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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

ERIC GARCIA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

LIGHTNING SOURCE LLC; INGRAM
DISTRIBUTION MANAGEMENT INC.;
INGRAM CONTENT GROUP LLC; and
DOES 1 through 25, inclusive

Defendants.

Case No. 20CECG01641

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Jeffrey Hamilton

Department 503

CLASS AND PAGA ACTION

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

Date: June 15, 2023

Time: 3:30 p.m.

Dept: 503

Judge: Hon. Jeffrey Hamilton

Filed: June 10, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiff Eric Garcia (“Plaintiff”) seeks final approval of a pre-certification wage and hour class and Private Attorneys General Act (PAGA) action settlement of \$860,000.00. The proposed Settlement will benefit 123 individuals employed in California by Defendants Lightning Source LLC, Ingram Distribution Management LLC (erroneously sued as “Ingram Distribution Management Inc.”), and Ingram Content Group LLC (collectively, “Defendants”) as non-exempt employees any time during the Class Period (April 6, 2016 through June 28, 2021). Declaration of Isam C. Khoury (“Khoury Decl.”), ¶ 11.

After adequate Notice to the Class informing them of their rights, the reaction has been wholly positive—with no Requests for Exclusion or Objections received to date.¹ Khoury Decl., ¶ 12; Declaration of Lindsay Kline on behalf of Simpluris, Inc. (“Simpluris Decl.”) generally, Exhibit A (“Class Notice”).

Plaintiff has achieved an excellent result in this litigation, with an average estimated settlement payment over \$4,000 and the highest at nearly \$12,000. Khoury Decl., ¶ 13; Simpluris Decl., ¶ 16. With no reversion to Defendants, 100 percent of this money will be paid out to the Class. Khoury Decl., ¶ 14; Stipulation of Class Action Settlement and Release of Claims (“SA”), ¶ 18. Finally, all fees and awards requested herein are reasonable in light of work performed, costs reasonably incurred, and results achieved. Khoury Decl., ¶ 15.

II. THE PARTIES

A. Defendants

Defendants are printers and distributors of print-on-demand books throughout the United States. Defendants operate a book-binding factory in Fresno, California where Plaintiff and the entire putative Class worked. Khoury Decl., ¶ 16.

B. Plaintiff

Plaintiff was employed as an “Operations Team Lead-2nd Shift” in Defendants’ Fresno book-binding factory from May 7, 2018 through February 18, 2020. In this position, Plaintiff

¹ Class Members were allowed to opt-out/object until May 26, 2023. An updated Administrator declaration will be submitted before the Final Approval hearing.

1 ensured next-day priority shipping; filled, boxed, packed, and labeled orders; and loaded boxes
2 of books into trucks for delivery. Plaintiff typically worked four days per week, with three 12-
3 hour workdays, and one six-hour workday per week. Khoury Decl., ¶ 17; Declaration of Eric
4 Garcia (“Garcia Decl.”), ¶ 3.

5 **C. The Class and Aggrieved Employees**

6 The Class is defined as all current and former non-exempt employees of Defendants
7 employed in California during the Class Period. Khoury Decl., ¶ 18. PAGA Members, a subset
8 of the Class, worked during the PAGA Period (April 6, 2019 through June 28, 2021). *Id.*

9 **III. LITIGATION AND DISCOVERY**

10 On May 19, 2020, Defendants responded to Plaintiff’s record request and produced
11 Plaintiff’s personnel file containing, in pertinent part, employment policies and procedures, new
12 employee documents, performance evaluations, and wage statements. Khoury Decl., ¶ 19.

13 On June 8, 2020, Plaintiff served a PAGA notice on Defendants and the California
14 Labor and Workforce Development Agency (“LWDA”) advising that he intended to file a
15 representative action on behalf of himself and all other aggrieved employees to seek civil
16 penalties for the alleged Labor Code violations. Khoury Decl., ¶ 20.

17 On June 10, 2020, Plaintiff filed a class action complaint alleging Defendants failed to
18 (1) pay minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and IWC
19 Order(s) § 4); (2) pay overtime wages (Labor Code §§ 510, 1194, 1198, and IWC Wage
20 Order(s) § 3); (3) provide meal periods (Labor Code §§ 226.7, 512, and IWC Order(s) § 11); (4)
21 provide rest periods (Labor Code § 226.7 IWC Order(s) § 12); (5) provide accurate itemized
22 wage statements (Labor Code § 226 and IWC Wages Order(s) § 7); (6) reimburse business
23 expenses (Labor Code § 2802, and IWC Order(s) § 9); (7) timely pay wages due during
24 employment (Labor Code §§ 204, 210, and IWC Order(s)); (8) timely pay wages due upon
25 separation of employment (Labor Code §§ 201, 202, 203, and IWC Order(s)); and based on
26 these allegations, (9) violation of the Unfair Competition Law (Business & Professions Code §§
27 17200-17208). On June 24, 2020, Plaintiff served an amended PAGA notice on the LWDA and
28 Defendants. Khoury Decl., ¶ 21. Defendants served their general denial and affirmative

1 defenses to the complaint on August 21, 2020. Khoury Decl., ¶ 22.

2 On August 26, 2020, Defendants served Plaintiff with special interrogatories,
3 employment form and form interrogatories, and requests for production of documents. Plaintiff
4 served verified discovery responses and produced 110-pages of responsive documents on
5 November 6, 2020. Khoury Decl., ¶ 23.

6 After receiving no notice from the LWDA it intended to investigate the charges, on
7 September 10, 2020, a First Amended Complaint (“FAC”) seeking PAGA civil penalties was
8 filed and served. Defendants served their general denials and affirmative defenses on October
9 12, 2020. Khoury Decl., ¶ 24.

10 On September 10, 2020, Plaintiff served each Defendant with employment and form
11 interrogatories, special interrogatories, requests for admission, and requests for production of
12 documents. Khoury Decl., ¶ 25.

13 In late-September 2020, the Parties agreed to stay formal discovery and to attend
14 mediation. Plaintiff requested, and Defendants produced (a) contact information for ten (10)
15 Class Members; (b) an excel spreadsheet with timekeeping records and corresponding
16 spreadsheets with payroll records for 25 randomly selected Class Members chosen by Plaintiff’s
17 Counsel (20% of the Class – (13 former employees and 12 current employees)); (c) the
18 estimated Class size: 127, of which 67 were currently employed, and 60 were formerly
19 employed; (d) the estimated number of former employees within three years: 60 former
20 employees in the three-year statute of limitations for waiting time penalties, April 6, 2017 to
21 April 26, 2021; (e) the estimated number of former employees within one year: 29 former
22 employees during the one-year statute of limitations for PAGA Penalties; (f) the estimated
23 number of Class Period pay periods: 5,538 pay periods worked during the Class Period, from
24 April 6, 2016 to April 26, 2021, and (g) the estimated number of PAGA Period pay periods:
25 2,623 PAGA Pay Periods Worked from April 6, 2019 to April 26, 2021 (PAGA Period).
26 Khoury Decl., ¶ 26. The data was sufficient to allow Plaintiff to assess liability and to calculate
27 Class-wide damages for purposes of mediation. *Id.*

28 ///

IV. MEDIATION

With Class-wide damages and PAGA penalties models prepared, on April 29, 2021, the Parties attended mediation with Steven Serratore, an experienced wage and hour class action mediator facilitating the day-long arms'-length negotiations. At the end of the day, the mediator tendered a proposal which was, by May 4, 2021, accepted by the Parties. As a term of Settlement, Plaintiff filed and served a Second Amended Complaint on August 10, 2021 alleging the unlawful time-rounding and underpaid overtime wages theories which were evaluated at mediation. Khoury Decl., ¶ 27.

V. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

The Parties agreed to settle the Action for the Gross Settlement Amount ("GSA") of \$860,000.00 which includes, subject to Court approval: (a) attorneys' fees of \$286,666.67²; (b) litigation costs of \$15,405.67; (c) Class Representative Service Payment of \$10,000; (d) PAGA Payment of \$50,000 for civil penalties, of which \$37,500 (75%) will be paid to the LWDA and \$12,500 (25%) will be distributed to PAGA Members; and (e) administration expenses to Simpluris, Inc. of \$4,400. Khoury Decl., ¶ 28. In addition to the GSA, Defendants will pay the employer's share of payroll taxes on Class Members' payment allocated as wages. Khoury Decl., ¶ 29; SA, ¶¶ 13, 74.

After approved deductions, the estimated \$493,527.66 Net Settlement Amount ("NSA") will be distributed pro rata to Participating Class Members based on the number of weeks each worked during the Class Period in relation to the total number of weeks worked by all Class Members during the Class Period. No claim form will be necessary. Khoury Decl., ¶ 30; SA, ¶¶ 26, 38, 40, 63, 69.

The 123 Class Members will receive an average estimated settlement payment of \$4,012.42 and highest estimated settlement payment of \$11,798.88, upon Approval. Plaintiff's estimated individual settlement amount is \$4,026.77. Khoury Decl., ¶ 31; Simpluris Decl., ¶ 16.

² Fees are apportioned 50% to Lebe Law, APLC and 50% to Cohelan Khoury & Singer with Plaintiff's written consent. Garcia Decl., ¶ 9.

1 The 85 PAGA Members will receive a share of the \$12,500.00 PAGA Payment based
2 on Pay Periods worked during the PAGA Period, even if they request exclusion, as no right
3 exists to opt out of a PAGA Settlement. Khoury Decl., ¶ 32; SA, ¶ 63.

4 No portion of the GSA will revert to Defendants under any circumstances. Khoury
5 Decl., ¶ 33; SA, ¶ 18. After 120 days of issuance, the uncashed checks shall be voided and the
6 principal for those uncashed checks shall be transmitted to the State of California, Controller's
7 Office, Unclaimed Property Division for further handling. Khoury Decl., ¶ 34; SA, ¶ 84.
8 Settlement payments are characterized as ninety (90) percent penalties and interest and ten (10)
9 percent wages; appropriate tax forms will be provided by the Administrator. Khoury Decl.,
10 ¶ 35; SA, ¶ 72.

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

12 **1. Preliminary Approval and Class Notice**

13 On November 17, 2022, the Court preliminarily approved the proposed Settlement.
14 Khoury Decl., ¶ 36. On March 27, 2023, after searching the National Change of Address
15 database, and updating Class Member addresses, the Settlement Administrator mailed a Notice
16 Packet to 123 Class Members. The Notice Packet informed them of (1) the pendency of the
17 Action; (2) proposed settlement terms; (3) automatic payment of Settlement shares if exclusion
18 not requested; (4) released claims; (5) right to object or request exclusion, and (6) date, time and
19 place of the final approval hearing. Khoury Decl., ¶ 37; Simpluris Decl., ¶ 8, Exh. A.

20 **2. The Class' Response to the Notice**

21 The Class response to the Settlement has been extremely favorable.³ To date, no
22 objections or requests for exclusion have been received. Khoury Decl., ¶¶ 12, 38; Simpluris
23 Decl., ¶¶ 11-12.

24 The Court determined the first three *Dunk* factors were met when it granted preliminary
25 approval: (1) the settlement was reached through arm's-length bargaining; (2) investigation and
26 discovery allowed counsel and the court to act intelligently; and (3) counsel was experienced in

27 _____
28 ³ After performing advanced address searches, and re-mailing Class Notices, there is only one
(1) Class Notice that remains undeliverable. Simpluris Decl., ¶ 9.

1 similar litigation. The fourth factor could not be known until the Class had notice and an
2 opportunity to respond. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-1802.

3 The fourth *Dunk* factor was established when the Class, after receiving notice, and
4 having an opportunity to respond, unanimously approved the Settlement. Khoury Decl., ¶ 39.

5 **VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

6 The Preliminary Approval Motion thoroughly analyzed the terms of the proposed
7 Settlement in light of *Dunk* (establishing factors supporting fairness presumption) and *Kullar v.*
8 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (establishing factors determining
9 whether a settlement is adequate and reasonable). The Court carefully reviewed and ruled on
10 these analyses and they are fully incorporated here by reference. *See*, Preliminary Approval
11 Motion, at 10:15 – 17:14.

12 Nothing has changed since Preliminary Approval to negate the presumption of fairness
13 and Class Counsel remains convinced the Settlement is in the Class’ best interest. Khoury Decl.,
14 ¶ 40.

15 **VII. ATTORNEYS’ FEES ARE REASONABLE AND SHOULD BE AWARDED**

16 Class Counsel requests attorneys’ fees of \$286,666.67, one-third of \$860,000 GSA, and
17 actual litigation costs of \$15,405.67. Class Counsel expended 377 hours, a \$223,282.50
18 lodestar.⁴ Khoury Decl., ¶ 41, Exh. 1 – Consolidated Summary of Class Counsel’s Time &
19 Costs; Exh. 2 – Itemized Costs; Declaration of Jonathan M. Lebe (“Lebe Decl.”), ¶¶ 12-14.

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

21 The most important factor to consider in granting a fee award is the success obtained.
22 *Harman v. City & Cty. of S.F.* (2006) 136 Cal. App. 4th 1279, 1312 (citing *Hensley v. Eckerhart*
23 (1983) 461 U.S. 424, 426). Here, an excellent result was achieved, enforcing the law and
24 providing benefits to the Class. The average individual settlement of over \$4,000 is substantial,
25 especially given the average Class Member’s hourly rate of approximately \$18.06—as
26

27 ⁴ Cohelan Khoury & Singer expended 227.6 hours; Lebe Law expended 149.4 hours. 227.6 +
28 149.4 = 377. Cohelan Khoury & Singer’s total lodestar is \$125,147.50. Lebe Law’s total
lodestar is \$98,135. \$125,147.50 + \$98,135 = \$223,282.50.

discerned by Plaintiff's consultant based on time records provided by Defendants. Khoury Decl., ¶ 42.

The Class was provided notice of all settlement terms, including that Counsel would request an award of attorneys' fees up to one-third of the GSA, \$286,666.67. Simpluris Decl., Exh. A. No Class Member objected to the attorneys' fees award. Simpluris Decl., ¶ 12.

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

The California Supreme Court has 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.* (2016) 1 Cal.5th 480, 503; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("*Serrano III*"); *see also Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.

A common fund fee award is beneficial because it 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, delay in correcting alleged unlawful practices, and delay in compensating the class. *Laffitte*, 1 Cal.5th at p. 503.

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* (1995) 12 Cal.4th 105, 110.

Class Counsel undertook representation at their own expense, with compensation wholly contingent upon providing a Class benefit. Class Members will benefit from the proposed Settlement and receive monetary payments. Based on the defined and clearly traceable Class benefit, the Court may award a percentage of the common fund as attorneys' fees. Khoury Decl., ¶ 43.

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* (S.D. Cal. Sept. 28, 2017) 2017 U.S. Dist. LEXIS 160214, *28. Several studies of class action fee awards found median common fund fee awards are about

one-third of the total settlement fund and this has been accepted by California courts. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (“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* (1998) 17 Rev. Litig. 525, 546; 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* (1996) p. 90 (class action attorneys’ fees are generally about “one-third of total settlement”).

Counsel’s request for one-third of the common fund is in the mid-range of awards which 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., ¶ 44.

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), (S.D. Cal. Jan. 14, 2013) 2013 U.S. Dist. LEXIS 6049, *14 (“These percentages compare favorably with” the California (33%) benchmark.); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMc), (S.D. Cal. Nov. 14, 2013) 2013 U.S. Dist. LEXIS 163118, at *7. Class Counsel’s fee request is consistent with awards in similar California cases, and market rates, and is reasonable. Cohelan Khoury & Singer has routinely been awarded attorneys’ fees of one-third of a common fund in wage and hour class actions. Khoury Decl., ¶ 45.

D. Lodestar Cross-Check Multiplier Is Reasonable

The California Supreme Court has provided that trial courts have discretion to conduct a lodestar cross-check of the common fund award to assess whether the award is reasonable. *Laffitte*, 1 Cal.5th at p. 504 (“court’s decision to double check the reasonableness of the percentage fee through a lodestar calculation” is not an “abuse of discretion”). Such a cross-check “calculation need entail neither mathematical precision nor bean-counting,” it 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.* (E.D. Cal. July 2, 2013) 297 F.R.D. 431, 451. 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.

1 *Serrano III*, 20 Cal.3d at p. 48. Here, Class Counsel’s lodestar is \$223,282.50. Khoury Decl.,
2 ¶ 46.

3 The court then enhances the lodestar by a “multiplier” to account for a range of factors.
4 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36. Factors determining level of enhancement
5 include the contingent nature of recovery, the special skill and experience of counsel, the extent
6 to which the litigation precluded other employment, the novelty and complexity of the issues
7 involved, and the percentage-of-the-fund the attorney would have received on the fair market.
8 *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 49 (“*Lealao*”). The list is not
9 exhaustive and a Court may consider other factors it deems important in setting the multiplier.
10 *Ketchum*, 24 Cal.4th at p. 1139.

11 In *Lealao*, the Court held a trial court’s refusal to enhance the lodestar was an abuse of
12 discretion, remanded for consideration of the original 8.0 multiplier request, and opined a
13 multiplier more than 3.5 was reasonable. *Lealao*, 82 Cal. App. 4th at pp. 24, 52; *see also*
14 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (internal citations omitted)
15 (finding a trial court did not abuse its discretion in applying a multiplier of 3.65, explaining
16 “courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund
17 cases.”); *Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F. Supp. 2d 1160, 1170
18 (“Where appropriate, multipliers may range from 1.2 to 4 or even higher.”). Khoury Decl.,
19 ¶ 47.

20 If the fee award here is calculated using the lodestar, rather than the common fund
21 method, Plaintiff would ask the Court to apply a multiplier of 1.28 (\$286,666.67/\$223,282.50).
22 Khoury Dec., ¶ 48. This multiplier is justified given that Class Counsel prosecuted this action
23 on a wholly contingent basis; Class Counsel has decades of experience in prosecuting wage and
24 hour class actions; work in this action precluded other work that could have been undertaken;
25 complex issues were involved; and one-third of the GSA represents the fair market value
26 according to many California authorities. Khoury, ¶ 49.

27 **E. Counsel’s Hourly Rates Are Reasonable.**

28 Class Counsel are entitled to hourly rates charged by attorneys of comparable

1 experience, reputation, and ability for similar litigation. *Ketchum*, 24 Cal.4th at p. 1133;
2 *Children's Hospital and Med. Center v. Bonta* (2002) 97 Cal. App. 4th 740, 783 (affirming rates
3 as "within the range of reasonable rates charged by and judicially awarded comparable attorneys
4 for comparable work"). When determining reasonable rates, Courts may consider attorney skill
5 and experience, nature of the work performed, and the relevant area of expertise and the
6 attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App.
7 4th 629, 632.

8 Class Counsel's skill and experience support their hourly rates and are in line with rates
9 typically approved in California wage and hour class actions. Cohelan Khoury & Singer's
10 practice is limited to litigating class and representative actions on behalf of employees and
11 consumers, and our firm has been appointed Class Counsel or co-Class Counsel in over 300
12 such cases. Khoury Decl., ¶¶ 3-10, 50. Mr. Lebe has devoted a vast majority of his practice to
13 employment law and class actions, and has been appointed certified Class Counsel in numerous
14 wage and hour class actions. Lebe Decl., ¶¶ 3-11.

15 Class Counsel's skill and experience support their hourly rates: Cohelan Khoury &
16 Singer: Founding Partners, Isam C. Khoury - \$925; Managing Partner, Michael D. Singer -
17 \$900; Partner, Diana M. Khoury - \$725, Associate, Rosemary C. Khoury - \$500; Lebe Law,
18 APLC: Founding Attorney, Jonathan M. Lebe - \$800, Associate, Zachary Gershman - \$475.
19 These rates are in line with those typically approved in California wage-and hour class action
20 litigation. Indeed, the Laffey Matrix would actually provide for a rate increase. Khoury Decl.,
21 ¶ 51, Exh. 3 - Laffey Matrix; Lebe Decl., ¶¶ 12-13.

22 **F. Class Counsels' Total Hours Are Reasonable.**

23 Hours are reasonable if, "at the time rendered, [they] would have been undertaken by a
24 reasonable and prudent lawyer to advance or protect his client's interest." *Moore v. Jas. H.*
25 *Matthews & Co.* (9th Cir. 1982) 682 F.2d 830, 839. *Norman v. Housing Auth.* (11th Cir. 1988)
26 836 F.2d 1292, 1306 ("The measure of reasonable hours is determined by the profession's
27 judgment of the time that may be conscionably billed and not the least time in which it might
28 theoretically have been done"). Here, all work undertaken was in the client and the class's

interest to achieve this Settlement. Khoury Decl., ¶ 52; Lebe Decl., ¶¶ 12-13.

G. Class Counsel and Settlement Administration Costs Are Reasonable

The Settlement allows Class Counsel to recover up to \$18,000.00 in costs and the Settlement Administrator to recovery up to \$5,000.00 in costs. Counsel and the Settlement Administrator respectively seek \$15,405.67⁵ and \$4,400.00 in actual reasonable and necessary costs. Khoury Decl., ¶ 53, Exh. 2 – Itemized Costs; Lebe Decl., ¶ 12; Simpluris Decl., ¶ 17.

VIII. THE PROPOSED PAGA PAYMENT IS REASONABLE

The settlement of PAGA penalties for \$50,000.00, of which \$37,500.00 (75%) will be paid to the LWDA and \$12,500.00 (25%) to PAGA Employees, is reasonable and appropriate. The Parties negotiated a good faith amount for PAGA penalties, which was not the result of self-interest at the expense of Class Members. Khoury Decl., ¶ 54. Where a “good faith amount” is negotiated and “there is no indication that this amount was the result of self-interest at the expense of other Class Members,” it is generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *25.

The amount allocated to PAGA here, which represents over five percent of the GSA (\$50,000/\$860,000), is within the range, or higher, than other settlements. See *Magadia v. Wal-Mart Assocs.* (2019) 384 F. Supp. 3d 1058, 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.* (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118 (\$10,000 PAGA penalties in settlement of \$900,000), recommendation adopted, (E.D. Cal. Mar. 3, 2015) 2015 U.S. Dist. LEXIS 25730; *Nen Thio v. Genji, LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 (\$10,000 PAGA penalties, \$1.25m settlement); *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, *5-6 (\$10,000 PAGA penalties, \$2.5m settlement); *Garcia v. Gordon Trucking* (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS 160052 (\$10,000 PAGA, \$3.7m settlement). Khoury Decl., ¶ 55.

Class Counsel provided the LWDA with the Motion for Preliminary Approval and the Settlement Agreement. The LWDA did not object. Khoury Decl., ¶ 56, Exh. 4 – LWDA,

⁵ Costs for Cohelan Khoury & Singer are \$15, 336.99, and costs for Lebe Law are \$68.68. \$15,336.99 + \$68.68 = \$15,405.67.

September 16, 2022 Confirmation of Receipt. The LWDA was served with this Final Approval Motion when filed. Khoury Decl., ¶ 57, Exh. 5 – LWDA Confirmation.

IX. 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; *see also Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433 (“Those who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful [but] [w]hile 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”).

Here, Plaintiff has done substantial work and taken substantial risks to achieve an excellent result for the Class, justifying the \$10,000 award he seeks. Khoury Decl., ¶ 58; Garcia Decl., ¶¶ 4-7. If granted, he would receive approximately \$14,026.77 in total (\$4,026.77 estimated individual payment + \$10,000 Class Representative Service Payment). This would be approximately 3.5 times the average estimated settlement payment (\$14,026.77/4,012.42). Khoury Decl., ¶ 59. Granting this Service Payment would not be a clear abuse of discretion. *See Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App. 4th 399, 412 (finding trial court did not abuse its discretion in awarding named plaintiffs more than twice the average payment to class members). Further, courts have issued \$10,000 awards to named plaintiffs in class actions under similar circumstances. *See, e.g. Ellison v. Madden, Ltd.* (C.D. Cal. May 7, 2013) 2013 U.S. Dist. LEXIS 202269, at *34-35 (granting \$10,000 for work performed and risks taken, notwithstanding that plaintiff apparently did not sit for deposition). Khoury Decl., ¶ 60.

Finally, the Class received notice Plaintiff would request \$10,000.00. No Class Member objected. Simpluris Decl., ¶¶ 12, 15; Khoury Decl., ¶ 61.

X. CONCLUSION

The Settlement favorably resolves what would otherwise be uncertain litigation. Class

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

Respectfully submitted,

LEBE LAW, APC
COHELAN KHOURY & SINGER

Dated: May 23, 2023

By:



Isam C. Khoury

Rosemary C. Khoury

Attorneys for Plaintiff Eric Garcia, individually and on
behalf of all others similarly situated