
21 do not know enough or because such redress is disproportionately expensive. If
22 each is left to assert his rights alone if and when he can, there will at best be a
23 random and fragmentary enforcement, if there is any at all. This result is not only
24 unfortunate in the particular case, but it will operate seriously to impair the
25 deterrent effect of the sanctions which underlie much contemporary law. The
26 problem of fashioning an effective and inclusive group remedy is thus a major
27 one. *Vasquez v. Superior Court*, 4 Cal. 3d 800, 807 (1971).

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

27 Class action plaintiffs, not class members, risk a judgment for defendant’s costs. “Those
28 who choose to take the risks of litigation should be the ones who bear the cost when they are

1 unsuccessful.” *Earley v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). The *Earley* court
2 contended this risk was balanced by potential reward.

3 “While imposition of the entire cost burden on the named plaintiffs may have a chilling
4 effect on the willingness of plaintiffs to bring class action suits, this effect easily may be
5 outweighed by the potential recovery.” *Id.* Plaintiff’s recovery in a class action will always be
6 less than an individual action, take longer to obtain, and have no potential for early settlement.

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

9 Ms. Yanez more than satisfied her obligation to be available when asked and work with
10 counsel to protect the interests of the Class and place them above her own. Accepting the risk of
11 judgment for Defendant’s costs, the potential loss of employment opportunities, or achieving
12 compensation for the Class, are each sufficient to support a Service Award of \$5,000.
13 Declaration of Eva Yanez ¶¶4-10. Together, they are more than sufficient.

14 It is impossible to know, or intervene, each time a class action plaintiff loses an
15 employment opportunity, making it essential to compensate them at final approval, the only
16 time the risk they took can be at least slightly offset and they can be adequately compensated.

17 The Class received notice Plaintiff requested \$5,000 to “compensate Plaintiff for
18 services undertaken on behalf of the Class.” CPT Decl. ¶¶3, 7, Exhs. A and B, ¶3. No Class
19 Member objected. *Id.* at ¶10.

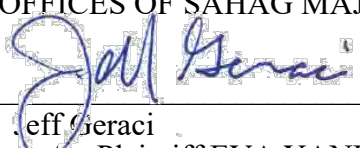
20 **X. CONCLUSION**

21 The Settlement favorably resolves what would otherwise be uncertain litigation.
22 Class Counsel respectfully requests the Court grant final approval of the Settlement, approve
23 the Service Award, attorneys’ fees and costs, and administration expenses as requested.

24 Respectfully submitted,

25 COHELAN KHOURY & SINGER
26 LAW OFFICES OF SAHAG MAJARIAN II

27 Dated: November 9, 2023

28 By:  _____

Jeff Geraci

Attorney for Plaintiff EVA YANEZ, on behalf of
herself and all others similarly situated

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