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CARLOS LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

Carlos Lopez, individually and on behalf of others similarly situated,

Plaintiff,

v.

Bay Mountain Air, Inc.; and DOES 1 through 25, inclusive,

Defendants.

Case No. 21CV382011 (Lead Case)
Consolidated with Case No. 21CV386284

PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT

Hearing Date: January 6, 2026
Hearing Time: 1:30 p.m.
Dept.: 19
Judge: Hon. Elizabeth C. Peterson
Complaint Filed: May 17, 2021

I. INTRODUCTION

Plaintiff Carlos Lopez ("Plaintiff") submits this supplemental brief in response to the Court's order of September 4, 2026 (the "Order") continuing the hearing on Plaintiff's unopposed motion for preliminary approval of the proposed $325,000 class and PAGA action settlement with Defendant Bay Mountain Air, Inc. ("Defendant" or "Bay Mountain"). The Court did not find the Settlement unfair. Rather, the Court explained that, on the record then before it, it could not make the independent fairness assessment that its role as fiduciary for absent class members requires, and it directed Plaintiff to supplement the record in four respects. (Order, pp. 2, 8-9.)

This brief, the concurrently filed Supplemental Declaration of Arlo Garcia Uriarte (the "Supp. Uriarte Declaration") and Defendant Bay Mountain Air, Inc.'s confidential materials filed under seal address each of the four items identified in Section III of the Order:

1. A claim-by-claim risk-adjusted valuation of the $5,709,467 damages model, stating the discount applied to each component, the basis for that discount, and the rest period violation rate the evidence would support at trial. This brief supplies that analysis in Section II.

2. Evidence of Defendant's financial condition, and an explanation reconciling Defendant's representation that $325,000 is the most it can pay with the separate $50,000 individual settlement. Defendant has lodged federal corporate tax returns for its three most recent fiscal years, a current balance sheet and profit-and-loss statement, and a supplemental declaration of its President, Todd Stone, addressing the absence of insurance and the global nature of the settlement figure. This brief addresses that evidence and the reconciliation in Section III.

3. The individual settlement agreement, provided for the Court's confidential in camera review, together with a declaration addressing the timing, negotiation, and valuation of that settlement and the basis for the $17,196.63 in fees and costs. This brief addresses the individual settlement in Section IV.

4. A revised class notice incorporating the modifications set forth in Section II.F of the Order, submitted in both redline and clean form. This brief addresses the revised notice in Section V.

As set forth below and in the supporting declarations, the supplemental showing confirms that the Settlement is fair, reasonable, and adequate, and that it falls within the range of possible approval. Plaintiff respectfully requests that the Court grant preliminary approval, conditionally certify the Settlement Class, approve the revised notice, appoint Phoenix Class Administration Solutions as Settlement Administrator, and set a final approval hearing.

II. CLAIM-BY-CLAIM RISK-ADJUSTED VALUATION (ORDER, SECTION III.1)

The Court observed that the original motion supplied a maximum-exposure model of $5,709,467.02 (exclusive of PAGA) but did not state what the claims are worth after the litigation risks are applied, leaving no benchmark against which to measure the $325,000 Gross Settlement Amount. (Order, pp. 4-5.) As the Order recognizes, a maximum-damages estimate is a typical starting point, but the Court must also understand how the proponents discount it for the risks presented. (Order, p. 2, citing *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-409.)

Plaintiff supplies that analysis below. The percentages reflect Class Counsel's professional assessment of the litigation risk associated with each component, informed by the certification record, the deposition testimony of Defendant's Person Most Knowledgeable, the four corroborating employee declarations developed to date, Defendant's electronic timekeeping and payroll data, and counsel's experience litigating comparable wage and hour class actions. (Supp. Uriarte Decl., ¶¶ 3-8.) They are offered as reasoned, good-faith estimates of realistic trial value, not as predictions of certainty.

A. Negative Rounding (Modeled at $32,181.24).

The negative rounding component is the most objectively supported part of the model because it was derived directly from Defendant's own electronic timekeeping and payroll records for 2021 through 2024, rather than from an assumption. (Supp. Uriarte Decl., ¶ 4.) The principal risks are legal rather than evidentiary: Defendant denies that its rounding practice was unlawful, and the data show the negative effect was concentrated in the earlier portion of the electronic period, particularly 2021, after which Defendant ceased the practice and paid employees based

on their recorded punches. Applying a modest discount of approximately 25 percent to reflect that legal risk and the transitional, limited scope of the practice, Class Counsel values this component at approximately $24,100.

B. Off-the-Clock Work During the Handwritten Timecard Period (Modeled at $781,243.62).

This component rests on an assumption of thirty minutes of uncompensated pre- and post-shift work per qualifying workday, extrapolated across the handwritten timecard period, and is not independently recorded in Defendant's timecards. (Supp. Uriarte Decl., ¶ 5.) The evidentiary risk is substantial. Despite renewed outreach, Class Counsel obtained only four corroborating employee declarations out of an estimated 180 Class Members; Defendant's Person Most Knowledgeable testified that employees were supposed to record their actual times and that supervisors collected the cards for payroll; and Plaintiff himself testified at deposition that he was paid for all time he worked. A factfinder could credit the corroborating witnesses but conclude their experience was not representative of the subclass, or could reduce the assumed thirty-minute figure. Applying an approximately 85 percent discount to reflect that representative-proof risk and the absence of records capturing the alleged work, Class Counsel values this component at approximately $117,200.

C. Rest Period Premiums (Modeled at $3,560,058.16).

This is the largest and riskiest component of the model, and the Court specifically asked for the rest period violation rate the evidence would support at trial. (Order, p. 9.) The $3,560,058.16 figure was calculated using approximately 98,075 workdays and a 98.72 percent violation rate at an average hourly rate of $36.77. That 98.72 percent rate assumes a compensable violation on essentially every qualifying workday across the subclass. The evidence does not support a rate approaching that figure. Defendant's Person Most Knowledgeable characterized the combined-break practice as voluntary, testifying that "a lot of the guys opt to skip their 10-minute break at 10:00 and add it to their lunch"; the prevalence of a supervisor-directed, mandatory practice rests on the limited corroborating declarations; and the Court itself recognized at certification that Defendant's records do not readily establish which employees actually

experienced the alleged practice. (Supp. Uriarte Decl., ¶¶ 6-7.) In Class Counsel's assessment, the evidence would realistically support a rest period violation rate of approximately one-third, which reduces this component to approximately $1,190,000.

That reduced figure must then be discounted again for legal risk. Under *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1041, combined rest periods are not categorically unlawful, and an employer may depart from the preferred schedule where practical considerations make separate rest periods infeasible and advantageous to employees as well. Plaintiff's theory therefore requires proof not only that combined breaks occurred, but that Defendant lacked a legally sufficient, practicability-based justification. Applying a further discount of approximately 65 percent to reflect the *Rodriguez* defense and the risk that the practice cannot be shown to have been classwide and mandatory, Class Counsel values the rest period claim at approximately $415,000. The departure must be predicated on facts demonstrating that the preferred schedule would impose a material burden on the employer, and that the departure is necessary to alleviate such burden.

D. Derivative Wage Statement Penalties (Modeled at $630,000).

The wage statement penalty figure assumes that approximately 75 percent of the 180 Class Members would recover the $4,000 statutory maximum. It is wholly derivative of the underlying wage violations and depends on the additional statutory requirements applicable to that remedy. Because this component builds on the same contested predicate violations analyzed above, and because the derivative requirements present additional risk, Class Counsel applies an approximately 85 percent discount and values this component at approximately $94,500.

E. Derivative Waiting Time Penalties (Modeled at $705,984).

The waiting time penalty figure assumes approximately 80 separated employees each recovering the full 30 days of penalties at an average daily rate of $294.16. Like the wage statement penalties, this component is derivative of the underlying wage violations and depends on the additional statutory requirements applicable to that remedy, including the full 30-day

assumption applied uniformly. Applying an approximately 85 percent discount, Class Counsel values this component at approximately $105,900.

F. <u>The Risk-Adjusted Class Value and the PAGA Claim.</u>

Taken together, the risk-adjusted value of the class claims is approximately $756,000, as compared to the $5,709,467.02 maximum model:

Negative rounding:	$32,181.24 modeled; approximately $24,100 risk-adjusted.
Off-the-clock work:	$781,243.62 modeled; approximately $117,200 risk-adjusted.
Rest period premiums:	$3,560,058.16 modeled; approximately $415,000 risk-adjusted.
Wage statement penalties:	$630,000 modeled; approximately $94,500 risk-adjusted.
Waiting time penalties:	$705,984 modeled; approximately $105,900 risk-adjusted.
Total:	**$5,709,467.02 modeled; approximately $756,000 risk-adjusted.**

Measured against that risk-adjusted value of approximately $756,000, the $325,000 Gross Settlement Amount represents approximately 43 percent of the realistic value of the class claims, before accounting for the further risks of maintaining certification through trial, prevailing at trial, surviving posttrial and appellate review, and ultimately collecting on any judgment.

The PAGA claim does not materially change this picture. Class Counsel calculated theoretical PAGA exposure exceeding $2.3 million by applying the applicable penalty rates to approximately 5,982 pay periods during the PAGA Period. That figure is not a realistic recovery because it depends on the same disputed predicate violations analyzed above and because the Court retains broad discretion to award less than the maximum where the maximum would be unjust, arbitrary, oppressive, or confiscatory. (Lab. Code, section 2699, subd. (e)(2).) The $10,000 PAGA allocation is reasonable when the claim is valued realistically rather than at its statutory

ceiling. Also, there is evidence that Defendant has changed their practices in response to this litigation. For example, they stopped their rounding practice soon after learning of this action .

III. EVIDENCE OF DEFENDANT'S FINANCIAL CONDITION AND RECONCILIATION WITH THE INDIVIDUAL SETTLEMENT (ORDER, SECTION III.2)

The Order noted that the Agreement makes Defendant's financial limitations a material term and contemplates a declaration describing those limitations, but that the only evidence originally submitted was a single conclusory sentence that attached nothing and supplied no foundation. (Order, pp. 5-6; Agreement, section B.9.) The Court directed Plaintiff to submit federal tax returns or financial statements for the three most recent fiscal years, a current balance sheet and profit-and-loss statement, information concerning available insurance coverage and any applicable indemnity, and a declaration from a person competent to explain those materials, with confidential material to be lodged conditionally under seal. (Order, pp. 5-6; Cal. Rules of Court, rules 2.550, 2.551.)

A. The Financial Evidence Now Before the Court.

Through Defendant, the following materials have been provided so that the Court may independently evaluate Defendant's representation concerning the settlement amount. Because they contain confidential corporate financial information, they are lodged conditionally under seal in accordance with the Order and California Rules of Court, rules 2.550 and 2.551. (Supp. Uriarte Decl., ¶¶ 9-11.)

Defendant's federal corporate income tax returns for its three most recent fiscal years, 2023 (Exhibit 2), 2024 (Exhibit 3), and 2025 (Exhibit 4);

Defendant's most recent reconciled balance sheet, for the period ending July 31, 2026 (Exhibit 5);

Defendant's most recent reconciled profit-and-loss statement, for the period ending July 31, 2026 (Exhibit 6); and

The supplemental declaration of Todd Stone, President of Bay Mountain Air, Inc., which authenticates the financial records and addresses the matters below (Exhibit 1).

B. Insurance Coverage and Indemnity.

As to the insurance and indemnity information the Order required, Mr. Stone declares that "[t]here was no insurance to cover the cost of the defense of this matter and no insurance to cover any settlement of any of Plaintiff's claims." (Supp. Uriarte Decl., ¶ 10; Stone Supp. Decl., ¶ 5.) There is accordingly no insurance or indemnity source available to satisfy either the class claims or Plaintiff's individual claims, and the Settlement is funded entirely from Defendant's own resources.

C. Asset Check on Mr. Stone and Bay Mountain Found Bad History

In October 2025, after the failed mediation, our firm engaged in an asset and financial condition investigation on Defendant's owner, Todd Stone and Bay Mountain. This was to substantiate the mediator's repetition of Mr. Stone's assertion that he was not financially stable. The result was that he owned very little assets and actually was facing several credit related actions. Found many liens associated with Mr. Stone and Bay Mountain. Also found over 10 judgments related to either or both. Supp. Decl. ¶ 11.

This discovery confirmed to us that Mr. Stone has the appetite to have liens against him and his company, to have judgments against him and his company, instead of paying or settling collection actions against him and his company. Id. ¶ 14.

D. Reconciliation of the $325,000 Representation with the Separate $50,000 Individual Settlement.

The Court asked the parties to explain how Defendant's representation that $325,000 is its maximum can be reconciled with the fact that Defendant is also paying $50,000 to resolve Plaintiff's individual claims. (Order, pp. 5-6.) The supplemental declaration of Todd Stone resolves the apparent tension. Mr. Stone declares that the figure he represented at the September 2025 mediation as the maximum Defendant could pay was a global figure of $375,000 to resolve both the class claims and Plaintiff's individual claims, "without significantly impairing the ability

to maintain [the company's] business operations and meet [its] existing financial obligations at the time of the mediation in September 2025." (Supp. Uriarte Decl., ¶ 10; Stone Supp. Decl., ¶¶ 3-4.) The $325,000 class Gross Settlement Amount and the $50,000 individual settlement together total that $375,000 global maximum. The individual settlement therefore does not reflect capacity to pay the class beyond what Defendant represented; it is a component of the same global figure.

Mr. Stone further declares that, at the mediation, he advised the mediator that if the cost to resolve the matter were any greater, one possible solution was to close the business. (Supp. Uriarte Decl., ¶ 10; Stone Supp. Decl., ¶ 5.) The employer-side payroll taxes referenced in the Order are a statutory incident of the wage portion of the class payments and are paid in addition to, and do not diminish, the funds available to the Class, and Defendant's own defense costs are incurred regardless of the Settlement and are likewise unavailable to the Class.

E. Approval Does Not Rest on Ability to Pay Alone.

Plaintiff presents the foregoing so that the Court can perform the independent evaluation its fiduciary role requires. As the Court recognized, limited ability to pay can justify an otherwise lower settlement only where the limitation is established by evidence the Court can evaluate, and the Court now has that evidence before it. (Order, pp. 5-6.) Importantly, however, the reasonableness of the Settlement does not depend on Defendant's financial condition alone. As Section II demonstrates, the $325,000 Gross Settlement Amount represents approximately 43 percent of the risk-adjusted value of the class claims. The Settlement is fair and reasonable on the strength of that risk-adjusted analysis, and Defendant's representations concerning its financial condition and the absence of insurance provide additional support for the compromise. (Supp. Uriarte Decl., ¶¶ 8-11.)

IV. THE SEPARATE INDIVIDUAL SETTLEMENT (ORDER, SECTION III.3)

The parties separately resolved Plaintiff's individual termination claims, asserted in consolidated Case No. 21CV386284, for $50,000, consisting of $32,803.37 payable to Plaintiff and $17,196.63 in attorneys' fees and costs. (Order, p. 6; Supp. Uriarte Decl., ¶ 12.) The individual action asserted FEHA and related wrongful termination theories and was ordered consolidated

with the class action for discovery and case-management purposes on September 20, 2021. The class and PAGA Settlement Agreement expressly provides that it resolves only the class and PAGA claims in Case No. 21CV382011 and does not resolve, compromise, or release Plaintiff's individual claims in the related action. (Agreement, sections A.1, B.3.) Plaintiff seeks no class representative service award from the Gross Settlement Amount, and the individual settlement does not reduce the funds available to the Class or the LWDA. (Supp. Uriarte Decl., ¶ 12.)

A. The Individual Settlement Agreement Is Provided for In Camera Review.

In accordance with Section II.C of the Order, Plaintiff's counsel provides a copy of the fully executed individual settlement agreement to the Court for its confidential in camera review. The agreement is not attached as a public exhibit in order to preserve its confidentiality and that of Plaintiff's individual, non-wage claims.

B. Timing, Negotiation, and Valuation of the Individual Settlement.

The Order directs Plaintiff's counsel to submit a declaration stating when the individual settlement was negotiated relative to the class settlement, whether the two were negotiated as a package, whether the amount of either was affected by the other, and the basis for the $17,196.63 in fees and costs. (Order, pp. 6-7.) The Supplemental Declaration of Arlo Garcia Uriarte addresses each of these points. (Supp. Uriarte Decl., ¶¶ 12-15.)

The parties separately resolved Plaintiff's individual termination and failure to accommodate claims, asserted in consolidated Case No. 21CV386284, for $50,000, consisting of $32,803.37 payable to Plaintiff and $17,196.63 in attorneys' fees and costs. The individual action asserted FEHA and related wrongful termination theories. The class and PAGA Settlement Agreement resolves only the class and PAGA claims and does not resolve or release Plaintiff's individual claims. Plaintiff seeks no class representative service award from the Gross Settlement Amount, and the individual settlement does not reduce the funds available to the Class or the LWDA. A copy of the fully executed individual settlement agreement is provided to the Court for confidential in camera review.

The negotiation for the individual claim was occurring before the mediation. Between 2024 and 2025, counsel for both parties discussed settlement of the individual claim several times.

Settlement was separately discussed during mediation in September 2025. Aside from counsel for both parties negotiating the claim, a CCP 998 offer was served on Plaintiff on October 2025. Negotiations continued through to December 2025, when with the assistance of the mediator, the class and individual claims were settled.

The terms and amount of the class settlement were not reduced or influenced by the individual settlement. Plaintiff's value for his individual claims far exceed $50,000. Plaintiff was unable to work for over two years after his termination in September 2020. He was making about $4,000 per month. He did have some intermittent work in between, but he also got depressed and fell in and out of inability to work due to his medical condition. It is not an exaggeration to state that his life was changed dramatically because of the alleged wrongful termination. His allegations for trial would have been because he was not accommodated because of COVID related symptoms, he was not able to work, and the termination caused him not only wage loss and related financial loss, but also severe emotional distress. My best estimate is that in trial it would not be unreasonable to seek at least $300,000 from a jury sympathetic to Plaintiff. See Supp. Uriarte Dec. ¶ 14.

The individual retainer agreement called for a 33.33% recovery of the attorney fees. That amounts to $16,665 and the costs allocated to the individual action is $531.63. A costs sheet is attached as Ex. 7, to Arlo Uriarte Declaration. It should be noted that Plaintiff first called our office because of his concern and desire to file a wrongful termination action. Plaintiff survived summary judgment for his causes of action of wrongful termination, failure to accommodate and failure to engage in interactive process. It is almost certain that the "lodestar" work for this individual matter far exceeds the fees earned. Counsel for Plaintiff will provide the hours worked as the Court directed as part of the Motion for Final Approval. Here is a list of work done in the individual cases only: Sept. through October 2020, intake investigation, appointments in the office. Retained. Communication with employer re employment records and analysis of records through the end of 2020. FEHA complaint filed and analysis of his medical records from Dec. 2020 to June 2021. FEHA complaint filed July 2021. Discovery, meet and confer, IDCs through August 2022. Jan. to April 2023, MSJ work. 2024 – 2025 Negotiations and Settlement.

C. The Individual Settlement Does Not Undermine the Fairness of the Class Settlement.

A payment negotiated for the class representative and class counsel alongside a class settlement warrants scrutiny to ensure the class settlement was not influenced by the individual one. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.) Several features of this Settlement address that concern. Plaintiff seeks no service award from the Gross Settlement Amount, so he does not receive any class-fund payment above and beyond his pro rata workweek share. The individual settlement resolves distinct FEHA and wrongful termination claims that are separate from the wage and hour claims released by the Class, is documented in a separate agreement, and does not reduce the Gross Settlement Amount, the Net Settlement Amount, or the LWDA's share. (Agreement, sections A.1, B.3; Supp. Uriarte Decl., ¶¶ 12-15.)

Furthermore, the work and negotiations were done separately. A separate MSJ was addressed by Plaintiff who could have proceeded to try the case. Whether Plaintiff was going to be successful in collecting any large judgment was in question. Plaintiff's counsel engaged in an asset search and financial background check on the owner, Todd Stone. The results of that investigation were not motivating to say the least. Aside from a lack of asset, it included credit actions, liens, judgments against Mr. Stone and Bay Mountain from several sources. Supp. Decl. Uriarte, ¶ 11. Such realization made us consider, seriously consider a reduced value for the individual claim.

V. REVISED CLASS NOTICE (ORDER, SECTION III.4)

The Order found the notice plan satisfies due process and that the form of notice is generally adequate, subject to four modifications. (Order, pp. 7-8.) Plaintiff has revised the proposed Notice of Class Action Settlement to incorporate each modification and submits the revised Notice in both redline and clean form. (Supp. Uriarte Decl., ¶¶ 16-17.) The revisions are as follows.

A. Scope of the Release and the Summary-Adjudicated Claims.

Section 7 of the Notice has been conformed to section A.31 of the Agreement so that it releases neither meal period claims nor business expense reimbursement claims. In addition,

section 2 of the Notice has been revised to state that the meal period and expense reimbursement causes of action were resolved against Plaintiff on summary adjudication and are not part of this Settlement. (Order, p. 7.)

B. Disclosure of the Cy Pres Provision.

The Notice has been revised to disclose the cy pres provision, including that settlement checks remain negotiable for 180 days and that funds represented by checks uncashed after that period will be distributed to La Raza Centro Legal as the cy pres recipient pursuant to Code of Civil Procedure section 384, with no second distribution. (Order, p. 7; Agreement, section E.3.b.)

C. Disclosure of the Separate $50,000 Individual Settlement.

The Notice has been revised to disclose the separate $50,000 individual settlement, including the $17,196.63 paid to Class Counsel, and to state that the individual settlement does not reduce the Gross Settlement Amount and that no class representative service award is sought from the Gross Settlement Amount. (Order, p. 7.)

D. Remote Appearance Information and Department Change.

The Order notes that hearings in this matter occurring up to November 4, 2026 will be heard in Department 8 and that hearings occurring after November 4, 2026 will be heard in Department 19. (Order, p. 8.) Because the final approval hearing will occur after that date, the Notice has been revised to add the following language specified by the Court:

> Class members may appear at the final approval hearing in person or remotely using the link for Department 19, and should review the remote appearance instructions beforehand:
>
> https://santaclara.courts.ca.gov/online-services/remote-hearings
>
> Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing, if possible, so that potential technology or audibility issues can be avoided or minimized.

As revised, the Notice continues to describe the nature of the Action, the material terms of the Settlement, the estimated payments, the applicable releases, and the procedures and deadlines for disputing workweek information, requesting exclusion, objecting, and appearing at

the final approval hearing, and will be provided in English and Spanish by First Class U.S. Mail and, where available, by email. The revised Notice remains reasonably calculated to apprise Class Members of the Settlement and their rights and satisfies due process.

VI. ATTORNEYS' FEES AND LODESTAR CROSS-CHECK

The Court indicated that it will fix the requested 25 percent fee at final approval with a lodestar cross-check, and directed that Class Counsel submit each timekeeper's experience, rate, and hours by task category, and separately identify time billed to Plaintiff's individual action, which may not be counted toward the class fee. (Order, p. 7; *Laffitte v. Robert Half International Inc.* (2016) 1 Cal. 5th 480, 503-504.) Class Counsel will provide that lodestar documentation, including the separate identification of time attributable to the individual action, in connection with the motion for final approval, and will submit an itemized accounting of litigation costs actually incurred at that time as well.

VII. CONCLUSION

For reasons set forth in this and the original motion, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the Settlement Class and appoint Carlos Lopez as class representative and Arlo Garcia Uriarte as class counsel for settlement purposes, approve the revised Notice and notice procedures, appoint Phoenix Class Administration Solutions as Settlement Administrator, and set a final approval hearing.

Dated: October 16, 2026

Respectfully submitted,
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