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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LUIS LOPEZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

GE UNITED TECHNOLOGIES, LLC, a
Delaware Limited Liability Company d/b/a
GRASSDOOR, and DOES 1 through 10,
Inclusive,

Defendants.

Case No. 20STCV34691

ASSIGNED FOR ALL PURPOSES TO:
The Honorable William F. Highberger
Department SS10

CLASS ACTION

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

Date: October 24, 2022

Time: 11:30 a.m.

Dept.: 10

Judge: William F. Highberger

Complaint filed: September 11, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiffs seek final approval of a \$350,500 non-reversionary wage and hour class and Private Attorney Generals' Act ("PAGA") settlement for 602¹ non-exempt California employees of Defendant GE United Technologies, LLC d/b/a Grassdoor, any time from July 19, 2019 through July 13, 2021. Declaration of Diana M. Khoury, ("Khoury Decl."), ¶10.

On July 27, 2022, the Court-approved Notice Packet was mailed to 602 Class Members informing them of their rights and benefits under the Settlement, including the estimated amount of Settlement Payments, and the right to request exclusion, dispute pay periods, or file a written objection to the Settlement by September 10, 2022. Declaration of Evelin Reyes on behalf of Simpluris, ("Simpluris Decl."), ¶8, Exh. A.

Support for the Settlement is strong. No Class Member objected to the Settlement and only five class members requested exclusion, less than 1% (0.8) of the total class. Simpluris Decl. ¶¶16-17. Participating Class Members will receive payments averaging \$328.62, with a highest payment of \$1,144.99, and PAGA Members will receive payments averaging \$2.08, with a highest payment of \$6.70, upon Final Approval. Khoury Decl. ¶11; Simpluris Decl. ¶14.

II. THE PARTIES

A. Defendant

GE United Technologies, LLC dba Grassdoor delivers cannabis products throughout Los Angeles and Orange Counties. According to its website²: "Grassdoor is a cannabis delivery technology company that has developed a platform to help retailers efficiently manage and deliver orders for cannabis products to their customers and patients." <https://grassdoor.com/becomedriver>. Grassdoor began employing non-exempt employees, including delivery drivers on July 19, 2019. Khoury Decl. ¶12.

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¹ At the time of Preliminary Approval, Plaintiff estimated the Class to be 606 members, based on Defendant's representation that there were 562 drivers and 44 nondrivers employed during the Class Period. The final class list consists of 602 members who are encompassed within the Class definition. Khoury Decl. ¶10.

² As of the date of preliminary approval motion filing.

B. Plaintiff

Plaintiff Luis Lopez worked for Grassdoor as a non-exempt delivery driver, delivering cannabis products throughout Los Angeles County from October 2019 through June 2020. Khoury Dec. ¶13; Declaration of Plaintiff Luis Lopez, (“Lopez Decl.”), ¶7.

C. The Class and Aggrieved Employees

The Class is defined as all hourly, non-exempt individuals employed by GE United Technologies, LLC dba Grassdoor in California during the period from July 19, 2019 through July 13, 2021 (“Class Period”). There are 597 class members who worked 17,648 pay periods during the Class Period. Khoury Decl. ¶14; Simpluris Decl. ¶14. PAGA Members means all Class Members employed during the time during the time period of September 11, 2019 through July 13, 2021 (“PAGA Period”). The 602 PAGA Members worked a combined 17,713 pay periods during the PAGA Period. Khoury Decl. ¶15; Simpluris Decl. ¶14.

III. PRE-MEDIATION LITIGATION AND INFORMAL DISCOVERY

On September 11, 2020, Plaintiff filed a class action complaint in the Los Angeles County Superior Court alleging Grassdoor’s failure to (1) pay minimum, regular, and overtime wages (Labor Code §§ 510, 1194; IWC Wage Order 9-2001, §§ 3, 4); (2) provide meal periods (Labor Code §§ 226.7, 512; IWC Wage Order 9-2001, §11); (3) reimburse business expenses (Labor Code §§ 2800, 2802, 2804); (4) provide accurate itemized wage statements (Labor Code § 226); and (5) timely pay wages due upon separation of employment (Labor Code §§ 201, 202, 203). Based on these allegations, Plaintiff alleged unfair business practices in violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208). Khoury Dec. ¶16.

In early January 2021, the Parties agreed to mediate and scheduled mediation with Todd A. Smith for April 14, 2021. Khoury Dec. ¶17. On January 29, 2021, Plaintiff filed a First Amended Complaint (“FAC”) seeking PAGA civil penalties pursuant to Labor Code §§ 2699, *et seq.*, based on Plaintiff’s causes of action, and sought penalties for Grassdoor’s unlawful deduction of tips (Labor Code § 351) and failure to maintain accurate records (Labor Code § 1174). Khoury Dec. ¶18.

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IV. MEDIATION

To prepare for mediation, Plaintiff requested, and Defendant produced, subject to a Stipulated Protective Order, key data for the period from July 19, 2019 through November 12, 2020 that included: (1) total number of Class Members; (2) number of formerly employed Class Members; (3) number of Class Member Pay Periods; (4) number of Class Member Work Weeks; and (5) average hourly rate of pay; and for the PAGA Penalties for the period from September 11, 2019 to November 12, 2020: (1) total number of aggrieved employees, (“PAGA Members”); (2) number of formerly employed PAGA Members; (3) number of PAGA Member Pay Periods; (4) number of PAGA Member Work Weeks; and (5) average hourly rate of pay. In addition, Grassdoor produced excel spreadsheet data containing a 10% random sample of Class Member time (through November 12, 2020) and payroll records (through Pay Period ending September 27, 2020), and the names and contact information for ten Class Members. Khoury Dec. ¶19.

After receipt of the data and an analysis of the information produced by Grassdoor and gathered from informal interviews of Class Members, Plaintiff’s Counsel retained the services of a damages’ consultant to review the information and data to assess violation rates for short, late, or missed meal periods, unpaid or underpaid expense reimbursements for mileage and cell phone expenses, the incidence of underpaid overtime wages due to failure to use the Class Members’ regular rate of pay, and derivative claims for wage statements penalties, waiting time penalties, PAGA civil penalties, and to extrapolate the damages to the Class. Khoury Dec. ¶20.

On April 14, 2021, the Parties attended mediation via Zoom with Todd A. Smith, an experienced and respected wage and hour mediator. The Parties engaged in a day of serious, informed and lengthy arms’-length negotiations, which resulted in a Settlement in principle and a memorandum of understanding. Khoury Dec. ¶21.

V. POST-MEDIATION NEGOTIATIONS & SETTLEMENT AGREEMENT

Several months after mediation and after drafting the long-form settlement agreement, Counsel for Grassdoor proposed a release of rest period claims. To evaluate the request, Plaintiff reenlisted his damages’ consultant to analyze the data previously produced which had

1 included data documenting clock-in and clock-out times for rest periods. The rest period
2 violation rate was identified, and extrapolated to the Class. Based on the identified violation
3 rate, and after an exchange of written demands and counter-offers between the Parties, on
4 January 26, 2022, an agreement was reached on a fair negotiated sum to release the rest period
5 claims on behalf of the Class reflected in the discussion below. Khoury Dec. ¶22.

6 To effectuate the terms of the proposed Settlement, which now includes a release of rest
7 period claims, on April 5, 2022 a Second Amended Class and Representative Action Complaint
8 was filed. Khoury Decl. ¶23.

9 **VI. SUMMARY OF PROPOSED SETTLEMENT**

10 **A. Settlement Terms.**

11 The Parties agreed, subject to Court approval, the Action may be settled for the Gross
12 Settlement Amount of \$350,500.00 (“GSA”) which, subject to Court approval, includes:
13 (a) attorneys’ fees of \$116,833.33 (one-third of the GSA) to compensate Class Counsel for
14 work performed and remaining to be performed in securing final Court approval [Plaintiff
15 consented to apportion fees: 60% to Cohelan, Khoury & Singer, and 40% to Mesriani Law
16 Group. Khoury Decl. ¶25; Lopez Decl. ¶16]; (b) Class Counsel’s litigation expenses of
17 \$14,483.55 (originally estimated at \$15,000.00); (c) a Service Payment to Plaintiff Luis Lopez
18 of \$5,000.00 in consideration of his initiation and prosecution of the action, service as Class
19 Representative, work performed, and risks undertaken for the payment of costs in the event the
20 case was unsuccessful, and benefits conferred on absent Class Members; (d) PAGA Payment of
21 \$5,000.00 of which \$3,750.00 (75% of \$5,000.00) will be paid to the LWDA, and \$1,250.00
22 (25% of \$5,000.00) will be distributed to PAGA Members); and (e) Administration expenses to
23 Simpluris of up to \$13,000.00. Khoury Dec. ¶24. In addition to the GSA, Defendant will pay
24 the Employer Tax Obligations. *Id.*

25 After all Court-approved deductions from the GSA, the remaining Net Settlement
26 Amount (“NSA”) estimated at \$197,433.12 will be distributed to Participating Class Members
27 based on number of Pay Periods worked at any time during Class Period without the need to
28 return a claim form. Khoury Decl. ¶26. The \$1,250.00 PAGA Payment will be distributed to

PAGA Members based on number of Pay Periods worked at any time during the PAGA Period.
Khoury Decl. ¶27.

The 597 Participating Class Members, who worked a total of 17,648 pay periods during the Class Period, will receive an estimated average gross payment of \$328.62, the estimated highest gross payment being \$1,144.99, with the lowest being \$11.12. The 602 PAGA Members, who worked a total of 17,713 pay periods during the PAGA Period, will receive an average PAGA payment of \$2.08, the highest PAGA payment of \$6.70, and the lowest PAGA payment being \$0.07. Khoury Decl. ¶28; Simpluris Decl. ¶ 14. Plaintiff's estimated individual settlement amount is \$402.73. Khoury Decl. ¶29; Simpluris Decl. ¶15.

Checks will be void 180 days after issuance, and any unclaimed amounts will be transferred to the State of California Unclaimed Property Fund, to be held in the name of and for the benefit of such Class Members under California's escheatment laws. Khoury Decl. ¶30; Simpluris Decl. ¶19.

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

1. Preliminary Approval and Class Notice

On May 24, 2022, the Court preliminarily approved the proposed Settlement and Notice Packet for mailing to the Class³. Khoury Decl. ¶31. On July 27, 2022, after searching the National Change of Address database, and updating Class Member addresses, the Settlement Administrator mailed Notice Packets to 602 Class Members. The Notice Packet informed them of (1) the pendency of the Action; (2) proposed settlement terms; (3) automatic payment of Settlement shares if exclusion not requested; (4) estimated amount each Participating Settlement Class Members will receive based on number of pay periods worked during the Class and PAGA Period; (5) released claims; (6) right to object or request exclusion, and (7) date, time and place of the final approval hearing. Khoury Decl. ¶32; Simpluris Decl. ¶8, Exh A.

³The Court Granted Preliminary Approval on the condition that at the time of filing for final approval, the Parties submit a written Amendment to the Settlement Agreement stating that the PAGA release date is the same as the class settlement release date. Section 12.2 of the Joint Stipulation of Settlement and Release of Class Action has been revised accordingly. Khoury Decl. ¶31, Exh. 1 – Amendment to Joint Stipulation of Settlement and Release of Class Action

1 **2. The Class’ Response to the Notice**

2 The Class response to the Settlement was extremely favorable. No objections and five
3 (5) requests for exclusion were received. Khoury Decl. ¶¶33; Simpluris Decl. ¶¶16-17.

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

9 The fourth *Dunk* factor was established when the Class overwhelmingly approved the
10 Settlement.

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

12 The Preliminary Approval Motion thoroughly analyzed the terms of the proposed
13 Settlement in light of *Dunk*, (establishing factors supporting a presumption of fairness); and
14 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008), (establishing factors
15 determining whether a settlement is in the Class’ best interest, is adequate, and reasonable). The
16 Court carefully reviewed and ruled on these analyses and they are fully incorporated here by
17 reference. *See*, Preliminary Approval Motion, at 7:10 – 15:13, and Order Granting Preliminary
18 Approval ¶3.

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

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

22 Class Counsel requests attorneys’ fees of \$116,833.33, one-third of the GSA, and actual
23 litigation costs of \$14,483.55. Class Counsel have expended 240.8 hours, a lodestar of
24 \$146,242.00. Khoury Decl. ¶35, Exh. 2 – Consolidated Summary of Class Counsel’s Time &
25 Costs; Exh. 3(A-E) – Attorney Time Records; Exh. 4 – Itemized Costs; Declaration of Rodney
26 Mesriani, (“Mesriani Decl.”), ¶¶9, 12, Exh. A – Attorney Time Records; Exh. B. Itemized
27 Costs.

28 ///

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, at *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 attorneys' fees request up to one-third of the GSA, \$116,833.33. Simpluris Decl. ¶¶5-9. No Class Member objected to the attorneys' fees award. Simpluris Decl. ¶17.

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 may look to federal authority for guidance. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239-40 (2001))

"Despite its primacy, the 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 (fees may be calculated as percentage of common fund where settlement amount is certain).

A common fund fee award is proper here as it spreads the attorneys' fees among all beneficiaries of the fund, aligns the incentives between Plaintiff's 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. *Laffitte*, 1 Cal.5th at 503.

A lodestar "cross-check" is not required, but may be used at the trial court's option to double check "reasonableness of the percentage fee through a lodestar calculation." *Id.* at 504.

With the guiding principle that early class action settlements are favored and may not diminish an award of attorneys' fees, Class Counsel base their request on substantial hours expended, risks and complexities of prosecution, the contingent nature of any fee, experience in handling cases of this type, common fee awards in these cases, and vindication of Class rights.

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

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

13 **C. One-Third of the Common Fund is a Reasonable Fee**

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

24 Counsel’s request for one-third of the common fund is in the mid-range of awards which
25 commonly range from 20% to 50%, and is fair compensation for undertaking complex, risky,
26 litigation on a contingent basis, and for the result achieved for the Class. Khoury Decl. ¶36.

27 Some courts have found an award of 33% of a common fund is the “benchmark” in
28 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). Counsel’s fee request is reasonable, in line with awards in similar California cases, and consistent with market rates. Khoury Decl. ¶¶37-39.

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 many California courts decline to do so. See, *Glass v. UBS Financial Services, Inc.*, No. 06-4066-MMC, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 26, 2007) (“no need to conduct a lodestar cross-check [as] [c]lass counsel’s prompt action in negotiating a settlement while the state of the law remained uncertain should be fully rewarded”); *Lopez v. Youngblood*, No. 07-0474-DLB, 2011 U.S. Dist. LEXIS 99289 (E.D. Cal. Sep. 1, 2011) (“lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference.”)

When it is used, the cross-check “calculation need entail neither mathematical precision nor bean-counting,” is not intended to be a “full-blown lodestar inquiry,” and “can be performed with a less exhaustive cataloguing and review of counsel’s hours.” *Barbosa v. Cargill Meat Solutions Corp*, 297 F.R.D. 431, 451 (E.D. Cal. July 2, 2013).

Under the lodestar method, a base fee amount is calculated from a 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 for the Class. *Id.*, at 49; see also *Ketchum v. Moses*, Cal.4th 1122, 1132-36 (2001).

Class Counsel’s lodestar is \$146,242.00, \$20,591.33 greater than the \$116,833.33 fee award sought. If the fee award were calculated using the lodestar, rather than the common fund method, no multiplier would be needed. Class Counsel’s work to obtain a class settlement was reasonable and necessary and is reflected in the excellent result achieved for Class Members.

1 Khoury Decl. ¶40, Exh. 1 - Consolidated Summary of Class Counsel's Time.

2 **E. Counsel's Hourly Rates Are Reasonable**

3 Class Counsel is entitled to hourly rates charged by attorneys of comparable experience,
4 reputation, and ability for similar litigation. *Ketchum, supra* at, 1133; *Children's Hospital and*
5 *Med. Center v. Bonta*, 97 Cal App.4th 740, 783 (2002) (affirming rates as "within the range of
6 reasonable rates charged by and judicially awarded comparable attorneys for comparable
7 work"). When determining reasonable rates, Courts may consider the attorney's skill and
8 experience, the nature of the work performed, and the relevant area of expertise and the
9 attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal.App.4th 629,
10 632 (1998).

11 Class Counsel's skill and experience support their hourly rates and are in line with rates
12 typically approved in California wage and hour class action litigation. Khoury Dec. ¶¶4-941;
13 Mesriani Decl. ¶¶9-11. Cohelan Khoury & Singer's practice is limited exclusively to litigating
14 class and representative actions on behalf of employees and consumers. Cohelan, Khoury &
15 Singer has been appointed Class Counsel or co-Class Counsel in over 250 such cases. Khoury
16 Dec. ¶¶8-9, 42. As leading attorneys in the field, Class Counsel monitors prevailing market
17 rates of defense and plaintiff firms and sets billing rates to follow attorneys and staff of
18 comparable skill, qualifications and experience, which support their hourly rates ranging from
19 \$900 to \$350 (Cohelan Khoury & Singer: Founding Partner, Timothy C. Cohelan - \$900;
20 Founding Partner, Isam C. Khoury - \$900; Managing Partner, Michael D. Singer - \$900;
21 Partner, Diana M. Khoury - \$750; Associate, Rosemary C. Khoury - \$350. Mesriani Law
22 Group: Managing Attorney, Rodney Mesriani - \$595). These rates are in line with those
23 typically approved in wage-and-hour class action litigation in California. Other Class and
24 Representative Counsel before California courts charge comparable if not higher rates. Khoury
25 Dec. ¶43, Exh. 5 - 2014 National Law Journal Billing Survey; Mesriani Decl. ¶¶4-11.

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

27 Hours are reasonable if, "at the time rendered, [they] would have been undertaken by a
28 reasonable and prudent lawyer to advance or protect his client's interest." *Moore v. Jas. H.*

1 *Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982). *Norman v. Housing Auth.*, 836 F.2d 1292,
2 1306 (11th Cir. 1988) (“The measure of reasonable hours is determined by the profession’s
3 judgment of the time that may be conscionably billed and not the least time in which it might
4 theoretically have been done”).

5 **G. Litigation Expenses Are Reasonable**

6 The Settlement allows for Class Counsel to request up to \$15,000.00 in costs. Counsel
7 seeks reimbursement of actual costs of \$14,483.55. These costs were reasonable and necessary.
8 Khoury Decl. ¶45, Exh. 3 - Itemized Costs; Mesriani Decl. ¶12, Exh. B - Itemized Costs.

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

10 The settlement of PAGA penalties for \$5,000, of which \$3,7500 (75%) will be paid to
11 the LWDA and \$2,500 (25%) to aggrieved employees, is reasonable and appropriate. The
12 Parties negotiated a good faith amount for PAGA penalties, which was not the result of self-
13 interest at the expense of Class Members. Khoury Decl. ¶46. Where a “good faith amount” is
14 negotiated and “there is no indication that this amount was the result of self-interest at the
15 expense of other Class Members,” it is generally considered reasonable. *Hopson v.*
16 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 U.S. Dist. LEXIS 33900, at *25 (N.D. Cal. Apr.
17 3, 2009).

18 The amount allocated to PAGA is within the range, or higher, than other settlements.
19 See *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona*
20 *v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA
21 penalties in settlement of \$900,000), recommendation adopted, 2015 U.S. Dist. LEXIS 25730
22 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014)
23 (\$10,000 PAGA penalties, \$1.25m settlement); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist.
24 LEXIS 169057, *5-6 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA penalties, \$2.5m settlement);
25 *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. 2012) (\$10,000 PAGA,
26 \$3.7m settlement). The LWDA was served the Motion for Preliminary Approval and the
27 Settlement Agreement. The LWDA raised no objection. Khoury Decl. ¶46, Exh. 6 – LWDA
28 Confirmation of Receipt dated March 25, 2022. The LWDA will be served with this Final

Approval Motion on that date it is filed. Khoury Decl. ¶48, Exh. 7 – LWDA Confirmation.

X. THE SERVICE PAYMENT 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. The Court preliminarily granted a \$5,000.00 service award to Plaintiff.

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

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

Courts have concluded class action plaintiffs, not class members, take the risk of a judgment for defendant’s costs. “Those who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful.” *Earley v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). The *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.* The recovery for a plaintiff in a class action will always be less than an individual action, and take much longer to obtain, with no potential for early settlement, as in some individual cases, which may settle even before filing a public complaint.

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

3 Mr. Lopez more than satisfied his obligation to be available when asked and work with
4 counsel to protect the interests of the Class and place them above his own. Lopez Decl. ¶¶5, 6,
5 11-15. Accepting the risk of judgment for Defendant’s costs, the potential loss of employment
6 opportunities, or achieving an excellent result for the Class, are each sufficient to support a
7 Class Representative Service Payment of \$5,000.00. Considered together, they are more than
8 sufficient.

9 It is impossible to know, or intervene, each time a class action plaintiff loses an
10 employment opportunity, making it essential to compensate them adequately at final approval,
11 the only time that the risk they accepted on behalf of the Class can be at least slightly offset and
12 they can be rewarded for their contribution.

13 The Class received notice Plaintiff would request \$5,000.00 for “initiation and
14 prosecution of the Action, risks undertaken for payment of costs, and the benefits conferred
15 upon the Class.” Simpluris Decl. ¶¶5-10, Exh. A, III. No Class Member objected. *Id.* at ¶17;
16 Khoury Decl. ¶47.

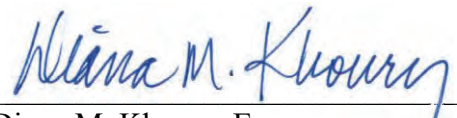
17 **XI. CONCLUSION**

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

21 COHELAN KHOURY & SINGER
22 MESRIANI LAW GROUP

23
24 Dated: September 30, 2022

By: _____


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