

1 THE HONORABLE ARTHUR A. WICK
2 SUPERIOR COURT OF CALIFORNIA
3 COUNTY OF SONOMA
4 3035 Cleveland Avenue
5 Santa Rosa, CA 95403
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

MAR 17 2021

BY *HH*
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

FAHEEM KHAN, as an individual and on
behalf of all others similarly situated,

Case No. SCV-266127

Plaintiffs,

ORDER AFTER HEARING
MARCH 10, 2021

vs.

AMY'S KITCHEN, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

_____/

This matter came before the Court on March 10, 2021 in Department 17, via zoom, before The Honorable Arthur Wick. Counsel Mai Tulyathan appeared on behalf of plaintiff Faheem Khan ("Plaintiff") and counsel Ashley Park appeared on behalf of defendant Amy's Kitchen, Inc. ("Defendant"). The Court previously granted a motion for conditional certification of the class and preliminary approval of the class action settlement on October 28, 2020 and a written order was entered on November 9, 2020. This matter came on calendar for Plaintiff's unopposed motion for final approval of the settlement, approving distribution of the settlement funds pursuant to the terms of the settlement, approving Plaintiff's request for a class representative enhancement payment of \$10,000, approving Plaintiff's counsel's request for an award of attorneys' fees in the amount of \$130,000 and costs in the amount of \$8,915.23, approving Plaintiff's request for reimbursement of costs to the settlement administrator in the amount of \$8,500, approving the payment to the California Labor & Workforce Development Agency ("LWDA") for \$15,00 pursuant to the terms of the settlement; and entering final

1 judgment as to all members of the settlement class.

2 The Motion is **GRANTED**. However, in light of the lack of lack of substantial further
3 information provided by Plaintiff and Plaintiff's counsel to justify the class representative
4 enhancement award under applicable law, or to justify an award of 33% of the gross settlement
5 fund where, as here, the case settled within months of the complaint being filed and there is no
6 information from which the Court can conduct a lodestar cross-check, the class representative
7 enhancement is reduced to **\$5,000** and the attorney fee award is reduced to **\$97,500**, representing
8 25% of the gross settlement fund, plus the requested costs.

9
10 I. The Complaint

11 On March 3, 2020, Plaintiff filed the complaint in this action individually and on behalf
12 of all others similarly situated against Defendant seeking penalties and/or damages for failure to
13 provide complete and accurate itemized wage statements, with causes of action for: 1) violation
14 of Cal. Lab. Code ("LC") § 226(a); and 2) violation of the Private Attorneys General Act
15 ("PAGA"), LC § 2698 et seq. (the "Complaint").

16 The Complaint alleges that LC § 226(a) requires employers to provide accurate itemized
17 wage statements to its employees that identify all applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate by the employee. It
19 alleges that Plaintiff and the other members of the class (defined as "[a]ll current and former non-
20 exempt employees of Defendants in the State of California who were paid shift differential wages
21 at any time from March 4, 2019, through the present") were paid hourly and the wage statements
22 should have reflected the accurate hourly rates of pay, including for shift differential wages, such
23 as "2nd ShiftDiff" wages, whenever such wages were paid, but that they were not so identified. It
24 further alleges that instead, Defendant had a policy and practice of only identifying the amount of
25 shift differential wages earned as a lump sum, without any breakdown as to the hourly rates and
26 applicable number of hours worked, in violation of LC § 226(a)(9). It alleges that this practice
27 entitles Plaintiff and the members of the putative class to damages and penalties, including
28 interest, plus attorneys' fees and costs. The Complaint contains a second cause of action under

1 PAGA, LC § 2698, which seeks civil penalties plus attorneys' fees and costs as provided for
2 under that statute for violation of LC § 226.

3
4 **II. The Settlement**

5 According to the Motion, and as substantiated by the declarations filed in support of the
6 motion for *preliminary* approval, Plaintiff investigated the facts relating to the claims alleged in
7 the Complaint and that through informal discovery, Defendant provided necessary data related to
8 the number of employees and number of wage statements with payment for shift differential
9 wages at issue, which allowed Plaintiff to conduct a full analysis of the claims, damages, and
10 penalties at issue, and that thereafter, the parties participated in a private mediation with mediator
11 Louis Marlin, Esq. Tulyathan Preliminary Approval Decl. ¶¶ 3-6; 8-12; 15. This culminated in
12 execution of the Joint Stipulation of Class Action Settlement (the "Settlement Agreement") in
13 August, 2020. Tulyathan Preliminary Approval Decl. ¶ 25 & Ex. A.

14 Based on Plaintiff's counsel's analysis of the information received, they estimate that
15 Defendant faced potential liability for violation of LC § 226 of \$1.07 million, based on 11,000
16 deficient wage statements, if Plaintiff prevailed at trial. Tulyathan Preliminary Approval Decl. ¶
17 8. Plaintiff estimated Defendant's potential PAGA liability as \$2.75 million, if Plaintiff prevailed
18 at trial (*id.* ¶ 9), although the Court has discretion to reduce PAGA penalties (for example based
19 on an employer's good faith attempt at complying with the law) or deny them altogether under
20 LC § 2699(e)(2) "if, based on the facts and circumstances of the particular case, to do otherwise,
21 would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

22 The Gross Settlement Fund of \$390,000 Defendant agreed to pay therefore represents
23 10.2% of the maximum potential recovery. Tulyathan Preliminary Approval Decl. ¶ 10. Although
24 Plaintiff and Plaintiff's counsel believe in the merits of the claims alleged and that there is no
25 basis for reducing PAGA penalties, Defendant may raise defenses to the wage statement claims
26 and to the PAGA penalties, including that Plaintiff cannot prove "injury" under LC § 226(e)
27 since employees can determine their shift differential wages by mathematical calculation. *Id.* ¶¶
28 11-12. According to the moving papers, the Gross Settlement Fund reflects the risks that Plaintiff

1 will not prevail or will not obtain the maximum relief sought, as well as the risk of not obtaining
2 or maintaining class certification, and counsel, who are experienced in wage and hour litigation,
3 believe that the settlement—reached through an arms’ length negotiation with the assistance of a
4 mediator—is fair, reasonable, and adequate when considering the inherent risks of litigation,
5 including the substantial risks relative to class certification and the merits of the claims, the costs
6 of pursuing such litigation, and the risks associated with the Court’s discretion to reduce PAGA
7 penalties. Tulyathan Preliminary Approval Decl. ¶¶ 7, 14; Lee Preliminary Approval Decl. ¶¶ 3,
8 6; Marder Preliminary Approval Decl. ¶¶ 2, 3; Khan Preliminary Approval Decl. ¶ 6.

9 The Settlement Agreement defines the Class as “all current and former non-exempt
10 employees of Defendant in the State of California who were paid shift differential wages at any
11 time during the period of March 4, 2019, through April 12, 2020.” Settlement Agreement ¶ 4.
12 The Class Period is defined as the period from March 4, 2019, through April 12, 2020.
13 Settlement Agreement ¶ 8. Defendant represented that there are approximately 503 individuals in
14 the Class. Settlement Agreement ¶ 4.

15 The Settlement Agreement provides that Defendant shall pay a non-reversionary Gross
16 Settlement Amount of Three Hundred Ninety Thousand Dollars (\$390,000), which does not
17 require the submission of claim forms from members of the Class. From that amount, the
18 following will be deducted: 1) attorneys’ fees of (up to) \$130,000 (which is 1/3 of the Gross
19 Settlement Amount) and costs up to \$15,000; 2) an incentive award to Plaintiff of (up to)
20 \$10,000; 3) settlement administration costs not to exceed \$8,500; and 4) \$15,000 in penalties
21 under PAGA paid to the California Labor and Workforce Development Agency. If these sums
22 are all approved by the Court, this results in a Net Settlement Amount of \$211,500, to be
23 distributed to the members of the Class who do not opt out. Each participating member of the
24 Class will be awarded a portion of the Net Settlement Amount on a pro-rata basis, based upon the
25 number of wage statements he or she received during the Class Period which included payment
26 for shift differential wages. Settlement Agreement ¶¶ 6, 10, 19, 22, 31, 44. With the estimated
27 503 members of the class, there is an “average” payment of \$420.48. Tulyathan Preliminary
28 Approval Decl. ¶ 12. Uncashed settlement payments which remain outstanding as of their

1 expiration date will be distributed to Legal Aid at Work, a nonprofit legal services organization
2 for low-income workers. Settlement Agreement ¶ 63. The payments are classified as penalties
3 and subject to an IRS 1099. Settlement Agreement ¶ 45.

4 The Settlement Agreement and proposed notice to the Class (the "Proposed Notice")
5 (Tulyathan Preliminary Approval Dec. Ex. B) also set forth the procedure and timeline for
6 providing notice to the class members (which were to be sent by the administrator via first class
7 mail within ten days of receiving the list from Defendant). The Proposed Notice included a
8 detailed explanation of the claims and defenses, terms of the settlement, opt out and objection
9 procedures, an estimate of the individual class member's settlement payment and a description of
10 how it was calculated, and that all participating members of the class will be paid without the
11 need to submit a claim. The members of the Class who do not opt-out will be deemed to have
12 released the Released Claims which accrued during the Class Period. Released Claims are
13 defined as "[a]ny and all claims that were alleged or reasonably could have been alleged in the
14 operative Complaint based upon the facts, legal theories, or causes of actions contained therein,
15 including but not limited to all of the following claims for relief: a. Improper and/or inaccurate
16 wage statements; and b. Civil penalties under the PAGA predicated on improper and/or
17 inaccurate wage statements." Settlement Agreement ¶ 26.

18 19 III. Final Approval of the Settlement Terms

20 After preliminary approval, the Court determines whether a class action settlement is fair,
21 adequate and reasonable in a final hearing, often referred to as a "fairness hearing." Cal. R. Ct.
22 3.769(g); *see also Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The purpose of
23 this requirement is "the protection of those class members, including the named plaintiffs, whose
24 rights may not have been given due regard by the negotiating parties" and to "prevent fraud,
25 collusion or unfairness to the class..." *Dunk*, 48 Cal.App.4th at 1800-01, citing *Malibu Outrigger*
26 *Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79; *see also Marcarelli v.*
27 *Cabell* (1976) 58 Cal.App.3d 51, 55.

28 "The trial court has broad discretion to determine whether a class action settlement is fair

1 and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. “Due regard should be
2 given to what is otherwise a private consensual agreement between the parties” and “the court’s
3 inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement
4 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
5 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Dunk*, 48
6 Cal.App.4th at 1801 (internal citations omitted). “When the following facts are established in the
7 record, a class action settlement is presumed to be fair: ‘(1) the settlement is reached through
8 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
9 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
10 objectors is small.’” *Chavez*, 162 Cal.App.4th at 52 *quoting Dunk*, 48 Cal.App.4th at 1802.

11 The aforementioned factors are met. Plaintiff’s counsel’s declarations (along with the
12 preliminary approval declarations cited above) establish that Plaintiff’s counsel are experienced
13 and that they engaged in discovery and investigation which allowed them to estimate the total
14 potential damages in this case. Further, the parties mediated the matter before a neutral mediator.
15 The declarations filed in support of the preliminary approval motion also included a discussion of
16 the relative strengths and weaknesses of the parties’ respective positions and the risks and
17 expenses associated with continued litigation to demonstrate that a gross settlement sum of
18 \$390,000 is in the best interests of the class members. *See* Lee Decl. ¶¶ 2-4; Tulyathan Decl. ¶¶
19 2-4; *see generally* Tulyathan Preliminary Approval Decl.; Lee Preliminary Approval Decl.;
20 Marder Preliminary Approval Decl.

21 Plaintiffs’ counsel retained a third-party class administrator who performing the notice
22 required by the preliminary approval order. Lee Decl. ¶ 5; Tulyathan ¶ 5; Kruckenberg Decl. ¶ 2.
23 The Court-approved notice included an estimated payment the recipient could expect based on
24 weeks worked. Kruckenberg Decl. ¶ 5 & Ex. A (notice packet). According to the settlement
25 administrator, Phoenix Settlement Administrators, there were 503 people identified as members
26 of the class and 503 notice packets were sent. Thirteen were returned, two of which had a
27 forwarding address and were re-mailed accordingly, and Phoenix performed a skip trace for the
28 other eleven address and located ten, and those were re-sent. As of the date of the declaration

1 (February 12), only one notice packet was considered undeliverable. Kruckenberg Decl. ¶¶ 3-7.
2 Phoenix received 0 objections, and 2 requests for exclusion, and there are no outstanding
3 disputes. Kruckenberg Decl. ¶¶ 8-10. Costs associated with the settlement administration are
4 \$8,500. Lee Decl. ¶ 12 & Ex. B (showing costs totaling \$9,158.30).

5 Based on a calculation that assumes that the requested attorneys' fees, costs, and
6 incentive fee awards are approved (i.e. a \$217, 584.77 net settlement fund- due to the slightly
7 lower actual costs than the maximum per the settlement agreement) the highest individual
8 settlement payment to be paid is approximately \$717.58 and the lowest \$19.93, with an average
9 of approximately \$434.30. Kruckenberg Decl. ¶ 11. **Based on the reductions in the attorney
10 fee request and enhancement award described below, the net settlement fund will actually
11 be \$255,084.77.**

12 Based on the foregoing, because the factors articulated in *Dunk* are met; because there is
13 no indication of fraud, collusion or unfairness; and because the terms of the settlement appear to
14 be fair and reasonable; and based on the lack of opposition or objection, Plaintiff's motion for
15 final approval of the terms of the settlement is approved.

16
17 IV. Final Approval of the Attorneys' Fees and Cost Award and Class Representative
18 Enhancement.

19 With respect to the request for attorneys' fees and costs, "[o]ur courts have always been
20 cognizant of the inherent tension between the interests of class membership and counsel in
21 settlement of class action litigation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555-
22 56. "In any class action there is always the temptation for the attorney for the class to recommend
23 settlement on terms less favorable to his clients because a large fee is part of the bargain." *Apple*
24 *Computer, Inc. v. Sup. Ct.* (2005) 126 Cal.App.4th 1253, 1269. For this reason the majority of
25 courts have found, for example, that it is impermissible to have a class representative too closely
26 associated with the class attorney. *Id.* at 1264, citing *Susman v. Lincoln American Corp.* (7th
27 Cir.1977) 561 F.2d 86, 90-91. It has also been recognized that once a settlement agreement is
28 reached, the interests of class counsel and defendant are no longer necessarily adverse. *See, e.g.*

1 *Consumer Privacy Cases*, 175 Cal.App.4th at 555-56, citing *In re General Motors Corp. Pick-*
2 *Up Truck Fuel Tank* (3rd Cir.1995) 55 F.3d 768, 819-820 (“a defendant is interested only in
3 disposing of the total claim asserted against it; ... the allocation between the class payment and
4 the attorneys’ fees is of little or no interest to the defense.’ ... [T]he divergence in financial
5 incentives [between the class and counsel] creates the ‘danger ... that the lawyers might urge a
6 class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet
7 treatment for fees.’”)

8 Because of the potential for fraud, collusion or unfairness, thorough judicial review of fee
9 applications is required in all class action settlements and the fairness of the fees must be
10 assessed independently of determining the fairness of the substantive settlement terms. *Dunk*, 48
11 Cal.App.4th at 1808-09. Thus, the court has a duty, independent of any objection, to assure that
12 the amount and mode of payment of attorneys’ fees are fair and proper, and may not simply act as
13 a rubber stamp for the parties’ agreement. See *Garabedian v. Los Angeles Cellular Telephone*
14 *Co.* (2004) 118 Cal.App.4th 123, 128-29. “The evil feared in some settlements-unscrupulous
15 attorneys negotiating large attorney’s fees at the expense of an inadequate settlement for the
16 client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the
17 adequacy of the settlement for the class and determining and setting a reasonable attorney’s
18 fee...” *Zucker v. Occidental Petroleum Corp.* (9th Cir.1999) 192 F.3d 1323, 1328-29 n. 20
19 (internal citation omitted).

20 California recognizes “[t]wo primary methods of determining a reasonable attorney fee in
21 class action litigation...” *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 489. The
22 percentage method “calculates the fee as a percentage share of a recovered common fund or the
23 monetary value of plaintiffs’ recovery.” *Id.* By contrast, “[t]he lodestar method...calculates the
24 fee ‘by multiplying the number of hours reasonably expended by counsel by a reasonable hourly
25 rate...Once the court has fixed the lodestar, it may increase or decrease that amount by applying
26 a positive or negative ‘multiplier’ to take into account a variety of other factors, including the
27 quality of the representation, the novelty and complexity of the issues, the results obtained, and
28 the contingent risk presented.” *Id.* citing *Lealao v. Beneficial California, Inc.* (2000) 82

1 Cal.App.4th 19, 26; *see also Serrano v. Priest* (1977) 20 Cal.3d 25, 48. In *Laffitte*, the Court
2 clarified that it is within the trial court's discretion to use the "percentage method" to "to
3 calculate a fee in a common fund case, where the award serves to spread the attorney fee among
4 all the beneficiaries of the fund..." 1 Cal.5th at 503. The Court stated that "[w]e join the
5 overwhelming majority of federal and state courts in holding that when class action litigation
6 establishes a monetary fund for the benefit of the class members, and the trial court in its
7 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
8 of a reasonable fee by choosing an appropriate percentage of the fund created." *Id.* "The choice
9 of a fee calculation method is generally one within the discretion of the trial court, the goal under
10 either the percentage or lodestar approach being the award of a reasonable fee to compensate
11 counsel for their efforts." *Id.* at 504 *citing Consumer Privacy Cases*, 175 Cal.App.4th at 557-58.

12 In this case, the underlying Settlement Agreement established a gross settlement fund or
13 "common fund" fixed at \$390,000, without any reversion to Defendants and with all settlement
14 proceeds, net of specified fees and costs and \$15,000 in PAGA penalties, going to pay claims for
15 class members who did not opt out of the settlement (and none did). Plaintiffs' counsel requests
16 an award of \$130,000, which is one third (33.33%) of the common fund.

17 This case was filed on March 4, 2020 and mediated successfully only three months later,
18 on June 5, 2020. In connection with the preliminary approval motion, the court advised Plaintiff
19 in its tentative ruling granting the motion, adopted without objection, that it would need
20 "significantly more information to evaluate the propriety of the requested attorney fee and cost
21 award, and named plaintiff incentive award, to justify final approval in the amounts requested,
22 given the relatively early stage of the litigation."

23 Class counsel Lee (who has eighteen years of experience) and Tulyathan (who graduated
24 in 2017) filed declarations setting forth their qualifications, but none submitted any information
25 about the time spent on this case or even a general description of the work performed, much less
26 contemporaneously-prepared timesheets or billing rates. Thus, there is no way for the Court to
27 conduct a lodestar cross-check. At the hearing, Plaintiff's counsel stated that she could submit
28 timesheets, but as indicated above, counsel was advised prior to the filing of this Motion that

1 more information would have to be provided and yet it was not. Moreover, Plaintiff's counsel did
2 not make any offer of proof or articulate at the hearing what the timesheets she could submit
3 would show, *i.e.* what the lodestar would be. The Court declines to permit counsel to make a
4 belated submission under these circumstances. Plaintiff also pointed out wage and hour cases like
5 the present case, taken on contingency, present a risk of no payment at all. While that is a
6 relevant factor for using or justifying a positive multiplier, along with factors such as the
7 complexity of the litigation and the results achieved (*Lealao*, 82 Cal.App.4th at 44) Plaintiff's
8 counsel did not present information for the baseline lodestar to which a multiplier could be
9 applied.

10 It is the case that the percentage recovery focuses on results achieved whereas the lodestar
11 focuses on time spent (and ordinarily a 1/3 fee is within the range of reasonableness). But in light
12 of the extraordinarily early phase at which this case settled and the not-extraordinary results
13 achieved (10.2% of the maximum potential recovery, or about 36.5% even excluding any
14 potential PAGA penalties) the lack of any further information to justify the award—mitigated
15 only by the lack of any class member objections—the Court finds that the “appropriate
16 percentage of the fund created” (*Laffitte*, 1 Cal.5th at 503) is 25% of the \$390,000 common fund
17 rather than 33.3%. *See also Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048
18 (utilizing 25% as benchmark that could be adjusted based on the circumstances).

19 At the hearing, Plaintiff's counsel also asserted that this was a better than average
20 settlement for a pure wage statement case, but no evidence to that effect was provided, so all the
21 Court could base its analysis on is the percent of potential recovery described above. Moreover,
22 although counsel conceded that 25% is the benchmark in federal court she argued that it is 1/3 in
23 state court under *Laffitte*. But *Laffitte* did not adopt 1/3 as a “benchmark”; it held that trial courts
24 could use an “appropriate percentage” of the common fund created and “retain the discretion to
25 forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
26 percentage fee.” 1 Cal.5th at 506. Although they did not produce detailed time records, plaintiffs'
27 counsel in *Laffitte* provided the trial court with declarations summarizing the time spent. *Id.* at
28 505 (“The trial court in the present case exercised its discretion in this manner, performing the

1 cross-check using counsel declarations summarizing overall time spent, rather than demanding
2 and scrutinizing daily time sheets in which the work performed was broken down by individual
3 task.”). Plaintiff’s counsel’s problem is that despite the specific admonition made in connection
4 with the preliminary approval, Plaintiff provided no such summary or description of work
5 performed, or any other basis for justifying the requested 33.3% as reasonable under the
6 circumstances. “Courts using the percentage method have generally weighed the time counsel
7 spent on the case as an important factor in choosing a reasonable percentage to apply.” *Laffitte*, 1
8 Cal.5th at 505.

9 Plaintiff’s counsel also seeks \$8,915.23 litigation-related costs and attaches a cost report
10 substantiating that sum. Lee Decl. ¶ 11 & Ex. A.

11 **Based on the foregoing, Plaintiff’s request for attorneys’ fees and costs is granted in**
12 **the amount of \$97,500 for fees and \$8,915.23 in costs.**

13 Plaintiff also seeks a service award in the amount of \$10,000. “[C]riteria courts may
14 consider in determining whether to make an incentive award include: 1) the risk to the class
15 representative in commencing suit, both financial and otherwise; 2) the notoriety and personal
16 difficulties encountered by the class representative; 3) the amount of time and effort spent by the
17 class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
18 enjoyed by the class representative as a result of the litigation.’ [citation] These ‘incentive
19 awards’ to class representatives must not be disproportionate to the amount of time and energy
20 expended in pursuit of the lawsuit.” *See Cellphone Termination Fee Cases* (2010) 186
21 Cal.App.4th 1380, 1394-95. *See also Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal. 2017) 269 F.
22 Supp. 3d 975, 1003 (citing *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D.
23 245, 266-67, which in turn collected cases and explained that a \$5,000 incentive award is
24 presumptively reasonable in that district and that awards typically range from \$2,000–\$10,000).

25 Plaintiff argues that this award is reasonable in light of his role as representative of the
26 class. In particular, he cites his role in providing substantive information and documents to
27 counsel and reviewing documents and the Settlement Agreement and the risks he took
28 professionally, personally, and monetarily (for costs), in that he subjected himself to potential

1 reprisal from other potential employers. Motion at 20:9-21:6. He filed a declaration generally
2 describing his participation and establishing that he is aware of his role as class representative,
3 but he did not describe particular activities or undertake to quantify any of the time spent on his
4 efforts (and neither did class counsel). *See generally* Khan Decl.

5 Plaintiff's failure to even attempt to quantify these efforts is problematic. *See, e.g. Clark*
6 *v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 805-07 (finding \$25,000
7 enhancements unjustified on a \$2,000,000 recovery; "The record shows, with regard to time
8 spent on the litigation, that Clark and Gaines spent 'several hours' in initial consultations with
9 counsel, had their depositions taken for a full day, and Gaines attended a full day mediation; in
10 addition, both reviewed 'thousands of pages' of documents for the mediation. But, except to say
11 they spent 'countless hours' participating in the prosecution of the case, no further quantification
12 of the time Clark and Gaines spent appears in the record.... Here, we simply cannot sanction, as
13 within the trial court's discretion, incentive awards totaling \$50,000, with nothing more than pro
14 forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.'
15 Significantly more specificity, in the form of quantification of time and effort expended on the
16 litigation, and in the form of reasoned explanation of financial or other risks incurred by the
17 named plaintiffs, is required in order for the trial court to conclude that an enhancement was
18 'necessary to induce [the named plaintiff] to participate in the suit....') (internal citation
19 omitted). Moreover, the discussion in Plaintiff's declaration of reputational risks applies
20 generically to wage and hour litigation and is not related to his particular circumstances, job
21 description, or industry. The duration of the litigation was short, and there is no discussion in the
22 moving papers describing what Plaintiff's personal award will be as a result of the settlement.

23 The only rationale Plaintiff offered at the hearing for a greater enhancement award is the
24 broader release offered by Plaintiff not applicable to the other members of the Class (an issue that
25 could have been, but was not, addressed in the moving papers). Even so, the Court finds that the
26 broader release is part of the justification for Plaintiff's receipt of an enhancement of more than
27 ten times the average award for a case which settled three months after its filing when there is no
28 quantification of the work performed on behalf of the Class.

1 In light of the foregoing, and in particular due to the lack of information to justify an
2 award higher than the presumptively reasonable award of \$5,000 under the factors described in
3 *Cellphone Termination*, 186 Cal.App.4th at 1394-95, **Plaintiff's request for a personal**
4 **representative enhancement award is approved in the amount of \$5,000.**

5
6 V. Conclusion

7 Based on the foregoing:
8

9 1. The Court, for purposes of this Order, adopts all defined terms and conditions as set forth
10 in the Settlement Agreement filed in this case.
11

12 2. The Court has jurisdiction over the subject matter of this litigation and the Class
13 Representative, the other members of the Class, and Defendant.
14

15 3. The Court finds that the dissemination of the Class Notice as disseminated to the Class
16 Members, constituted the best notice practicable under the circumstances to all persons within
17 the definition of the Class, and fully met the requirements of California law and due process
18 under the United States Constitution.
19

20 4. The Court approves the Settlement of the above-captioned action, as set forth in the
21 Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The
22 Settling Parties are directed to perform in accordance with the terms set forth in the Settlement
23 Agreement.
24

25 5. Except as otherwise provided in the Settlement Agreement, the Settling Parties are to bear
26 their own costs and attorneys' fees.
27

28 6. The Court hereby certifies the following Class for settlement purposes only: "All current

1 and former non-exempt employees of Defendant in the State of California who were paid shift
2 differential wages at any time during the period of March 4, 2019, through April 12, 2020.”
3

4 7. With respect to the Class and for purposes of approving the settlement only and for no
5 other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable
6 and so numerous that joinder of all members is impracticable; (b) there are questions of law or
7 fact common to the Class, and there is a well-defined community of interest among members of
8 the Class with respect to the subject matter of the claims in this litigation; (c) the claims of Class
9 Representative is typical of the claims of the members of the Class; (d) the Class Representative
10 has fairly and adequately protected the interests of the members of the Class; (e) a class action is
11 superior to other available methods for an efficient adjudication of this controversy; and (f) the
12 counsel of record for the Class Representative, i.e., Class Counsel, are qualified to serve as
13 counsel for the Plaintiff in his individual and representative capacity and for the Class.
14

15 8. Defendant shall fund **\$390,000.00** of the total Gross Settlement Fund pursuant to the
16 terms of the Settlement Agreement.
17

18 9. The Court approves the Individual Settlement Payment amounts, which shall be
19 distributed pursuant to the terms of the Settlement Agreement.
20

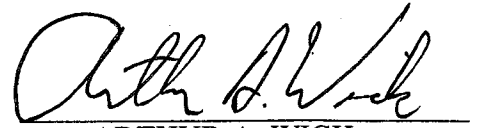
21 10. Defendant shall pay (a) to Class Counsel attorneys’ fees in the amount of **\$97,500.00** and
22 reimbursement of litigation costs in the amount of **\$8,915.23**; (b) enhancement payment to the
23 Class Representative Faheem Khan in the amount of **\$5,000.00**; (c) the sum of **\$15,000.00** to be
24 paid to the LWDA for PAGA Penalties; and (d) **\$8,500.00** to the Claims Administrator, Phoenix
25 Settlement Administrators, for the costs relating to the claims administration process in this
26 matter. The Court finds that these amounts are fair and reasonable. Defendant is directed to make
27 such payments from the Gross Settlement Amount and in accordance with the terms of the
28 Settlement Agreement.

1 11. The Court will enter final judgment in this case in accordance with the terms of the
2 Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the
3 Settlement or judgment, this Court shall retain exclusive and continuing jurisdiction over the
4 action and the Parties, including all Class Members, for purposes of enforcing and interpreting
5 this Order and the Settlement.

6
7 Plaintiff's counsel shall submit a [proposed] judgment.

8
9 IT IS SO ORDERED.

10
11 Dated: March 17, 2021.


ARTHUR A. WICK
Superior Court Judge

PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Dr., Room 107-J, Santa Rosa, California, 95403; that I am not a party to this case; that I am over the age of 18; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of *ORDER AFTER HEARING MARCH 10, 2021* in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: March 18, 2021

Arlene Junior
Clerk of the Court

By: Sarah Helstrom
Sarah Helstrom, Deputy Clerk

-ADDRESSEES-

LARRY W LEE
DIVERSITY LAW GROUP PC
515 S FIGUEROA STREET SUITE 1250
LOS ANGELES CA 90071

