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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANGEL CARACOZA, JR., on behalf of
himself and as representative for the State of
California on behalf of all other aggrieved
employees,

Plaintiff,

v.

ASHLEY FURNITURE INDUSTRIES,
INC., a Wisconsin Corporation d/b/a THE
ASHLEY COMPANIES; and DOES 1
through 10, Inclusive,

Defendants.

LEAD CASE NO. CIVDS2012912

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Jessica Morgan
Department S26

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

Date: August 20, 2024
Time: 8:30 a.m.
Dept.: 26

Complaint filed: June 1, 2020
Trial Date: Not set

DANIEL ORTIZ, individually and on behalf
of all other aggrieved employees,

Plaintiff,

v.

ASHLEY FURNITURE INDUSTRIES, LLC,
a Wisconsin Limited Liability Company;
ASHLEY FURNITURE INDUSTRIES, INC.,
a Wisconsin Corporation; and DOES 1
through 50, Inclusive,

Defendants.

CASE NO. CIVDS2012912

ANGEL CARACOZA, JR., on behalf of
himself and all others similarly situated,

Plaintiff,

v.

ASHLEY FURNITURE INDUSTRIES, INC.,
a Wisconsin Corporation d/b/a THE ASHLEY
COMPANIES; and DOES 1 through 10,
Inclusive,

Defendants.

CASE NO. CIVSB2118827

DANIEL ORTIZ, on behalf of himself and all
others similarly situated

Plaintiffs,

vs.

ASHLEY FURNITURE INDUSTRIES, LLC;
ASHLEY FURNITURE INDUSTRIES, INC.,
a California Corporation, and DOES 1 through
50, inclusive,

Defendants.

CASE NO. CIV SB2212619

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1 **I. INTRODUCTION**

2 Plaintiffs Angel Caracoza and Daniel Ortiz (“Plaintiffs”) seek final approval of a pre-
3 certification \$2,500,000.00 non-reversionary wage and hour class action settlement on behalf of
4 3,366 individuals who were employed as hourly, non-exempt employees by Defendants Ashley
5 Furniture Industries, LLC and Ashley Furniture Industries, Inc. (“Defendant” or “Ashley”) any time
6 from June 25, 2017 through May 12, 2023 (“Class Period”) or any time from March 29, 2019 through
7 May 12, 2023 (“PAGA Period”). Declaration of Michael D. Singer, (“Singer Decl.”), ¶ 16; Exh. 1 -
8 “Class Action and PAGA Settlement Agreement and Class Notice” (“Settlement Agreement” or
9 “SA”).

10 Support for the Settlement is strong. Not a single Class Member submitted an objection or a
11 request for exclusion. Declaration of Markus Bluthius on Behalf of Simpluris, Inc., (“Simpluris
12 Decl.”), ¶¶ 12-13. With a 100% participation rate of the 3,366 Participating Class Members, the
13 highest total Individual Class Payment is estimated to be \$3,222.94, and the average Individual Class
14 Payment is estimated to be \$446.34. Simpluris Decl. ¶¶ 11.

15 **II. PARTIES**

16 **A. Defendant Ashley and Named Plaintiffs Angel Caracoza and Daniel Ortiz**

17 Ashley Furniture, headquartered in Arcadia, Wisconsin, and owned by father-and-son duo
18 Ron and Todd Wanek, is one of the largest furniture manufacturers in the world. The company makes
19 upholstered furniture, as well as leather and hardwood pieces, which it sells through more than 6,000
20 retail partners worldwide. During the putative Class Period, Ashley has employed thousands of non-
21 exempt employees, including Plaintiffs Caracoza and Ortiz who worked for Ashley in warehouses in
22 Redlands, within San Bernardino County, as distribution center laborers. Plaintiffs’ primary job
23 duties included unloading and storing Ashley furniture in their warehouse and using a forklift to
24 transport heavy loads. Singer Decl. ¶ 17; Declaration of Daniel Ortiz filed December 8, 2023 in
25 support of Preliminary Approval, (“Ortiz Decl.”), ¶ 2; Declaration of Angel Caracoza, Jr. filed
26 December 8, 2023 in support of Preliminary Approval, (“Caracoza Decl.”), ¶ 2.

27 **B. The Class and Aggrieved Employees**

28 The Class is defined as all persons who are or were employed by Defendant in California and

1 classified as hourly, nonexempt employees during the Class Period of June 25, 2017, to May 12,
2 2023, and Aggrieved Employees are those who worked during the PAGA Period of March 29, 2019
3 through May 12, 2023. SA, ¶¶ 1.12, 1.31. The Class List contained data for three thousand three
4 hundred sixty-six (3,366) Class Members who worked one hundred forty-three thousand forty-three
5 (143,043) Workweeks during the Class Period who were all also Aggrieved Employees who worked
6 fifty-nine thousand one hundred fifty-nine (59,159) Pay Periods during the PAGA Period. Simplruiis
7 Decl. ¶ 6.

8 **III. BACKGROUND**

9 On June 5, 2020, Plaintiff Caracoza commenced this Action by filing a PAGA only Complaint
10 against Defendant, Case No. CIVDS2012912. On October 15, 2020, Plaintiff Caracoza filed a First
11 Amended PAGA only Complaint against Defendant, Case No. CIVDS2012912. On July 26, 2021
12 Plaintiff Ortiz filed a PAGA only Complaint against Defendant, Case No. CIVSB2122588. On June
13 24, 2021 Plaintiff Caracoza filed a Class Action Complaint against Defendant, Case No.
14 CIVSB2118827. On June 16, 2022, Plaintiff Ortiz filed a Class Action Complaint against Defendant,
15 Case No. CIVSB2212619. The PAGA only Complaints filed by Plaintiffs Caracoza and Ortiz in Case
16 Nos. CIVDS2012912 and CIVSB2122588 were consolidated. The Parties agreed to consolidation of
17 the Class and PAGA Complaints filed by Plaintiffs Caracoza and Ortiz for purposes of settlement in
18 Case Nos. CIVDS2012912, CIVSB2122588, CIVSB2118827 and CIVSB2212619 (collectively
19 “Operative Complaints”). Plaintiffs have entered into a joint prosecution agreement in this case and
20 have consented to the agreement in writing. S.A., ¶ 2.1.

21 Once the matter was at issue, the Parties engaged in meet and confer discussions regarding
22 potential discovery issues, potential law and motion matters, and the merits of the cases. Ultimately,
23 the Parties agreed to attempt mediation. Singer Decl. ¶ 18.

24 Plaintiff Caracoza propounded, and Ashley answered, comprehensive discovery in the
25 Caracoza PAGA action. Plaintiff Ortiz also propounded discovery in the Ortiz PAGA action. Ashley
26 also informally produced requested data and policy documents for mediation, including: a twenty
27 percent (20%) random sample of corresponding class time and payroll records; the estimated total
28 number of weekly class pay periods, the class average hourly pay rate, and other relevant class data

1 points; its Corporate Handbook and California Addendum; descriptions of job positions for all non-
2 exempt employees; exemplar wage statements from throughout the putative class period; and other
3 policy documents. Thus, the Parties engaged in significant informal discovery to facilitate an
4 exchange of information necessary to engage in a meaningful mediation. Singer Decl. ¶ 19. Plaintiffs
5 had these data and documents reviewed and analyzed for meal period violations rates, and had an
6 damages model for meal and rest period violations, off-the-clock work, and derivative claims
7 constructed by, consulting expert Berger Consulting Group. Singer Decl. ¶ 20.

8 The Parties then engaged Todd Smith, Esq., a respected mediator with extensive wage and
9 hour class action experience, and on December 16, 2022 participated in a full day mediation with Mr.
10 Smith. Throughout the day, the arms-length negotiations were hard-fought and adversarial as the
11 Parties exchanged extensive information on their legal and factual positions, and made numerous
12 offers and counter-offers. The matter did not settle at the December 16, 2022 mediation. Following
13 the mediation, after several months of negotiations, the Parties were able to agree to settle the Action,
14 memorialized in the form of a Memorandum of Understanding, executed by all parties on or about
15 July 19, 2023. The Parties later negotiated the Settlement Agreement setting forth the full and final
16 settlement terms. Singer Decl. ¶ 21.

17 **IV. SUMMARY OF PROPOSED SETTLEMENT**

18 **A. Settlement Terms**

19 Defendant will pay a non-reversionary, maximum Gross Settlement Amount (“GSA”) of
20 \$2,500,000.00 which includes: (a) attorneys’ fees¹ not to exceed \$833,333.33 (1/3 of GSA), to
21 compensate Class Counsel for work performed and remaining to secure final Court approval; (b)
22 litigation costs of \$21,290.01;² (c) Class Representative Service Payment of \$10,000.00 each to
23 Plaintiffs Caracoza and Ortiz for a total of \$20,000; (d) PAGA Penalties of \$100,000.00 [\$75,000.00
24 to LWDA (75%)/\$25,000.00 to Aggrieved Employees (25%)]; and (e) Settlement Administration

25 ¹ Plaintiffs consented in writing to the division of attorneys’ fees between Counsel as follows: 70%
26 to Cohelan Khoury & Singer United Employees Law Group, PC (to be divided 66.67% to CKS and
33.33% to UELG) and 30% to Haig B. Kazandjian Lawyers, APC. Singer Decl. ¶ 22.

27 ² See Singer Decl. ¶ 23, Exh. 2 - Summary of Time and Costs; see also Declaration of Haig
28 Kazandjian, (“Kazandjian Decl.”), ¶ 21; Declaration of Walter L. Haines, (“Haines Decl.”), ¶ 11.

costs of \$23,000.00. Singer Decl. ¶ 24; Simpluris Decl. ¶ 10. Defendant will pay the employer's payroll taxes in addition to the GSA. SA, ¶ 3.1.

After approved deductions, the estimated \$1,502,376.66 Net Settlement Amount ("NSA") will be distributed to Participating Class Members and Aggrieved Employees. Individual Class Payments will be calculated based on the number of Workweeks that each Participating Class Member worked. Aggrieved Employees will also receive Individual PAGA Payments in accordance with the number of pay periods they worked during the PAGA Period. Class Members will receive an estimated \$10.50 for each Workweek worked during the Class Period (\$1,502,376.66/143,043), and Aggrieved Employees will receive an estimated \$0.42 for each pay period worked during the PAGA Period (\$25,000/59,159), with an average/highest Individual Class Payment of \$446.34/\$3,222.94 and an average/highest PAGA Penalties payment of \$7.43/\$45.72. Singer Decl. ¶ 25; Simpluris Decl. ¶¶ 6, 10-11.

Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. SA, ¶ 3.2.4.1.

Funds representing Settlement Payment checks uncashed 180 days after issuance will be sent to the California Controller's Unclaimed Property Fund in the name of the Class Member/Aggrieved Employee thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). SA, ¶ 4.4.3.

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

1. Preliminary Approval and Class Notice

The Settlement was preliminary approved on February 22, 2024. Singer Decl. ¶ 26. On March 28, 2024, after receiving the Court-approved text for the content of the Class Notice from Class Counsel and data file from Defendant, and searching the National Change of Address database and updating Class Member addresses, Simpluris mailed a Class Notice to 3,366 Class Members,

1 informing them of (1) the pendency of the Action; (2) proposed settlement terms; (3) automatic
2 payment of Settlement shares if exclusion not requested; (4) released claims; (5) right to object or
3 request exclusion, and (6) and the date, time and place of the final approval hearing. Simpluris Decl.
4 ¶¶ 5-8; Exh. A.

5 2. **Class Response to the Notice**

6 The Class response to the Settlement was extremely favorable. Simpluris has not received any
7 objections to the Settlement nor requests for exclusion from the Settlement. Simpluris Decl. ¶¶ 12-
8 13. This Court has already recognized, at preliminary approval, that the Settlement is “fair, adequate,
9 and reasonable.” Now, it is clear that “the reaction of the class members to the proposed settlement”
10 also favors granting final approval. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
11 Singer Decl. ¶ 27.

12 C. **Released Claims**

13 All Participating Class Members on behalf of themselves and their respective former and
14 present representatives, agents, attorneys, heirs, administrators, successors and assigns, release the
15 Defendant and each of its former and present directors, officers, shareholders, owners, members,
16 attorneys, insurers, predecessors, successors, assigns, subsidiaries and affiliates from all class claims
17 pled or that could have been pled based on the factual allegations contained in the operative
18 complaints which occurred during the Class Period including, but not limited to claims under
19 California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.2, 226.3, 226.7, 256, 432, 510, 512,
20 558(a), 558.1, 1174, 1174.5, 1175, 1182.2, 1194, 1194.5, 1197, 1197.1, 1198, 1198.5, 1199, and
21 2802, and expressly excluding all other claims, including claims for vested benefits, wrongful
22 termination, unemployment insurance, disability, social security, workers’ compensation, and class
23 claims outside of the Class Period. The time period for this release is the Class Period of June 25,
24 2017 through May 12, 2023. SA, ¶ 5.2.

25 All Non-Participating Class Members and Participating Class Members who are Aggrieved
26 Employees are deemed to release, on behalf of themselves and their respective former and present
27 representatives, agents, attorneys, heirs, administrators, successors and assigns, the Defendant and
28 each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers,

1 predecessors, successors, assigns, subsidiaries and affiliates from all PAGA claims pled or that could
2 have been pled based on the factual allegations contained in the operative complaints and PAGA
3 Notices that occurred during the PAGA Period that stated violations of California Labor Code §§
4 201, 202, 203, 204, 210, 226(a), 226.2, 226.3, 226.7, 256, 432, 510, 512, 558(a), 558.1, 1174, 1174.5,
5 1175, 1182.2, 1194, 1194.5, 1197, 1197.1, 1198, 1198.5, 1199, and 2802 as to the Aggrieved
6 Employees and expressly excluding all other claims, including claims for vested benefits, wrongful
7 termination, unemployment insurance, disability, social security, workers' compensation, and PAGA
8 claims outside of the PAGA Period. The time period for this release is the PAGA Period of March
9 29, 2019 through May 12, 2023. SA, ¶ 5.3.

10 Plaintiffs Caracoza and Ortiz also entered into a general release of "all claims of any kind or
11 nature whatsoever" with Defendant which includes a Civil Code section 1542 waiver. See SA, ¶¶ 5.1,
12 5.1.1.

13 **V. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

14 **A. Attorneys' Fees & Litigation Costs**

15 Class Counsel requests attorneys' fees of \$833,333.33, one-third of GSA, and actual litigation
16 costs of \$21,290.01. Counsel have expended 480.55 hours, a \$304,610.75 lodestar. Singer Decl. ¶ 28,
17 Exh. 2 - Summary of Time & Costs, Exh. 3(A-D) - Time Records, Exh. 4 - Costs; Kazandjian Decl.
18 ¶¶ 19-21; Haines Decl. ¶¶ 6-11. The requested litigation costs are reasonable because they reflect the
19 actual costs incurred in litigating the case through a successful mediation. Singer Decl. ¶ 28.

20 The requested fees are reasonable for several reasons:

21 First, a percentage fee of one-third of the common fund is standard in California class action
22 cases, *see, e.g. Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506. Singer Decl. ¶¶ 29-30
23 (listing cases in which Cohelan Khoury & Singer was award one-third of the GSA in attorneys' fees).

24 Second, an optional³ lodestar crosscheck supports awarding one-third of the common fund to

25 ³ "[T]he lodestar method is not necessarily utilized in common fund cases." *Lealao v. Beneficial*
26 *California, Inc.* (2000) 82 Cal.App.4th 19, 27; *see also Glass v. UBS Financial Services, Inc.*, No.
27 06-4066-MMC, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 26, 2007) ("no need to conduct a
28 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.")

1 Class Counsel. Under the lodestar method, a base fee is calculated by multiplying time reasonably
2 spent on the case by the reasonable hourly pay rate of the attorneys. *Serrano v. Priest* (1977) 20
3 Cal.3d 25,48. The court then enhances the lodestar by a “multiplier” to account for a range of factors.
4 *See Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36. Factors determining level of enhancement
5 include the difficulty of the questions involved and the skill in presenting them, the contingent nature
6 of the fee award, the extent to which the litigation precluded other employment, and the percentage-
7 of-the-fund the attorney would have received on the fair market. *Lealao*, 82 Cal. App. 4th at 49. The
8 list is not exhaustive and a Court may consider other factors it deems important in setting the
9 multiplier. *Id.* at 40; *Ketchum*, 24 Cal.4th at 1139. In *Lealao*, the Court held a trial court’s refusal to
10 enhance the lodestar was an abuse of discretion, remanded for consideration of the original 8.0
11 request, and opined that a multiplier more than 3.5 was reasonable. *Lealao*, 82 Cal. App. 4th at 24,
12 52; see also *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 (case remanded with directions “to
13 enhance the lodestar award...”).

14 Here, to award the \$833,333.33 requested, the Court should allow a multiplier of 2.73
15 (\$833,333.33/\$304,610.75). Such a multiplier is appropriate. First, Class Counsel worked on a wholly
16 contingent basis, and risked losing all costs and time expended if they could not reach a Settlement
17 with Defendant on behalf of Plaintiffs. Indeed, no settlement was reached at mediation in December
18 2022, and the Parties only reached settlement after prolonged and contentious mediator-facilitated
19 negotiations, on May 12, 2023. Second, the nearly 500 hours expended by Class Counsel precluded
20 other employment. Third, on the open market, Class Counsel would have received one-third of the
21 common fund by agreement between Class Counsel and named Plaintiffs. Singer Decl. ¶ 31.

22 And finally, Class Counsel were confronted with several difficult legal questions in uncertain
23 areas of law in this case and presented their positions to defense counsel and to the mediator with
24 skill. For instance, as to rounding, Class Counsel was operating against the uncertain legal backdrop
25 created by the precedents of *See’s Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907
26 (allowing rounding only “if the rounding policy is fair and neutral on its face and it is used in such a
27 manner that it will not result, over a period of time, in failure to compensate the employees properly
28 for all the time they have actually worked”), *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 834-

1 35 (considering a scenario where the employer required employees to work off the clock several
2 minutes per shift and holding that the federal de minimis doctrine which may “in some circumstances
3 ... excuse the payment of wages for small amounts of otherwise compensable time upon a showing
4 that the bits of time are administratively difficult to record” did not apply to state law claims for
5 unpaid wages in that circumstance), *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61
6 (disallowing rounding of time period punches), and *Camp v. Home Depot, U.S.A., Inc.* (2022) 84
7 Cal.App.5th 638 (articulating that “[t]he California Supreme Court expressly stated...that it ‘has
8 never decided the validity of the rounding standard articulated in *See’s Candy*’” (quoting *Donohue*,
9 *supra*, at 72), and criticizing *See’s Candy*, finding nothing in the Labor Code authorized rounding of
10 time worked, and explaining that the efficiencies previously claimed for rounding time no longer
11 apply in instances where the employer can and does record actual time to the exact minute). In another
12 instance, Class Counsel were confronted with the question of what constitutes a meal period where
13 “operations cease” such that it need not be recorded, see Wage Order 7-2001 (“Mercantile Industry”),
14 §7(A)(3), where a dearth of case law exists as to this question and fact-intensive inquiries were
15 required. Singer Decl. ¶ 32.

16 Further, to award one-third of the common fund as requested, courts have regularly granted
17 awarded Cohelan Khoury & Singer lodestar multipliers, without modification from what was
18 requested, in pre-certification class actions, ranging from 0.5 to 8.0. See Singer Decl. ¶ 30 (collecting
19 awards since 2020).

20 Third, the rates requested by Class Counsel, between \$500 for a four-year attorney, and \$995
21 for a forty-year attorney and managing partner, are supported by the Laffey Matrix. Singer Decl. ¶
22 33, Exh. 2 - Summary of Time and Costs, Exh. 5 - Laffey Matrix; Kazandjian Decl. ¶ 20; Haines
23 Decl. ¶¶ 1, 6.

24 Fourth, the extensive experience of Class Counsel in prosecuting, certifying, and settling class
25 actions, as well as their charitable and academic endeavors, support granting the requested fees.
26 Singer Decl. ¶¶ 2-15, 34; Kazandjian Decl. ¶¶ 2-4; Haines Decl. ¶¶ 2-3. Class Counsel believe, in
27 light of all of their experience, that this Settlement is fair, adequate, and reasonable for the Class and
28 Aggrieved Employees. Singer Decl. ¶ 35; Kazandjian Decl. ¶ 14; Haines Decl. ¶ 12.

1 Fifth, the 480.55 hours expended by Class Counsel “would have been undertaken by a
2 reasonable and prudent lawyer to advance or protect his client’s interest.” *Moore v. Jas. H. Matthews*
3 & Co., 682 F.2d 830, 839 (9th Cir. 1982). Singer Decl. ¶ 36.

4 And sixth, an excellent result was achieved, with substantial relief being provided to the Class,
5 and no Class Members objecting to, or requesting exclusion from, the Settlement. *See, e.g. Lealao*,
6 82 Cal.App.4th at 44. Singer Decl. ¶ 37.

7 **B. Settlement Administration Costs**

8 The requested administration costs of \$23,000 are reasonable, and were disclosed in the Class
9 Notice, with no objections or requests for exclusion received from the Class thereafter. *See Simpluris*
10 Decl. ¶¶ 12-13, Exh. A.

11 **C. Class Representative Service Payment**

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

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

23 Enforcement of laws protecting California employees would be “random and fragmentary,”
24 or non-existent, if no one came forward and spent time working on behalf of others, and perhaps most
25 importantly, took risks those others are not willing to bear.

26 Class action plaintiffs, not class members, risk a judgment for defendant’s costs. “Those who
27 choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful.”
28 *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433. The *Earley* court contended this risk

1 was balanced by potential reward. *See id.*

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

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

8 The risk of judgment for Defendants’ costs, alone, is sufficient to support Class
9 Representative Service Payments of \$10,000.00 to each Plaintiff. It is impossible to know, or
10 intervene, each time a class action plaintiff loses an employment opportunity, making it essential to
11 compensate them at final approval, the only time the risk they took can be at least slightly offset and
12 they can be adequately compensated. Each Plaintiff more than satisfied their obligation to protect the
13 interests of the Class and place them above their own. Both Plaintiffs accepted the risk of judgment
14 for Defendant’s costs and potential loss of future employment opportunities. Plaintiffs had individual
15 claims which they did not pursue, or abandoned, to serve only as a representative of other employees,
16 although, unlike those employees, Plaintiffs were required to give a general release of all claims of
17 any kind, including a section 1542 waiver. Singer Decl. ¶ 38. Plaintiff Caracoza further expended
18 approximately forty (40) hours in seeking legal counsel and participating in this action through and
19 beyond Settlement. Caracoza Decl. ¶¶ 4-6. Plaintiff Ortiz spent over twenty (20) hours fulfilling his
20 duties to the class. Ortiz Decl. ¶¶ 4-6. In addition, the Service Awards are also proportional compared
21 to the total recovery in this case. The amount of the total for the two Service Awards is approximately
22 .008 % of the gross settlement amount. Kazandjian Decl. ¶ 24. Finally, the Class received notice of,
23 and did not object to, Plaintiffs’ request of up to \$10,000 each “for filing the Lawsuit, working with
24 Class Counsel and representing the Class.” Simpluris Decl. ¶¶ 12-13, Exh. A.

25 **D. PAGA Payment**

26 The Agreement allocates \$100,000.00 to PAGA claims, \$75,000.00 (75%) paid directly to the
27 LWDA, and the remaining \$25,000.00 (25%) to Aggrieved Employees. This allocation was the result
28 of good-faith, mediated negotiations. Singer Decl. ¶ 39. Where PAGA penalties are negotiated in

1 good faith, with “no indication [the] amount was the result of self-interest at the expense of other
2 Class Members,” they are considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844,
3 (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *24; *see, e.g., In re Nordstrom Com. Cases*
4 (2010) 186 Cal. App. 4th 576, 579 (No abuse of discretion approving settlement allocating \$0 to
5 PAGA claims).

6 In addition, this allocation of \$100,000.00, which represents four percent (4%) of the GSA, is
7 higher than the amount approved in other settlements. *See, e.g. Magadia v. Wal-Mart Assocs.*, 384 F.
8 Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS
9 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in settlement of \$900,000, or 1.1% PAGA
10 allocation), recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015); *Nen*
11 *Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (\$10,000 PAGA, \$1.25m settlement,
12 or 0.8% PAGA allocation).

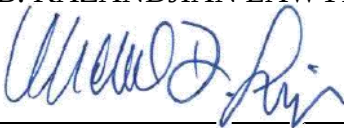
13 VI. CONCLUSION

14 This Settlement favorably resolves what would otherwise be uncertain and lengthy litigation.
15 Class Counsel thus respectfully requests the Court grant final approval of the Settlement and grant
16 all amounts requested herein.

17 Respectfully submitted,

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