

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

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

DAVTYAN LAW FIRM, INC.

Emil Davtyan (SBN 299363)

support@davtyanlaw.com

400 N Brand Blvd, Suite 700

Glendale, CA 91205

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

Attorneys for Plaintiff VERNELL BATTLE, JR., on behalf of himself and others

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

VERNELL BATTLE, JR., on behalf of himself
and other similarly-situated employees,

Plaintiff,

vs.

SAFRAN CABIN, INC., a Delaware
Corporation; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 30-2020-01140831-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Peter J. Wilson
Department CX 102

CLASS ACTION

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

Hearing Set by Court

(01/10/2023 Order - ROA #211)

Date: June 1, 2023

Time: 2:00 p.m.

Dept: CX 101

Judge: Hon. Peter J. Wilson

Complaint filed: May 26, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiff Vernell Battle, Jr. (“Plaintiff”) seeks final approval of a non-reversionary wage and hour class and Private Attorneys General Act (PAGA) settlement of five million four hundred fifty-five thousand dollars (\$5,455,000). The proposed Settlement will benefit 2,140 individuals employed by Defendant Safran Cabin, Inc. (“Safran Cabin”) in California at any time from May 26, 2016, through January 29, 2022 (the “Class Period”). Declaration of Isam C. Khoury, (“Khoury Decl.”), ¶10.

On March 23, 2023, the Court-approved Notice Packet, in English, Spanish and Vietnamese, was mailed to 2,379 Class Members informing them of their rights and benefits under the Settlement, including estimated Settlement Payment amount, and the right to request exclusion, dispute workweeks, or objection to the Settlement. Declaration of Evelin Reyes on behalf of Simpluris, Inc., (“Simpluris Decl.”), ¶9, Exh. A. In April 2023, Safran Cabin advised that 239 individuals had been incorrectly included as Class Members because they were at all times during the Class Period based in Washington State and not California. Khoury Decl. ¶11. On April 26, 2023, the Court entered an Order approving the mailing of a Notice of Erroneous Receipt of Class Action Settlement Notice to those 239 individuals. *Id.* Accordingly, there are 2,140 Class Members rather than the originally projected 2,379. Simpluris Decl. ¶10, Exh. B.

Support for the Settlement is strong. As of this Motion’s filing, there are no objections and only one opt-out. (Class Members were allowed to opt-out/object until May 22, 2023. An updated Administrator declaration will be submitted before the Final Approval hearing.) Simpluris Decl. ¶¶2, 16, 17; Khoury Decl. ¶¶12, 40.

II. THE PARTIES, CLASS, AND AGGRIEVED EMPLOYEES

A. Plaintiff and Defendant

Safran Cabin is a supplier of airplane cabin interiors for business and military aircraft with approximately four operational locations throughout California at issue during the Class Period. Plaintiff worked as an hourly non-exempt technician for Safran Cabin (formerly known as C&D Zodiac, Inc., which was informally referred to as “Zodiac Aerospace”) from approximately March 14, 2016, until approximately February 18, 2020.

Plaintiff worked primarily as an installation technician in the building and fitting of aircraft

interiors. He worked in Orange County at the Cypress facility in the State of California. Khoury Decl. ¶13, Exh. 1 - Declaration of Vernell Battle, Jr. filed August 11, 2022 (ROA #138), (“Battle Decl.”), ¶13.

B. The Class and Aggrieved Employees

The Class Members are, all individuals employed by Safran Cabin, Inc., in the State of California as an hourly non-exempt employee at any time during the Class Period of May 26, 2016, through January 29, 2022. The PAGA Members are, all individuals employed by Safran Cabin, Inc. in the State of California as hourly non-exempt employees at any time during the PAGA Period of April 28, 2019, through January 29, 2022 (“PAGA Period”). Khoury Decl. ¶14.

Plaintiff generally performed installation work for aircraft interiors; however, there are multiple job titles and positions within the Class, including administrative and accounting positions, sales positions, and assemblers and machinists. Class Members were hourly paid, non-exempt employees and typically worked a schedule of five (5) days per week, eight (8) hours per day, for a total of approximately forty (40) hours per week. Khoury Decl. ¶15.

III. PROCEDURAL HISTORY, INVESTIGATION AND DISCOVERY

Plaintiff’s counsel formally requested his personnel file and obtained job applications, work schedules, and time and pay records. Safran Cabin produced the requested documents. On April 28, 2020, Plaintiff filed the PAGA Notice with the Labor and Workforce Development Agency (“LWDA”) advising of his intent to pursue claims on behalf of the PAGA Members. Khoury Decl. ¶16.

On May 26, 2020, Plaintiff filed his initial Class Action Complaint, asserting claims for: (1) failure to pay minimum and/or regular wages for all hours worked (Cal. Labor Code §§ 1194, 1194.2, 1197.2); (2) failure to pay overtime wages (Cal. Labor Code §§ 510, 1194); (3) failure to provide compliant meal periods (Cal. Labor Code §§ 226.7, 512, and IWC Wage Orders); (4) failure to provide accurate itemized wage statements (Cal. Labor Code § 226); (5) failure to timely pay all wages owed at termination or separation from employment (Cal. Labor Code § 203); and (6) unfair competition and restitution for unpaid wages (Cal. Business & Professions Code §§17200 et seq.). Khoury Decl. ¶17.

On July 8, 2020, Plaintiff filed his First Amended Class Action Complaint and Representative Action, adding claims for PAGA civil penalties for all underlying Labor Code claims alleged in his initial complaint (specifically, Counts 7-10 of the First Amended Class Action Complaint and

Representative Action). Khoury Decl. ¶18.

On October 22, 2021 Plaintiff filed an Amended PAGA Notice with the LWDA. On January 18, 2022, Plaintiff filed his Second Amended Class Complaint and Representative Action, the operative complaint in this Action, adding the additional PAGA claims set forth in the Amended PAGA Notice for alleged violation of Labor Code 2802, rest period violations, and failure to maintain accurate records (Labor Code section 1174), and adding a class claim for rest period violation. Khoury Decl. ¶19.

Plaintiff served Safran Cabin with formal discovery including special interrogatories, requests for admissions, and requests for production of documents. The Parties engaged in extensive meet and confer efforts and decided to attempt to resolve Plaintiff's claims through mediation. Khoury Decl. ¶20.

The Parties agreed to mediate Plaintiff's claims and participated in mediation on September 7, 2021, with Mark S. Rudy, Esq. In preparation for mediation, Plaintiff requested and Safran Cabin informally produced documents and data for the Class Period, including: (1) employee handbooks and policies; (2) the number of current and former employees; (3) aggregate number of Workweeks; (4) aggregate number of pay periods; (5) timekeeping records for ten percent of the Class; (6) amount of meal and rest period premium wages paid; (7) itemized wage statements; and (8) exemplar arbitration agreements/class action waivers signed by Class Members. Khoury Decl. ¶21.

IV. PLAINTIFF'S CONTENTIONS AND DEFENDANT'S DEFENSES

Plaintiff contended that for the majority of the class period he and non-exempt employees were underpaid due to Safran Cabin's non-neutral time rounding practice. Employees were allowed to clock in up to seven minutes before the start of their scheduled shift. This pre-shift time was not considered and wages were paid only from the scheduled start time. There was no offsetting "window" after the start of the scheduled shift. Plaintiff alleged that over time, the use of this non-neutral rounding system resulted in underpaid minimum, regular, and overtime wages for hundreds of hours for all impacted employees using the same clock system. Khoury Decl. ¶22. See, *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 578; *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 847 [a rounding system must be fair and neutral on its face and as applied – over a period of time – in order to lawfully comply with California's requirement that workers be paid for "all hours worked."]; *Leyva v. Medline Indus.* (9th Cir. 2013) 716 F.3d 510, 512; *Corbin v. Time Warner Entertainment-Advance/Newhouse Partnership*

(9th Cir. 2016) 821 F.3d 1069, 1077 [“If an employer’s rounding practice does not permit both upward and downward rounding, then the system is not neutral.”]; *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889, 701, n.4; and *Silva v. See’s Candy Shops, Inc.* (2016) 7 Cal. App. 5th 235, 251.

Safran Cabin contended its rounding practice was for the convenience of the employees and that employees were specifically instructed not to work during the pre- shift window and used those minutes for personal tasks. Accordingly, Safran Cabin contended its rounding system operated neutrally and did not result in any systematic underpayment of its employees.

Plaintiff also contended Safran Cabin’s policies resulted in non-compliant first and second meal periods and rest periods as required under Labor Code sections 226.7 and 512, and Industrial Welfare Commission Wage Order 1-2001, sections 11 and 12 and that Safran Cabin, for a portion of the class period, employed an auto-deduct system which did not accurately record the meal period entries of its employees, resulting in potential liability for PAGA penalties. Review of the sampled time punch records documented 79% of shifts were subject to the auto deduct procedure which was utilized from May 26, 2016 through October 24, 2018 involving 477,253 shifts. Alleged violations relating to late or short meal breaks and missing breaks in the remaining shifts in this time period produced an 8% meal period “violation” rate. The shifts, after the auto deduct practice ceased on October 24, 2022 through the end of the class period (397,363), were analyzed and produced an alleged aggregate 16% violation rate for short, late or missed meal periods. Khoury Decl. ¶23.

With respect to the meal period auto deduct alleged violations, Safran Cabin asserted that the employees at issue were on a “bell” system where all work stopped for grouped employees at the same time and that this negated the requirement that such meal periods be recorded.¹ This simultaneous initiation of meal periods was confirmed by Plaintiff’s damage consultant after review of data provided.

In conjunction with a review of the sampled data Plaintiff’s consultant also analyzed whether the Labor Code section 226.7 meal period premium payments (\$582,800) were made using the appropriate

¹ IWC Order No. 1-2002 (7). RECORDS (A) Every employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. **Meal periods during which operations cease and authorized rest periods need not be recorded.**

1 hourly rate pursuant to *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021). This required
2 determining how many shifts involved pay periods in which shift premiums were recorded. The records
3 revealed that very few of the premium payments would qualify and that the aggregate “underpayment”
4 extrapolated to the class pay periods totaled less than \$400.

5 With respect to Plaintiff’s claims relating to missed second meal periods in shifts of more than 10
6 hours, Safran Cabin produced compliant second meal period policies and waivers which it asserted
7 relieved it from any liability for this claim. Khoury Decl. ¶24.

8 Plaintiff also contended Safran Cabin had a class wide policy which failed to authorize or permit
9 non-exempt employees to receive rest periods of at least ten minutes per four (4) hours, or major
10 fraction, worked, and failed to pay rest period premium wages equal to one (1) hour of pay at the regular
11 rate of compensation for each workday a compliant rest period was not authorized or permitted. Khoury
12 Decl. ¶25.

13 Safran Cabin argued it followed California law at all times by authorizing and permitting rest
14 breaks, not discouraging employees from taking them, and that to the extent any employees missed a
15 break, it was voluntarily. Khoury Decl. ¶26. It also argued that certification would be very problematic
16 given its compliant policies and the fact that rest periods were not required to be recorded and that it
17 would be entitled to individual inquiries which would defeat class certification. *Id.*

18 Plaintiff also contended, based on the underlying claims, Safran Cabin’s wage statements did not
19 display all required information, including actual hours worked, and rates earned for all hours worked.
20 Labor Code §226. Plaintiff also alleged derivative penalties pursuant to Labor Code section 203 for
21 separated employees who were not paid all wages owed at termination. Finally, Plaintiff sought PAGA
22 civil penalties related to the Labor Code violations alleged and civil penalties for failure to Reimburse
23 Business Expenses (Labor Code Sections 2800, 2802). Khoury Decl. ¶27.

24 **V. MEDIATION**

25 With significant investigation, research, and consultant’s analysis of the voluminous data, and a
26 Class-wide damage model, the Parties attended mediation with Mark S. Rudy, Esq. on September 7,
27 2021, and engaged in serious and informed arm’s-length negotiations. By the end of the day, the Parties
28 reached an agreement in principal on a proposed settlement. Thereafter the parties continued

1 negotiations with the assistance of the mediator and finally signed a Memorandum of Understanding
2 on January 18, 2022. The Parties subsequently negotiated additional settlement terms and entered into
3 a formal Agreement. Khoury Decl. ¶28. Pursuant to this Court’s October 12, 2022 ruling on the Motion
4 for Preliminary Approval, the Parties thereafter entered into an addendum to that Agreement. *Id.*

5 **VI. SUMMARY OF PROPOSED SETTLEMENT**

6 **A. Settlement Terms**

7 Safran Cabin will pay the Gross Settlement Amount (GSA) of \$5,455,000.00, which includes: (a)
8 attorneys’ fees of \$1,472,850.00² to compensate Class Counsel for all work performed and remaining
9 to be performed securing final Court approval [apportioned 66 2/3% to Cohelan Khoury & Singer and
10 33 1/3% to Davtayan Law Firm, Inc., with Plaintiff’s consent. Khoury Decl. ¶31]; (b) litigation costs of
11 \$15,956.37; (c) Class Representative Service Award payment of \$7,500.00; (d) \$250,000.00 in PAGA
12 Payment (\$187,500.00 to the LWDA (75%), and \$62,500.00 to PAGA Members (25%); and (e)
13 Settlement Administration Costs estimated to be \$19,075.00. Safran Cabin will pay the employer’s
14 share of payroll taxes in addition to the GSA. Khoury Decl. ¶29.

15 After Court-approved deductions, the estimated \$3,689,618.63 Net Settlement Amount (NSA)
16 will be distributed pro-rata to Class Members based on the number of Workweeks worked during the
17 Class Period. Khoury Decl. ¶32; Simpluris Decl. ¶14.

18 The 2,139 Participating Class Members will receive an average estimated payment of \$1,724, and
19 highest payment of \$3,557, upon Approval. Plaintiff’s estimated individual settlement amount is
20 \$2,347. (rounded to nearest dollar.) Khoury Decl. ¶33; Simpluris Decl. ¶14.

21 The 2,140 PAGA Members will receive a share of the \$62,500 PAGA Payment based on weeks
22 worked during the PAGA Period, even if they request exclusion, as no right exists to opt out of a PAGA
23 Settlement. Khoury Decl. ¶34; Simpluris Decl. ¶¶12, 13.

24 No portion of the GSA will revert to Safran Cabin under any circumstances. After 180 days of
25 issuance, the uncashed checks shall be voided and the principal for those uncashed checks shall be

26 ² The Settlement allows Class Counsel to request up to \$1,818,333.33, (one-third of GSA), in attorneys’
27 fees. Class Counsel, after a review of attorney time records in this matter, has unilaterally chosen to
28 reduce the request to \$1,472,850.00, 27% of the NSA, with the \$345,483.33 made available to the
Class. Khoury Decl. ¶30.

transmitted to the State of California Controller, Unclaimed Property Division for further handling on behalf of the Class Member whose check was voided. Khoury Decl. ¶35.

Settlement payments are characterized as 40% as penalties and 40% as interest (Form 1099), 20% wages (W-2), with PAGA Payments as penalties (Form 1099). Khoury Decl. ¶36.

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

1. Preliminary Approval and Class Notice

On January 10, 2023, the Court preliminarily approved the proposed Settlement (ROA #211). Khoury Decl. ¶37. On March 23, 2023, after searching the National Change of Address database, and updating Class Member addresses, and due to delays caused by data resolution issues, the Settlement Administrator mailed a Notice of Class Action Settlement (“Settlement Notice”) to all Class Members. The Settlement Notice informed them of (1) the pendency of the Action; (2) proposed settlement terms; (3) automatic payment of Settlement shares if exclusion not requested; (4) estimated amount each Participating Class Member will receive based on eligible weeks worked during the Class and PAGA Period; (5) released claims; (6) right to object or request exclusion, and (7) date, time and place of the final approval hearing. Khoury Decl. ¶38; Simpluris Decl. ¶9, Exh. A.

As set forth above, on April 26, 2023, the Court approved the mailing of a Notice of Erroneous Receipt of Class Action Settlement Notice to 239 individuals who received the Settlement Notice but were not, in fact, Class Members. Khoury Decl. ¶39; Simpluris Decl. ¶10, Exh. B.

2. The Class’ Response to the Notice

The Class response to the Settlement was extremely favorable. To date, no objections and only one request for exclusion was received. Khoury Decl. ¶¶12, 40; Simpluris Decl. ¶¶16, 17.

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 overwhelmingly approved the Settlement.

///

1 **VII. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

2 The Preliminary Approval Motion thoroughly analyzed the terms of the proposed Settlement in
3 light of *Dunk*, (establishing factors supporting a presumption of fairness); and *Kullar v. Foot Locker*
4 *Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008), (establishing factors determining whether a settlement
5 is in the Class’ best interest, is adequate, and reasonable). The Court carefully reviewed and ruled on
6 these analyses and they are fully incorporated here by reference. *See*, Preliminary Approval Motion, at
7 10:16 – 21:8 (ROA #136), Supplemental Briefing at 1:24 – 4:10 (ROA #185), and Order Granting
8 Preliminary Approval (ROA #211) at ¶3.

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

11 **VIII. ATTORNEYS’ FEES ARE REASONABLE AND SHOULD BE AWARDED**

12 Class Counsel requests attorneys’ fees of \$1,472,850.00, twenty-seven percent (27%) of the GSA,
13 and actual litigation costs of \$15,956.37. To bring this matter to final approval, Class Counsel will have
14 expended 423.3 hours, a lodestar of \$305,610. Khoury Decl. ¶42, Exh. 2 – Consolidated Summary of
15 Class Counsel’s Time & Costs; Exh. 3 – Attorney Time Records; Exh. 4 – Itemized Costs; Declaration
16 of Emil Davtyan, (“Davtyan Decl.”), ¶¶11, 12.

17 **A. The Results Achieved Support the Fee Request**

18 The most important factor to consider in granting a fee award is the success obtained. *In re*
19 *Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475 (RCx), 2005 U.S. Dist. LEXIS
20 13627, *27 (C.D. Cal. June 10, 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). An excellent
21 result was achieved, enforcing the law and providing benefits to the Class.

22 Although Class Counsel is in only requesting \$1,472,850.00 in fees, the Class was provided notice
23 that Counsel would request an award of attorneys’ fees up to one-third of the GSA, \$1,818,333.33.
24 Simpluris Decl. ¶9, Exh. A, ¶9. No Class Member objected to the attorneys’ fees award. *Id.* at ¶17.

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

26 The California Supreme Court recognized it is appropriate to award attorneys’ fees based on a
27 percentage of the total value of benefits to Class Members from the settlement, also known as the
28 “common fund” method. *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503 (2016); *Serrano*

1 v. Priest, 20 Cal.3d 25, 34 (*Serrano III*) (1977); *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769
2 (9th Cir. 1977). (California courts look to federal courts analyzing class issues. *Wershba v. Apple*
3 *Computer, Inc.*, 91 Cal. App. 4th 224, 239-40 (2001)).

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

7 A common fund fee award is especially appropriate here as it spreads the attorneys’ fees among
8 all beneficiaries of the fund; aligns incentives between counsel and the class; better approximates
9 market conditions in a contingency case; and encourages class counsel to seek early settlement and
10 avoid unnecessarily prolonging litigation, which prevents unnecessary use of judicial and party
11 resources, delay in correcting alleged unlawful practices, and delay in compensating the class. *Laffitte*,
12 1 Cal.5th at 503.

13 With the guiding principle that early class action settlements are favored and may not diminish
14 an award of attorneys’ fees, Class Counsel submits the fee request should be awarded, based on the
15 risks and complexities of prosecuting the action, the contingent nature of any fee, their experience in
16 handling cases of this type, fees commonly awarded in these cases, and vindication of the Class’ rights.

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

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

28 ///

C. Twenty-seven Percent (27%) of the Common Fund is a Reasonable Fee

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

Counsel’s request for 27% of the common fund is in the mid-range of awards which commonly range from 20% to 50%, and is fair compensation for undertaking complex, risky, litigation on a contingent basis, and for the result achieved for the Class. Khoury Decl. ¶43.

Some courts have found an award of 33% of a common fund is the “benchmark” in California. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist. LEXIS 6049, *14 (S.D. Cal. Jan. 14, 2013) (“These percentages compare favorably with” the California (33%) benchmark.); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMc), 2013 U.S. Dist. LEXIS 163118, at *7 (S.D. Cal. Nov. 14, 2013). Class Counsel’s fee request consistent with awards in similar California cases, and market rates, and is reasonable. Khoury Decl. ¶44. Cohelan Khoury & Singer has routinely been awarded attorneys’ fees of one-third of a common fund in wage and hour class and PAGA actions. *Id.*

In very large settlements, courts have awarded Cohelan Khoury & Singer fees of 30%. *Gallen v. Gambro Healthcare, Inc.*, Orange County Superior Court, Case No. 04CC00571 [Hon. Nancy Wieben Stock – approving attorneys’ fees of \$5,250,000, 30% of \$17,500,000 settlement in Class action]; and *Fairley v. Kaiser Foundation Hospitals*, Alameda County Superior Court, Case No. RG19021099 [Hon. Evelio Grillo – approving attorneys’ fees of \$6,555,000, 30% of \$21,850,000 settlement in Class and Representative action]. Khoury Decl. ¶45.

D. A Lodestar Cross-Check is Not Required

Many Courts decline to consider a lodestar cross-check. 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).

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. Khoury Decl. ¶¶3-9; Davtyan Decl. ¶¶4-7. Cohelan Khoury & Singer’s practice is limited to litigating class and representative actions on behalf of employees and consumers, and has been appointed Class Counsel or co-Class Counsel in over 300 such

cases. Khoury Decl. ¶¶5-9. Mr. Davtyan has devoted a significant portion of his practice to employment law and class and representative actions, and has been appointed counsel for plaintiff in numerous class and representative wage and hour class actions. Davtyan Decl. ¶¶5-6.

Class Counsel's skill and experience support their hourly rates: Cohelan Khoury & Singer: Founding Partners Isam C. Khoury - \$925; Managing Partner, Michael D. Singer - \$900; Former Partner, J. Jason Hill - \$700; Associate, Marta Manus - \$700; Davtyan Law Firm, Inc.: Founder and Managing Attorney, Emil Davtyan - \$695. These rates are in line with those typically approved in California wage-and hour class action litigation. Indeed, the Laffey Matrix would actually provide for a rate increase. Khoury Decl. ¶52, Exh. 5 - Laffey Matrix.

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

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

G. Lodestar Multiplier

When a lodestar is used it may be enhanced by a multiplier. *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 a Court may consider other factors it deems important in setting the multiplier. *Id.* at 40; *Ketchum, supra* at 1139.

In *Lealao*, the Court held a trial court's refusal to enhance the lodestar was an abuse of discretion, remanded for consideration of the original 8.0 request, and opining a multiplier more than 3.5 was reasonable. *Lealao, supra*, 82 Cal. App. 4th at 24, 52. See *SternwestCorp. v. Ash*, 183 Cal.App.3d 74, 76 (1986) (case remanded with directions "to enhance the lodestar award...");

A 4.8 multiplier is reasonable and less than used in other cases. Multipliers may range "from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc., supra*, 91 Cal. App. at 255. *In re Linerboard*

1 *Antitrust Litig., No. MDL 1261*, 2004 U.S. Dist. LEXIS 10532, *16 (E.D. Pa. June 2, 2004) (finding
2 from 2001 to 2003, a 4.35 average multiplier in common fund cases).

3 Within the past several years, Cohelan Khoury & Singer has been awarded multipliers equal to
4 and higher: *McGrath v. Wyndham Resort Dev. Corp.*, S.D.Cal. Jan. 30, 2018, No. 15cv1631 JM (KSC),
5 2018 U.S.Dist.LEXIS 16095*24 [Hon. Jeffrey T. Miller – approving attorneys’ fees of \$2,416,666.67
6 and **4.8 multiplier**, one-third of \$7,250,000 settlement in a pre-certification wage and hour class
7 action]; *Rodriguez v. Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court,
8 Case No. BC541313 [Hon. Kenneth Freeman – approving attorneys’ fees of \$2,000,000 and **5.05**
9 **multiplier**, one-third of \$6,000,000 settlement in a pre-certification wage and hour class action]; and,
10 *De Benning v. Costco Wholesale Corporation*, Sacramento County Superior Court, Case No. 2021-
11 00309030 [Hon. Jill H. Talley – approving attorneys’ fees of \$3,000,000 and **7.99 multiplier**, one-third
12 of \$9,000,000 settlement in a pre-certification wage and hour class action]. Khoury Decl. ¶49.

13 To the extent a lodestar could be used to set the fee, a multiplier is supported by the difficulty of
14 the questions involved, the skill displayed by Class Counsel in addressing them, and the contingent
15 nature of any recovery.

16 **H. Litigation Expenses Are Reasonable**

17 The Settlement allows Class Counsel to request up to \$20,000.00 in costs. Counsel seeks
18 reimbursement of actual costs of \$15, 956.37. Khoury Decl. ¶53, Exh. 4 – Costs; Davtyan Decl. ¶13.

19 **IX. THE PROPOSED PAGA PAYMENT IS REASONABLE**

20 The settlement of PAGA penalties for \$250,000, of which \$187,500 (75%) will be paid to the
21 LWDA and \$62,500.00 (25%) to PAGA Members, is reasonable and appropriate. The Parties
22 negotiated a good faith amount for PAGA penalties, which was not the result of self-interest at the
23 expense of Class Members. Khoury Decl. ¶54. Where a “good faith amount” is negotiated and “there
24 is no indication that this amount was the result of self-interest at the expense of other Class Members,”
25 it is generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 U.S.
26 Dist. LEXIS 33900, at *25 (N.D. Cal. Apr. 3, 2009).

27 The amount allocated to PAGA is within the range, or higher, than other settlements. See *Magadia*
28 *v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.*,

2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in settlement of \$900,000), recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (\$10,000 PAGA penalties, \$1.25m settlement); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, *5-6 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA penalties, \$2.5m settlement); *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. 2012) (\$10,000 PAGA, \$3.7m settlement).

Class Counsel provided the LWDA with the Motion for Preliminary Approval, the Settlement Agreement, and Supplemental Briefing, including the addendum to the Settlement Agreement. The LWDA raised no objection. Khoury Decl. ¶55, Exh. 7 – August 11, 2022, December 22, 2022 and January 6, 2023 LWDA Confirmations of Receipt. The LWDA was served with this Final Approval Motion when filed. Khoury Decl. ¶58, Exh. 7 – LWDA Confirmation.

X. THE SERVICE AWARD IS REASONABLE AND SHOULD BE AWARDED

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

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

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

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

1 *Earley* court contended this risk was balanced by potential reward.

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

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

9 Mr. Battle more than satisfied his obligation to be available when asked and work with counsel
10 to protect the interests of the Class and place them above his own. Accepting the risk of judgment for
11 Defendant’s costs, the potential loss of employment opportunities, or achieving compensation for the
12 Class, are each sufficient to support a Service Award of \$7,500.00. Khoury Decl. ¶56, Exh 1 – Battle
13 Decl. ¶¶5-14. Together, they are more than sufficient.

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

17 The Class received notice Plaintiff would request \$7,500. Simpluris Decl. ¶9, Exh. A, ¶9. No
18 Class Member objected. *Id.* at ¶9; Khoury Decl. ¶57.

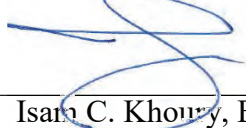
19 **XI. CONCLUSION**

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

23 Respectfully submitted,

24 COHELAN KHOURY & SINGER
25 DAVTYAN LAW FIRM, INC.

26 Dated: May 5, 2023

27 By:  _____
Isaac C. Khoury, Esq.
Attorneys for Plaintiff Vernell Battle, Jr., on behalf of
28 himself and all others similarly situated