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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JULIO OCHOA, individually and on behalf of all others similarly situated, Plaintiff, v. SPEECH AND LANGUAGE DEVELOPMENT CENTER, INC.; and DOES 1 through 25, inclusive Defendants.	Case No. 30-2020-01143577-CU-OE-CXC ASSIGNED FOR ALL PURPOSES TO: The Honorable Lon F. Hurwitz Department CX103 **CLASS ACTION** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT** **Hearing Set by Court Order - ROA #194** Date: May 17, 2024 Time: 1:30 p.m. Dept: CX 103 Judge: Hon. Lon F. Hurwitz Complaint filed: June 18, 2020 Trial date: Not set

TABLE OF CONTENTS **PAGE**

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

TABLE OF AUTHORITIES

PAGE

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

STATUTES AND REGULATIONS

PAGE

COHELAN KHOURY & SINGER
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San Diego, CA 92101

MISCELLANEOUS AUTHORITIES

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I. INTRODUCTION

Plaintiff Julio Ochoa ("Plaintiff") seeks final approval of a $750,000 non-reversionary wage and hour class and Private Attorneys General Act (PAGA) settlement for 271 non-exempt employees of Speech and Language Development Center, Inc. ("SLDC" or "the School") who worked any time from April 6, 2016 to March 13, 2020 ("Class Members"). Declaration of Jeff Geraci, ("Geraci Dec."), ¶10. (A review of four post-notice requests to be included found three class members in addition to the original 268. Simpluris Decl. ¶¶6, 14.)

With no objections or requests for exclusion, support for the Settlement is strong. Participating Class Members/Aggrieved Employees will receive an average estimated payment of $1,698, and highest payment of $3,380 (rounded to nearest dollar). Geraci Decl. ¶¶11, 31; Declaration of Lisa Pavlik on behalf of Simpluris, Inc., ("Simpluris Decl."), ¶¶11, 12, 17.

II. THE PARTIES

A. Defendant

Defendant is a non-profit school and therapy center in Buena Park serving children and young adults with language, learning, emotional, social and neurological needs. Students have a broad scope of diagnoses, including Autism Spectrum Disorder. Two speech therapists began working with children in 1955, the School steadily grew, and incorporated under its current name in 1963. Its services include transportation by bus to and from school. Geraci Dec ¶12.

Due to the COVID-19 Pandemic, the School was closed by order of the Governor from March 13, 2020, until it slowly started to reopen in late August 2020. Geraci Dec ¶13.

B. Plaintiff, Class, and Aggrieved Employees

Julio Ochoa worked for the School as a Special Education Paraprofessional, sometimes referred to as Aide or Bus Aide, from August 2012 through March 2020. Geraci Dec. ¶14; Declaration of Julio Ochoa, ("Ochoa Decl."), ¶2.

The Class consists of all non-exempt SLDC employees in California at any time from April 6, 2016 through March 13, 2020. Geraci Decl. ¶15. Aggrieved Employees, a subgroup of the Class with PAGA claims, are all non-exempt SLDC employees in California at any time from April 6, 2016 through March 13, 2020. Geraci Decl. ¶16.

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San Diego, CA 92101

III. PROCEDURAL HISTORY, INVESTIGATION AND INFORMAL DISCOVERY

On March 31, 2020, Plaintiff's counsel formally requested his personnel file and obtained job applications, work schedules, timesheets, and bi-weekly earnings statements. Geraci Dec. ¶17. Defendant produced the requested documents April 30, 2020. On May 13, 2020, Plaintiff filed charges with the Labor and Workforce Development Agency (LWDA). On June 18, 2020, Plaintiff filed the above-captioned Action. *Id*.

Plaintiff filed a First Amended Class Action Complaint (FAC) adding PAGA claims on July 20, 2020. The FAC alleged failure to provide (1) minimum and overtime wages (§1194); (2) meal and rest periods (§226.7); (3) timely final wages (§203); (4) accurate wage statements (§226); and violated the (5) Unfair Competition Laws ("UCL") (Bus. & Prof. Code §17200); and, (6) PAGA (§2699 et seq.) (citations to Labor Code, except UCL) Geraci Dec. ¶18.

After receiving LWDA charges and being served with the Action, Defendant retained a new payroll provider and revised its policies and procedures to, among other things, automatically pay premium wages for noncompliant meal periods, and to correctly calculate overtime wages for employees working at two different rates. Geraci Dec. ¶19.

The Parties agreed to attend mediation. Plaintiff requested and SLDC produced all time and pay data for a random 10% sample of the class, along with policy documents governing timekeeping, rounding, rest and meal periods, and payment of wages during the class period. Defendant also provided numbers of current and former Class and Aggrieved Employees, shift lengths, average regular rate, and meal period premiums paid, which were compared to, and confirmed by, an analysis of the data sample. Geraci Dec. ¶20.

IV. PLAINTIFF'S CONTENTIONS AND SLDC'S DEFENSES

Aides monitor and assist students, on the bus, on campus, and in the classroom. Each student is assigned at least one aide and staff to student ratio ranges from 1:1 to 1:3 for higher functioning students. About one-third of aides were paid different hourly rates depending on whether they were assisting students on the bus or in the classroom. Geraci Dec. ¶21.

Plaintiff contended the nature of caring for special needs students resulted in rest and meal period violations, and that meal violations were reflected in SLDC's records. Plaintiff also

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San Diego, CA 92101

contended SLDC did not correctly calculate overtime wages for employees working at two different hourly rates during a pay period, and paid based only on the lower "bus" rate. Plaintiff also alleged Defendant paid wages on a rounded, rather than actual time, resulted in underpayment of wages. As a result of these violations, Plaintiff contended SLDC did not issue accurate wage statements, and did not pay all final wages when due. Geraci Dec. ¶22.

The School contended, while it ensured that appropriate care and education for students was provided at all times, it had compliant rest and meal policies, adequate staffing and procedures to ensure breaks were taken, and to the extent breaks were not taken, or not accurately recorded, those were employee choices. Defendant also contended its rounding policy was facially neutral and resulted in no loss of wages. The School acknowledged a period of time overtime was calculated at the lower of two rates, but contended this effected less than one-third of employees and had little impact because they worked a negligible amount of overtime. Geraci Dec. ¶23.

Defendant emphasized that as soon as the School became aware of alleged non-compliance, it reviewed and corrected all alleged infractions and paid Class Members properly, including by providing premium wages if compliant rest or meal periods were not provided. Geraci Dec. ¶24.

V. MEDIATION

With substantial investigation, research, and analysis of data by a consultant, and a Class-wide damage model, the Parties mediated with Hon. Carl West (Ret.) on April 20, 2021, engaged in serious and informed arms'-length negotiations, and by day's end, reached agreement on principle settlement terms. The Parties continued to negotiate and entered into a Settlement Agreement and Release of Class and Representative Action. Geraci Dec. ¶25.

After seeking preliminary approval of the settlement, reviewing comments from and engaging in discussions with the Court, the Parties entered an Amended Settlement Agreement and Release of Class and Representative Action, (ROA #137), and later entered a First Amendment to Settlement Agreement (ROA #174) (together, the "Settlement Agreement"). Geraci Dec. ¶25.

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VI. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

Subject to Court approval, SLDC will pay the maximum Gross Settlement Amount ("GSA") of $750,000, which includes: (a) attorneys' fees of $250,000 (one-third GSA) [apportioned 50/50 between Class Counsel with Plaintiff's written consent. Geraci Decl. ¶27]; (b) actual litigation costs of $9,976.46; (c) Class Representative Service Payment of $5,000; (d) PAGA Payment of $25,000 [$18,750/75% to California Labor and Workplace Development Agency (LWDA); $6,250/25% to Aggrieved Employees]; and (e) Settlement Administration costs of $6,000. SLDC will pay the employer's share of payroll taxes in addition to the GSA. Geraci Decl. ¶26; Simpluris Decl. ¶16.

After Court-approved deductions, the estimated Net Settlement Amount ("NSA"), $454,023.54, will be distributed pro rata to Participating Class Members by dividing the number of weeks each Participating Class Member worked during the Class Period by the number of Work Weeks all Participating Class Members worked during the Class Period and multiplying that number by the Net Settlement Amount. Geraci Decl. ¶28; Simpluris Decl. ¶17.

Aggrieved Employees will divide 25% of the PAGA payment, $6,250, based on number of Pay Periods worked during the PAGA Period. Geraci Decl. ¶29; Simpluris Decl. ¶16.

Settlement payments are allocated 10% to wages, with payroll deductions taken and IRS W-2 Forms issued, and, 45% each to interest and penalties with IRS 1099 Forms issued. After 180 days of issuance, uncashed checks will be sent to the California Controller, Unclaimed Property Division in the name of Class Members whose checks were voided. Geraci Decl. ¶30.

Participating Class Members (all of whom are also/Aggrieved Employees) can expect to receive an average estimated payment of $1,698, with highest payments of $3,380 (rounded to nearest dollar). Simpluris Decl., ¶17; Geraci Decl. ¶31.

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

1. Preliminary Approval and Class Notice

The Settlement was preliminarily approved on January 4, 2024 (ROA #194). Geraci Decl. ¶32. On January 10, 2024, after receiving a data file from Defendant, and searching the

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San Diego, CA 92101

National Change of Address database and updating Class Member addresses, the Settlement Administrator mailed the court-approved Notice of Class Action Settlement, Change of Address Form, Request for Exclusion Form, and Objection Form, (collectively, "Notice Packet"), to 268 Class Members, informing them of (1) the pendency of the Action; (2) proposed settlement terms; (3) automatic payment of Settlement shares if exclusion not requested; (4) released claims; (5) right to object or request exclusion, and (6) and the date, time and place of the final approval hearing. Geraci Decl. ¶33; Simpluris Decl. ¶¶6-8, Exh. A.

2. The Class Response to the Settlement

The Class response to the Settlement was extremely favorable. No Class Member submitted an objection to the Settlement or requested exclusion. Geraci Decl. ¶¶11, 34; Simpluris Decl. ¶¶11-12.

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

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

C. Released Claims and Effective Date

Released Class Claims are: "all claims, debts, liabilities, demands, obligations, damages, or causes of action of any kind alleged in the Complaint, or that could have been alleged based on the same operative facts alleged in the Complaint, and including claims under California Labor Code sections, 203, 204, 210, 226(a), 226.2(a)(2), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, the corresponding Wage Orders; and Business & Professions Code section 17200 et seq., from April 6, 2016 to March 13, 2020. The Released Class Claims specifically exclude claims for workers' compensation, unemployment and state disability insurance, claims under the Employment Retirement Income Security Act of 1974, and claims for previously vested benefits under Employer-sponsored benefits plan." ROA #174, ¶31.

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San Diego, CA 92101

Released PAGA Claims are "all claims for PAGA Penalties alleged in Plaintiff's May 13, 2020 PAGA Notice to the California Labor and Workforce Development Agency (LWDA), and includes claims under California Labor Code sections, 203, 204, 210, 226(a), 226.2(a)(2), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2699(f), 2699.3, from April 6, 2019 through March 13, 2020." ROA #174, ¶32.

Effective Date means "the earlier of (a) if any timely objection is filed and not subsequently withdrawn, the 65th day after the Court enters an order granting final approval of the Agreement; or, (b) if any timely appeal is filed, the date it is resolved (or withdrawn), or; (c) if no timely objection is filed, or if all objections are withdrawn, the date which the Court enters an order granting Final Approval and entering Judgment. ROA #174, ¶15.

Plaintiff agrees that upon the Effective Date, the General Release shall be effective and he shall have no further claims against the Released Parties. Upon the Effective Date, all Participating Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have released the Released Parties from the Released Class Claims and Released PAGA Claims as defined in Paragraphs 31 and 32, respectively. ROA #174, ¶50.

The Settlement Payments shall be paid to Participating Class Members specifically in exchange for the release of the Released Parties. However, the releases shall be effective as to all Class Members who have not opted out, regardless of whether they subsequently refuse their portion of the Settlement Payment, claim not to have received it, or fail to negotiate the settlement check(s) from the Claims Administrator. ROA #174, ¶50.

VII. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Preliminary Approval Motion analyzed the Settlement in light of *Dunk's* factors supporting a presumption of fairness, and the factors determining whether a settlement is in the Class' best interest, and is adequate and reasonable, under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008). The Court carefully reviewed and ruled on these analyses and they are incorporated here by reference. *See*, Memorandum of Points an Authorities in support Preliminary Approval Motion filed March 24, 2022 (ROA #73) at 8:13 – 13:17, and January 4, 2024 Order Granting Preliminary Approval of Class Action Settlement (ROA #194), at ¶3.

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

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

VIII. ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE AWARDED

Class Counsel requests attorneys' fees of $250,000.00, one-third of GSA, and litigation costs of $9,976.46. Counsel have expended 253.2 hours, a $180,498 lodestar. Geraci Decl. ¶¶36, 37, Exh. 1 –Class Counsel's Summary of Time & Costs; Exh. 2 – Lodestar Task Sheet; Exh. 3 – Costs; Declaration of Jonathan M. Lebe, ("Lebe Decl."), ¶¶11-13; Exh. A – Costs.

A. The Results Achieved Support the Fee Request

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

The Class was provided notice of all settlement terms, including Counsel's request of award of attorneys' fees up to one-third of the GSA. Simpluris Decl. ¶8, Exh. A, Notice of Class Action Settlement ¶7. No Class Member objected to the attorneys' fees award. *Id.* at ¶12.

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

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

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

The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent, supra,* 557 F.2d at 769. "[O]ne who expends attorneys' fees in winning a suit which

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605 C Street, Suite 200
San Diego, CA 92101

creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." *Quinn v. State of California*, 15 Cal.3d 162, 167 (1995). The common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995).

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

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

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

C. One-Third 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

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San Diego, CA 92101

Report to the Advisory Committee on Civil Rules, 90 (1996) (attorneys' fees in class litigation "were generally in the traditional range of approximately one-third of the total settlement").

Counsel's request for one-third of the common fund is in the mid-range of awards which commonly range from 20% to 50%, and is fair compensation for undertaking complex, risky, litigation on a contingent basis, and for the result achieved for the Class. Geraci Decl. ¶38.

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 is reasonable, consistent with market rates and awards in similar California cases, including to Class Counsel, and including those made by this Court, and should be awarded. Geraci Decl. ¶¶38, 39.

D. Optional Lodestar Cross-Check Confirms Reasonableness of Fee

Courts are not required to cross-check a common fund fee award against a lodestar increased by a risk multiplier, and Courts may decline. See, *Glass v. UBS Financial Services, Inc.*, No. 06-4066-MMC, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 26, 2007); *Lopez v. Youngblood*, No. 07-0474-DLB, 2011 U.S. Dist. LEXIS 99289 (E.D. Cal. Sep. 1, 2011).

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

If a lodestar with a risk multiplier were used, rather than a common fund percentage, a 1.39 multiplier would be applied. ($250,000/$180,498 = 1.385). Class Counsel's work was reasonable and necessary and reflected in the excellent result achieved. Geraci Decl. ¶¶40, 41.

E. A Lodestar Cross-Check is Not Required

A lodestar cross-check is not required and a court may decline to perform one. There is "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." *Glass v. UBS Financial Services, Inc., supra,* at 8476. A "lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference." *Lopez v. Youngblood*, No. 07-0474-DLB, 2011 U.S. Dist. LEXIS 99289 (E.D. Cal. Sep. 1, 2011)

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).

Class Counsel's work to obtain a class settlement was reasonable and necessary and is reflected in the excellent result achieved for Class Members. Geraci Decl. ¶41, Exh. 1 - Consolidated Summary of Class Counsel's Time.

F. A Multiplier of the Lodestar Would Be Awarded

A lodestar may be enhanced by a multiplier for an appropriate fee award. *Serrano III*, 20 Cal.3d at 48. Factors determining level of enhancement include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Lealao* at 49. The list is not exhaustive, and the Court may consider other factors it deems important in setting the multiplier. *Id*. at 40; *Ketchum, supra* at 1139. "Multipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied." (Newberg on Class Actions §14.03 (4th ed. 2009)). Counsel pursued difficult claims, presented them with skill based on experience prosecuting employment class actions, and achieved an excellent result, on a contingent basis.

A 1.39 multiplier is reasonable and in line with those used in other cases, which may range "from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc., supra*, 91 Cal. App. at 255; *In re Linerboard Antitrust Litig., No. MDL 1261*, 2004 U.S. Dist. LEXIS 10532, *16 (E.D. Pa. June 2, 2004) (finding average multiplier awarded in common fund cases, 2001 to 2004, was 4.35). Class Counsel has been awarded greater multipliers in many cases. Geraci Decl. ¶42.

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San Diego, CA 92101

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

If a lodestar were used to calculate the fee award, a multiplier is supported by the difficulty of the questions involved, the skill displayed by Class Counsel in addressing them, the statutory employee protections enforced, and the contingent nature of any recovery.

G. 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, and an attorney's relevant area of expertise and customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632 (1998).

Class Counsel's skill and experience support their hourly rates and are in line with rates typically approved in California wage and hour class actions and previously awarded to Class Counsel by many courts. Cohelan Khoury & Singer's practice is limited to litigating class and representative actions on behalf of employees and consumers, and the firm has been appointed Class Counsel, or Co-Class Counsel, in over 300 such cases. Geraci Decl. ¶¶, 2-9, 46. Lebe Law, APLC prosecutes wage and hour class and representative employment actions in California and across the United States, and has been appointed co-class counsel for plaintiffs in numerous such actions. Lebe Decl. ¶¶7, 8, 15.

Class Counsel's skill and experience support their hourly rates: Cohelan Khoury & Singer: Managing Partner, Michael D. Singer - $995; Partner, Jeff Geraci - $850; Lebe Law:

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

Managing Attorney, Jonathan M. Lebe - $800; Associate, Zachary Gershman - $475. The Laffey Matrix provides for increased rates. Geraci Decl. ¶47, Exh. 4; Lebe Decl. ¶15, Exh. B.

H. Class Counsel's Total Hours are Reasonable

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

I. Litigation Expenses Are Reasonable

The Settlement provides up to $12,500 in costs. Counsel seeks $9,976.46 in reasonable and necessary actual costs. Geraci Decl. ¶48, Exh. 3 – Costs; Lebe Decl. ¶12, Exh. A– Costs.

IX. THE PROPOSED PAGA PAYMENT IS REASONABLE

After good-faith, mediated negotiations, the Parties allocated $25,000.00 to PAGA claims, $18,750.00 (75%) to the LWDA, and $6,250.00 (25%) to Aggrieved Employees. Where PAGA penalties are negotiated in good faith, with "no indication [the] amount was the result of self-interest at the expense of other Class Members," they are considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *24; *see, e.g., In re Nordstrom Com. Cases* (2010) 186 Cal. App. 4th 576, 579 (No abuse of discretion approving settlement allocating $0 to PAGA claims).

This allocation is within the range, or higher, than other settlements. See *Magadia 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, $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, $2.5m settlement); *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. 2012) ($10,000 PAGA, $3.7m settlement).

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The LWDA was provided with the Motion for Preliminary Approval, Supplemental Briefing and the Settlement Agreement and all Amendments. The LWDA raised no objection. Geraci Decl. ¶49, Exh. 5 – LWDA Confirmations of Receipt dated March 24, 2022, March 6, 2023, June 6, 2023 and November 27, 2023. The LWDA was served with this Final Approval Motion when filed. Geraci Decl. ¶52, Exh. 6 – LWDA Confirmation of Receipt.

X. THE SERVICE AWARD IS REASONABLE AND SHOULD BE AWARDED

Service awards "are fairly typical in class action[s]" and "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 came forward and spent time working on behalf of others, and perhaps most importantly, took risks those others are not willing to bear.

Class action plaintiffs, not class members, risk 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* (2000) 79 Cal.App.4th 1420, 1433. The *Earley* court contended this risk was balanced by potential reward. "While imposition of the entire cost burden on the named plaintiffs may have a chilling effect on the willingness of plaintiffs to bring class action suits, this effect easily may be outweighed by the potential recovery." *Id.* If "[t]hose who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful," how can that risk be offset? *Id.* An adequate Service Award.

The risk of judgment for Defendant's costs, alone, is sufficient to support a $5,000 Class Representative Service Award to Plaintiff.

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

Plaintiff protected the interests of the Class and placed them above his own: He accepted the risk of judgment for SLDC's costs and potential loss of future employment opportunities; He did not pursue individual claims, but represented other employees, but unlike them, he was required to release all claims of any kind. ROA #137, ¶18; Geraci Decl. ¶50.

The Class received notice Plaintiff requested $5,000 "to compensate Plaintiff for services undertaken on behalf of the Class." Simpluris Decl. ¶8, Exh. A, Notice of Class Action Settlement ¶7. No Class Member objected. *Id.* at ¶12; Geraci Decl. ¶51.

XI. CONCLUSION

Class Counsel respectfully requests the Court grant final approval of the Settlement, approve the Service Award, attorneys' fees and costs, and administration expenses as requested.

Class Counsel suggests a Final Accounting Hearing may be scheduled between January 24, 2025 and February 7, 2025.

Respectfully submitted,
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Dated: April 25, 2024

By: Jeff Geraci
Jeff Geraci
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