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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THOMAS HARDWICK AND CARA NOONE, on behalf of themselves and all others similarly situated, Plaintiff, v. HOOVESTOL, INC., a Minnesota corporation; 10 ROADS EXPRESS, LLC, a Delaware Limited Liability Company; and DOES 1through 10, inclusive, Defendants.	Case No. 20STCV19610 Assigned for All Purposes to: Hon. William F. Highberger **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 12, 2024 Time: 10:30 a.m. Dept: 10 Complaint Filed: May 21, 2020 FAC Filed: November 15, 2023

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I. INTRODUCTION

Plaintiffs Thomas Hardwick and Cara Noone ("Plaintiffs") seek preliminary approval of a wage and hour class action and Private Attorneys General Act ("PAGA") settlement achieved on behalf of all persons employed by Defendants Hoovestol, Inc. ("Hoovestol") and 10 Roads, LLC ("10 Roads") (collectively, Defendants") in California and classified as a non-exempt employee who worked as a truck driver during the Class Period (the "Class") and all persons employed by Defendants in California who worked during the PAGA Period (the "Aggrieved Employees").

After engaging in substantial discovery, extensive motion practice, a full-day mediation before experienced class action mediator Steve Pearl, a second full-mediation before experienced class action mediator Gig Kyriacou, and hard-fought negotiations, the parties agreed to a non-reversionary gross settlement amount of $495,000, exclusive of employer-side payroll taxes. The settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendants' potential defenses, as well as the expense, complexity, risks, and likely duration of continued litigation.

Subject to Court-approval, and after deductions for Settlement Administration Costs, Class Representative Service Payments, Class Counsel's attorneys' fees and costs, and PAGA payment, the remaining amount will be distributed to Class Members who did not opt-out of the Settlement as follows:

Gross Settlement Amount	$495,000
PAGA Allocation	$25,000
Administration Fees and Costs	$7,650
Class Representative Service Payments	Up to a total of $22,500
Attorneys' Fees	Up to $165,000
Attorneys' Costs	Up to $35,000
Net Settlement Amount	At least $239,850

Through this motion, Plaintiffs respectfully request that the Court enter an order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Notice of Class Action Settlement and ordering that the Notice of Class Action

Settlement be distributed to all Class Members; (4) appointing Plaintiff Thomas Hardwick as the Class and PAGA Representative; (5) appoints Cara Noone as the PAGA Representative; (6) appointing ILYM Group, Inc. as the Settlement Administrator; (6) appointing James Hawkins APLC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Service Payments, approval of Class Counsel's attorneys' fees and costs, and approval of the administration fees and costs.

II. SUMMARY OF THE LITIGATION

A. Plaintiff Hardwick

On May 22, 2020, Plaintiff Hardwick commenced this action by filing a Complaint alleging causes of action based on violation of multiple California Labor Code violations including, but not limited to sections 201-204, 226.2, 510, 1194, 1197, 1998, 226.7, 512, 2802, 2803, Business and Professions Code sections 17200-17208 and sections 11 and 12 of the applicable IWC Wage Order.

On July 28, 2020, the Plaintiff Hardwick commenced a PAGA action by filing a Complaint alleging causes of action based on claimed violations enumerated under Labor Code section 2699.5 including the following sections: 201-203, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699, 2800, 2802 and 2803. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notice on May 21, 2020.

On August 18, 2020, Defendants filed a Notice of Removal to the United States District Court. Then, on September 18, 2020, Defendants filed an Answer to Plaintiff Hardwick's Complaint. In its Answer, Defendants denied all allegations in the Complaint. Plaintiff propounded multiple rounds of written discovery to Defendants whose responses included the production of hundreds of pages of documents. Defendant also propounded discovery on Plaintiff. The parties also engaged in deposition discovery including the depositions of the Plaintiff and Defendants' person most qualified witnesses on various subject areas related to the allegations in the Complaint.

On October 22, 2020, Defendants filed a Notice of Removal of the PAGA action to the Central District Court. Defendants then filed a Motion to Dismiss Plaintiff Hardwick's PAGA action. On November 23, 202, Plaintiff Hardwick filed a Motion to Remand the PAGA action to the Los Angeles Superior Court. On January 1, 2021, the Central District Court Granted Plaintiff Hardwicks' Motion for Remand and denied Defendants' Motion to Dismiss as moot. Defendant then filed an Answer to Plaintiff Hardwick's PAGA Complaint. In its Answer, Defendants denied all allegations in the Complaint.

On September 12, 2022, the District Court granted Plaintiff Hardwick's motion for class certification. The District Court certified the following class: all current and former hourly drivers employed by Defendants in the State of California at any time from May 22, 2017 through the present, who are not members of the *Terry* class or who performed worked after December 7, 2018. The District Court also certified a Wage Statement Subclass and Waiting Time Penalty Subclass.

On November 25, 2022, Notice of Class Certification was mailed to the certified class. On February 10, 2023, Defendants filed a Motion to Compel Arbitration and the parties filed cross-motions for summary judgment as to the certified claims. On April 14, 2023, the District Court denied Defendants' motion to compel arbitration, finding that the overwhelming weight of evidence submitted indicates that Defendants took actions in the litigation inconsistent with their right to arbitrate and therefore waived their right to arbitration. The District Court also heard oral argument on cross-motions for summary judgment and requested supplemental briefs. Before the District Court issued its ruling on the motions for summary judgment, the Parties reached the present settlement.

B. Plaintiff Noone

On December 1, 2021, Plaintiff Noone commenced a PAGA action by filing a Complaint alleging causes of action based on claimed violations enumerated under Labor Code sections 2699.5 including, but not limited to the following sections: 201-203, 2802 and 2803. On February 5, 2021, Defendant filed an Answer to the Plaintiff Noone's Complaint. In its Answer, Defendants denied all allegations in the Plaintiff's Complaint.

C. Remand and Amended Complaint

For purposes of settlement, the Parties stipulated to remand the class action to this Court and to file an amended complaint to add Plaintiff Noone and effectively consolidate the present class action, the Hardwick PAGA action, and the Noone PAGA action.

D. Mediation

On December 16, 2021, the parties participated in an all-day mediation presided over by Steven G. Pearl, which did not resolve these actions. On October 10, 2022, all parties participated in an all-day mediation presided over by Gig Kyriacou, which did not resolve the actions. However, the parties continued to engage in settlement discussions facilitated by Mr. Kyriacou, which ultimately led to this Agreement to settle these actions.

III. SUMMARY OF THE SETTLEMENT

A. Gross Settlement Amount

Defendants shall pay a settlement payment in the total amount of $495,000 (the "Gross Settlement Amount" or "GSA"). The Gross Settlement Amount shall not exceed $495,000 with the exception of the escalator provision[1] and shall include all Individual Class Payments made to Settlement Class Members; the Class Representative Service Payments; attorneys' fees and costs to Class Counsel; costs of settlement administration; and the PAGA Penalties payment. This is a non-reversionary settlement. No portion of the Gross Settlement Amount will revert to Defendants. (Settlement, ¶ 3.1).

B. PAGA Payment

Class Counsel requests that the Court approve a PAGA Allocation of an amount equal to, and not to exceed, $25,000.00 to cover any and all claims for civil penalties based on the alleged violations in the Action and the alleged violations included in the letters to the LWDA. The PAGA Allocation will be deducted from the Gross Settlement Amount. (Settlement, ¶ 3.2.5). Seventy-five percent (75%) ($18,750.00) of the PAGA Payment shall be payable to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Settlement pursuant to PAGA, and twenty-

[1] Defendants estimate that there are 18,669 Total Workweeks during the Class Period. If the actual number of workweeks exceeds 20,000, the Gross Settlement Amount shall increase by the percentage beyond the 20,000 (e.g., if the Total Workweeks is determined to be 22,000 workweeks, the Gross Settlement Amount will increase by 10%), and the Class Counsel Fees shall be calculated as a percentage of the increased Gross Settlement Amount.

five percent (25%) of the PAGA Payment ($6,250.00) will be paid to the Aggrieved Employees. Defendants will not oppose this request.

C. Class Counsel Payment of Attorneys' Fees and Costs

Class Counsel requests that the Court approve an award of attorneys' fees in an amount not to exceed 1/3 of the Gross Settlement Amount ($165,000.00) and reimbursement of litigation costs in an amount not to exceed $35,000.00 subject to Court approval. Defendants will not oppose this request. Attorneys' fees and costs shall be paid out of the Gross Settlement Amount. (Settlement, ¶ 3.2.2).

D. Service Payment To Class Representatives

Plaintiffs request for a Service Payments in an amount not to exceed $15,000 to Plaintiff Hardwick as the Class and PAGA representative and $7,500 to Plaintiff Noone as the PAGA representative to be paid from the Gross Settlement Amount, for their service as representative for the Class and Aggrieved Employees, in addition to any payment they may otherwise be entitled to receive as a Settlement Class Member and/or Aggrieved Employee. (Settlement, ¶ 3.2.1.).

E. Settlement Administration Fees And Costs

The Parties have selected ILYM Group, Inc. to be the third-party Settlement Administrator to disseminate the Class Notice, and to do, among others things set forth in this Settlement Agreement, the formatting and printing of the Class Notice and other documents to be mailed to the Settlement Class, handling the Class Data, updating Settlement Class Members' mailing addresses before the initial mailing of the Class Notice, calculating estimated Individual Class Payments and Individual PAGA Payments, declarations regarding mailing, and as may be required by the Court, providing weekly status reports, resolving disputed claims, issuing Individual Settlement Payment checks, tax calculations and reporting, voiding uncashed checks, handling uncashed checks, etc. The administration of the Settlement is estimated to not exceed $7,650.00 and will be paid from the Gross Settlement Amount. (Settlement, ¶ 3.2.3.)

F. Net Settlement Amount

After deducting the PAGA Payment, the Court-approved sums for the Class Representative Service Payment, Class Counsel's attorneys' fees and costs, and the Settlement Administrator's fees and expenses from the Gross Settlement Amount, the remaining balance ("Net Settlement Amount") will be distributed to Participating Class Members on a pro-rata basis. (Settlement, ¶¶

1.28, 3.2.4.2.) The Net Settlement Amount is estimated to be $239,850. The employer-side payroll taxes will be paid in excess of the Gross Settlement Amount.

IV. PROPOSED NOTICE PROCESS

No Later than thirty (30) calendar days from the Order granting preliminary approval, Defendant shall provide a database containing the following information for each Settlement Class Member ("Class Data"): (1) the full name, last known address, and full social security number of all Settlement Class Members; and (2) the information necessary to determine the estimated settlement allocation to each Settlement Class Member, including without limitation, the total number of work weeks in which each Settlement Class Member worked during the Class Period and the total number of pay periods in which each PAGA Employee worked during the PAGA Period. (Settlement, ¶ 4.2). This database shall be based on Defendants' payroll and other business records and shall be provided in a format acceptable to the Settlement Administrator. Within three (3) business days of receiving the Class Data, the Administrator is to notify Class Counsel about the receipt and provide details about the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data. At this time, the Parties will purpose of determine whether the Escalator Provision has been triggered.

The Administrator is required to use their best efforts to send the Class Notice to all Class Members identified in the Class Data via first-class United States Postal Service (USPS) mail as soon as possible and no later than fourteen (14) days after receiving the Class Data.

The first page of the Class Notice will prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, along with the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator will update Class Member addresses using the National Change of Address database.

If any Class Notice is returned by the USPS as undelivered, the Administrator must re-mail the Class Notice using any forwarding address provided by the USPS within three (3) business days of receipt. If there is no forwarding address, the Administrator must conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. The

Administrator is not obligated to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned a second time by the USPS.

V. PROPOSED CLASS RELEASE

A. Claims Released By the Class and the Class Representatives

Upon the full funding of the entire Gross Settlement Amount by the Defendants, including all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, the Plaintiffs, Participating Class Members, and Class Counsel agree to release claims against all Released Parties. This release is effective on the date of such full funding. (Settlement, ¶ 6).

Plaintiffs, along with their current and former spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, collectively agree to release and absolve the Released Parties from all claims, dealings, or events that have emerged from their employment relationship with the Defendants or any Released Party. This release encompasses a broad range of claims, including but not limited to, allegations of wrongful termination, discrimination, harassment, or retaliation under various legal frameworks such as Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000 et seq.), the California Fair Employment and Housing Act (Cal. Gov't Code Section 12900 et seq.), and the California Labor Code. However, this release specifically excludes Plaintiff Noone's claims in the pending lawsuit entitled *Cara Noone v. 10 Roads Express, LLC*, et al., filed in the Alameda Superior Court under Case No. 23CV029324. (Settlement ¶ 6.1).

All Participating Class Members, for themselves and on behalf of their past and current representatives, agents, attorneys, heirs, administrators, successors, and assigns, will release the Released Parties from all claims that were or could have reasonably been brought forward, based on the facts outlined in the Operative Complaint and discovered during the Actions. This release specifically includes claims related to the alleged non-payment of minimum wage, overtime, and sick pay; the alleged failure to provide meal breaks; the alleged failure to authorize and permit rest periods; the alleged failure to reimburse necessary business expenses; the alleged failure to pay wages promptly upon termination; the alleged failure to provide precise, itemized wage statements; and any claims of unfair competition derived from these allegations. (Settlement, ¶ 6.2).

Every Non-Participating Class Member who qualifies as an Aggrieved Employee will release, on their own behalf and on behalf of their past and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, any claims against the Released Parties for PAGA penalties. This release applies to claims that were alleged, or could have reasonably been alleged, based on the facts related to the PAGA Period as stated in the Operative Complaint and the PAGA Notices, and discovered during the course of the Actions. The released claims specifically include allegations of failure to pay minimum wage, overtime, and sick pay; failure to provide meal breaks; failure to authorize and permit rest periods; failure to reimburse necessary business expenses; failure to pay wages in a timely manner upon termination; and failure to provide accurate and detailed wage statements. (Settlement, ¶ 6.3)

VI. COMPUTATION AND DISTRIBUTION OF NET SETTLEMENT AMOUNT AND CLASS COUNSEL PAYMENT

A. Deposit of Gross Settlement Amount

The Administrator is required to mail checks for all Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment within fourteen (14) days after the Defendants fund the Gross Settlement Amount. Disbursement of payments to Class Counsel and the Class Representative shall not precede the disbursement of Individual Class Payments and Individual PAGA Payments (Settlement, ¶ 4.4).

B. Formula For Calculating Individual Class Payments

Each Participating Class Member's Individual Class Payment will be determined by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and then multiplying the result by each Participating Class Member's Workweeks. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims and subject to tax withholding, reported on an IRS W-2 Form. The remaining eighty percent (80%) will be allocated to the settlement of claims for interest and penalties, not subject to wage withholdings, and reported on

IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment (Settlement, ¶ 3.2.4).

C. Formula For Calculating Individual PAGA Payments

Each Aggrieved Employee's Individual PAGA Payment will be determined by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties $($6,250.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Settlement ¶ 3.2.5.1).

D. Distribution of Net Settlement Amount and PAGA Payment to Class Members

The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and mail them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check will prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Non-Participating Class Members will not receive any Individual Class Payments, and the amounts equivalent to their would-be payments will be retained in the Net Settlement Amount for pro-rata distribution to Participating Class Members (Settlement, ¶ 4.4.1).

E. Class Counsel Payments, Class Representative Service Payment Awards, and Settlement Administrator Expense Payment

The Settlement Administrator will issue payments to Class Representatives for their Class Representative Service Payment, as approved by the Court. If the Court approves a Class Representative Service Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. (Settlement, ¶ 3.2.1).

The Settlement Administrator will also issue payments to Class Counsel for their Class Counsel Fees Payment and Class Counsel Litigation expenses Payment, as approved by the Court. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. (Settlement, ¶ 3.2.2).

The Administrator's Expenses Payment shall not exceed$7,650, except for a showing of good cause and as approved by the Court. Any excess in Administration Expenses or lesser amounts approved by the Court will be retained in the Net Settlement Amount (Settlement, ¶ 3.2.3).

VII. OBJECTIONS AND OPTING OUT OF THE SETTLEMENT

A. Objections to the Settlement

Only Participating Class Members are permitted to object to the class action components of the Settlement, including the fairness of the Settlement and the amounts requested for Class Counsel Fees, Litigation Expenses, and Class Representative Service Payment (Settlement, ¶ 8.7.1).

Participating Class Members may send written objections to the Administrator by fax, email, or mail. These must be sent no later than 60 days after the mailing of the Class Notice, with an additional 14 days allowed for those whose Class Notice was re-mailed (Settlement, ¶ 8.7.2). Alternatively, Participating Class Members may choose to present verbal objections at the Final Approval Hearing, either personally or through an attorney (Id.).

Non-Participating Class Members do not have the right to object to any of the class action components of the Settlement (Settlement, ¶ 8.7.3).

B. Requests to be Excluded from the Settlement

Class Members who wish to opt-out of the Class Settlement must send a signed written Request for Exclusion to the Administrator. This request must be sent via fax, email, or mail no later than sixty (60) days after the Class Notice is mailed by the Administrator. An additional fourteen-day (14-day) period is provided for those whose Class Notice was re-mailed (Settlement, ¶ 8.5.1). The Request for Exclusion must include the Class Member’s name, address, email address or telephone number, and clearly communicate their decision to be excluded from the Settlement (Id.).

VIII. ESCALATOR PROVISION

Defendants estimate that there are 18,669 Total Workweeks during the Class Period. If the actual number of workweeks exceeds 20,000, the Gross Settlement Amount shall increase by the percentage beyond the 20,000 (e.g., if the Total Workweeks is determined to be 22,000 workweeks, the Gross Settlement Amount will increase by 10%), and the Class Counsel Fees shall be calculated as a percentage of the increased Gross Settlement Amount. (Settlement, ¶ 9).

IX. LEGAL ARGUMENT IN FAVOR OF PRELIMINARY APPROVAL

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions,* at § 11.41, p.11-87 (3d ed. 1992. Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all class members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented and class members may be heard regarding the settlement. (*See Dunk v. Ford Motor Co (1996)* 48 Cal.App.4th 1794, 1801 *Manual for Complex Litigation, Second,* §30.44 (1993); Cal. Rules of Court, rule 3.769.) The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval."[2] (*Manual for Complex Litigation*, Second §30.44, at p. 229; *Gautreaux v. Pierce,* 690 F.2d 616, 621 n.3. (7th Cir. 1982) Preliminary approval is the prerequisite to giving notice so that "the proposed settlement . . . may be submitted to members of the prospective Class for their acceptance or rejection." (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.,* (323 F. Supp. 364, 372 (E.D. Pa. 1970). There is an initial presumption of fairness when a proposed settlement negotiated at arm's length by counsel is presented for court approval. (*Newberg*, 3d Ed., § 11.41, 11-88.) The ultimate question of whether the proposed settlement should be approved is made at a final approval hearing after notice is given.

A. The Proposed Settlement Meets the Standards for Preliminary Approval

Preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North County Contractor's Ass'n, Inc. v. Touchstone Ins. Serv. (1994)* 27 Cal. App. 4^{th} 1085, 89-

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[2] California courts look to federal authority on class actions. *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821. "It is well established that in the absence of relevant state precedents trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions." (*Frazier v. City of Richmond* (1986) 184 Cal.App.3d 1491, 1499, *citing Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.)

90; Conte & Newberg, *Newberg on Class Actions, §§* 11.26 (4th ed. 2002) ("Newberg"). In reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases (2010)* 186 Cal.App.4th 1380, 1389 . The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or conclusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerns." (*Id.*). Reasonableness and fairness are presumed where (1) the settlement is reached through "arm's-length bargaining"; (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently"; (3) counsel is "experienced in similar litigation"; and (4) the percentage of objectors "is small." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 (1996). The Settlement here already satisfies the first three factors. Plaintiff will analyze the fourth factor in her motion for final approval.

1. The Settlement is Entitled to a Presumption of Fairness

a. <u>The Settlement is the Result of Arm's-Length Negotiations</u>

Courts presume the absence of fraud and collusion in the negotiation of a settlement, unless contrary evidence is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. *Newberg, §* 11.51. Here, the parties attended a full-day mediation with a well-respected neutral wage and hour mediator, Gig Kyriacou (Hawkins Decl. ¶¶ 19.) The Settlement negotiations were adversarial, conducted at arm's length over many months and tempered by the efforts of both sides to serve the interests of their clients and, in the case of Plaintiffs' Counsel, the interests of the Class Members. (*Id*.)

b. <u>Class Counsel Conducted Significant Investigation</u>

Plaintiff's Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses using extensive discovery, motion practice, and close scrutiny of the fluctuating state of California's wage and hour laws. As described more extensively in the accompanying Hawkins Declaration, Plaintiffs' Counsel conducted extensive investigation of the claims asserted in the class and PAGA actions including substantial written discovery, depositions, legal research, motion practice including a motion to dismiss, motion for remand, motion to compel arbitration, motion for class certification, and cross-motions for summary judgment, expert damages analysis, and two full-day mediations. Using the information obtained through their research and investigation, Plaintiff's Counsel assessed the reasonable value of the class claims. (Hawkins Decl. ¶¶ 4-30)

c. Class Counsel is Experienced in Similar Litigation

Plaintiffs are represented by James Hawkins, APLC. Class Counsel has extensive experience prosecuting wage and hour cases on behalf of employees and others who have had their rights violated. (Hawkins Decl. ¶ 92.) James Hawkins, APLC, currently serving as plaintiffs' counsel of record, has participated in hundreds of wage and hour class action and representative action cases pending in both state and federal court. Class Counsel has litigated many wage and hour class action cases and has successfully resolved cases involving the same issues presented in this matter. (*Id.*)

2. The Proposed Settlement is Reasonable Given the Strengths of Plaintiffs' Claims and the Risks and Expense of Litigation

Courts have discretion to approve a settlement by assessing several well-recognized factors, including the "strength of plaintiff's case, risk, expense, complexity and likely duration of further litigation and risk of maintaining the class action through trial." *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 407; *see Kuller v. Foot Locker Retail, Inc. (2008)* 168 Cal.App.4th 116, 129. A settlement does not have to provide 100% of the damages sought to be considered a fair and reasonable settlement. *Rebney v. Wells Fargo Bank* (1991) 220 Cal.App.3d 1117, 1139 , overruled on other grounds. Rather, compromise is expected:

> Compromise is inherent and necessary in the settlement process…even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 250.

Here, Plaintiffs' Counsel calculated Defendants' total potential exposure assuming Plaintiffs prevailed on all aspects of their claims at trial to be approximately $9,682,397 but weighed that value against the chance of maintaining class certification, defeating Defendants' motion for summary judgment, and prevailing at trial, and determined that the realistic liability on the crux of the claims asserted was approximately $2,311,490 including PAGA penalties. (Hawkins Decl. ¶¶ 79-93). While Plaintiffs believed and continue to believe this is a strong, the significant risks and expenses associated with trial must be taken into account. In determining whether the amount offered for settlement was reasonable, Plaintiffs' Counsel weighed that figure against many risk factors. Defendants have many strong arguments, which could render the Class Members' claims worthless at the summary judgment stage or trial. (Hawkins Decl. ¶¶ 45-78).

As set forth more extensively in the Hawkins Declaration, Defendants denied all allegations and contends that it complied with the applicable law at all times. Defendants contended that it paid all wages owed, including proper calculations of minimum, regular, overtime, and double time rates and wages, prohibited off the clock work, and that it properly provided all rest and meal periods as a matter of policy and practice, and also paid break premiums at the correct rate and where applicable. (*Id.*) Defendants further argued that Settlement Class Members were not required to incur any expenses that were not reimbursed. (*Id.*). Defendant contended that to the extent any expense was incurred, it reimbursed employees for business expenses, and otherwise at all times complied with the California Labor Code. (*Id.*). Defendants argued that they timely furnished accurate itemized wage statements, that they complied with all wage statement requirements, and that all information on the wage statements was accurate and reflected the amount of money paid to employees. (*Id.*). Defendants contended that all non-exempt employees were paid for all time worked. (*Id.*).

Defendants also contended that Plaintiffs could not demonstrate that any violation was intentional or willful and that penalties were not available for certain derivative violations. (*Id.*). Defendants also contended that no employee suffered injury because of any alleged violations. (Id.).

The Settlement compares favorably to other class settlements in terms of potential recovery. (*See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ["The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved," quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d. 448, 455 & n.2 (2d Cir. 1974)]; *In re MyFord Touch*

Consumer Litig., 2019 WL 1411510, at *10 (N.D. Cal. Mar. 28, 2019) [observing that "the very essence of settlement is compromise" and citing cases where settlements ranged from 5% to 10% of potential recovery]; *Glass v. UBS Fin. Servs.,* 2007 WL 221862, at *9 (N.D. Cal. Jan. 26, 2007) [approving settlement that constituted approximately 25% of the estimated actual damages].) The Settlement here is consistent with these approved percentages.

Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir. 1998). Even though Plaintiffs dispute the merits of Defendants' defenses, they cannot ignore the fact that if those defenses were successful, they would eliminate or substantially reduce any recovery on behalf of the Settlement Class. After arm's-length negotiations between experienced and informed counsel and with the assistance of the mediator, the Parties recognized the potential risks and agreed on the Gross Settlement Amount of $495,000, which is approximately 21% of the realistic liability for the claims. (Id.) As the *Glass* court held:

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have rules on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. "The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." *See In re Mego Financial Corp. Securities Litigation,* 213 F.3d 454, 458 (9th Cir. 2000).

(*Glass, supra,* 2007 WL 221862, at *9). Here, the risk of further litigation is substantial, while the benefit of the Settlement is immediate and real. "Generally, unless the settlement is clearly inadequate, its acceptable and approval are preferable to lengthy and expensive litigation with uncertain results." (*Ching v. Siemens Indus, Inc.,* 2014 WL 2926210, at *4 (quotation omitted) (N.D. Cal. June 27, 2014). This factor weighs in favor of approval.

3. The Requested Service Payment Should be Provisionally Approved.

Plaintiffs seek a Service Payment for taking on the responsibilities of representing the interests of all Settlement Class Members and Aggrieved Employees and assuming risks and potential costs that were not agreed to by any other Settlement Class Members. A named plaintiff is eligible for payment that reasonably compensated them for undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone Termination Fee Cases* (2010) 186 Cal.App,4th 1380, 1393 ; *Bell v. Farmers, Ins. Exch.* (2004) 115 Cal.App.4th 715, 726. Here, Plaintiffs provided additional data and information to counsel, relayed their experiences to counsel, and analyzed the Settlement and determined that it was in the best interests of the Settlement Class of which they were a part. Their consultation with counsel to assist in evaluating the Settlement was vital in bringing this matter to a resolution. (See, Hawkins Decl. ¶¶ 82-83; Declaration of Thomas Hardwick; Declaration of Cara Noone).

No action likely would have been taken by Settlement Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' service on behalf of the Settlement Class and Aggrieved Employees. By actively pursuing this action, Plaintiffs furthered the California public policy goal of enforcing the State's wage and hour laws. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340 The proposed Service Payment of $15,000 to Plaintiff Hardwick for bringing class and PAGA action and $7,500 for Plaintiff Noone for bring the PAGA action and their service as the representatives and for their general release of all claims is reasonable and should be approved.

B. The Requested Attorneys' Fees and Costs Should be Preliminarily Approved

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took risk of non-payment and invested in a case that achieved a substantial positive result for the class. Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees equaling one-third of the potential value of the common fund. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 (2008) ("Empirical studies show that, regardless of whether the percentage method of the lodestar method is used, fee awards in class actions average around one-third of the recovery"). In the present case, Plaintiffs' Counsel will seek approval of one-third of the Gross Settlement Amount or up to $165,000.00 under the common fund theory, as well as actual litigation costs up to $35,000.00. At final approval, Plaintiffs' Counsel will fully brief the merits of their request for attorneys' fees and costs.

X. CONCLUSION

The parties have negotiated a fair and reasonable Settlement of the class and PAGA claims. Plaintiffs respectfully request that the Court preliminarily approve the Settlement, direct notice to be sent to the Class Members, and schedule a date to conduct the final approval hearing.

JAMES HAWKINS, APLC

Dated: March 22, 2024

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