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on behalf of similarly aggrieved

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

17 DARLENE TORRES, LEANNA
RUVALCABA AND MARCELLA BERNAL,
18 individuals, on their own behalf and on behalf
of all similarly aggrieved employees,

19 Plaintiff,

20 v.

21 MONETARY MANAGEMENT OF
CALIFORNIA, INC., a foreign corporation;
22 and DOES 1 through 50, inclusive,

23 Defendants.

Case No. 21STCV09917

*Assigned for All Purposes to Hon. Terry
Green, Dept. 14*

**JOINT NOTICE OF MOTION AND
JOINT UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS-
ACTION AND PAGE SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 25, 2022

Time: 8:45AM

Place: Dept. 14

Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

Complaint Filed: March 12, 2021

FAC Filed: June 9, 2022

Trial Date: August 8, 2022

1 **TO EACH PARTY AND TO THE HONORABLE COURT:**

2 **NOTICE IS HEREBY GIVEN** that on July 25, 2022, at 8:45 a.m. or as soon thereafter as
3 counsel may be heard, in Department 14 of the above-titled Court located at 111 North Hill Street, Los
4 Angeles, CA 90012, Defendant Monetary Management Of California, Inc. (“Defendant”) and Plaintiffs
5 Darlene Torres, Leanna Ruvalcaba and Marcella Bernal (“Plaintiffs”) will jointly move, and jointly
6 hereby do move, for:

- 7 1. Preliminary approval of the proposed class and PAGA settlement of this lawsuit;
- 8 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification of
9 the Settlement Class defined as “all non-exempt employees who were employed by Money Mart
10 [Defendant Monetary Management of California, Inc.] in California during the Claims Period,”
11 with the Claims Period defined as “the period from March 12, 2017 to the point in time where
12 the class Workweeks reach 71,500, or until the Court grants preliminary approval of the
13 Agreement, whichever occurs first”;
- 14 3. Appointment of Plaintiffs as Class Representatives;
- 15 4. Appointment of The Kick Law Firm, APC as Class Counsel;
- 16 5. The scheduling of a Final Settlement Approval Hearing to determine whether the class
17 settlement should be approved and to award the incentive payment to the Class Representatives
18 and attorneys’ fees and costs to Class Counsel;
- 19 6. Appointment of Simpluris as third-party settlement administrator; and
- 20 7. Approval of the proposed mechanism for receiving and evaluating claims and notices of election
21 to opt out of the settlement.

22 The Motion will be made and based upon this Joint Notice of Motion; the Declarations In
23 Support of this Motion of Mediator Marc Feder, the Declarations of the Class Representatives,
24 Plaintiffs’ attorneys Taras Kick and Gregory Taylor, all filed and served herewith; all of the pleadings,
25 papers, and documents contained in the file of the within action; and such further evidence and argument

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27 ///

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1 as may be presented in support at or before the determination of the Motion.

2 DATED: June 30, 2022

THE KICK LAW FIRM, APC
BARTKO ZANKEL BUNZEL & MILLER

3
4 *Taras Kick*

5 _____
Taras Kick
Gregory Taylor
6 Attorneys for Plaintiffs

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10 Attorneys For Defendant

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction, Including The Prior Hearing of June 7, 2022.

The parties to this action jointly ask that this Court grant preliminary approval of the Stipulation for Class Action and PAGA Settlement (“Settlement”)¹ entered into between Plaintiffs Darlene Torres, Leanna Ruvalcaba and Marcella Bernal (collectively, “Plaintiffs”), on behalf of the absent Class Members whom they seek to represent, and Monetary Management of California, Inc. (“Money Mart” or “Defendant”). This Motion requests that the Court grant preliminary approval of this non-reversionary \$1,500,000 Settlement, finding that there is a *prima facie* showing that it is fair, adequate, and reasonable. The class consists of approximately 738 persons. The average estimated amount each class member will receive from the class claims is about \$1,218.

The parties were before this Court on June 7, 2022, seeking this preliminary approval, but the Court did not yet have in its file the First Amended Complaint (“FAC”) which amends the complaint to add class action allegations. (Declaration of Taras Kick (“Kick Decl.”) ¶ 18.) Therefore, at the time of that June 7 hearing, the Court was unaware that the case was both a class action and PAGA case, and continued the hearing to July 25, 2022, so as to get the FAC before it. (*Id.*) Following the hearing, the parties reviewed the electronic docket and determined that the Court already had granted the parties’ Joint Stipulation for Leave to File FAC on June 2, 2022, which attached a copy of the proposed FAC but that the FAC had not yet been filed. (*Id.*) This Court’s June 2, 2002, Order granting the filing of the FAC is attached as Exhibit 2 to the Kick Decl. On June 9, 2022, Plaintiffs filed the FAC with the Court, which is also attached as Exhibit 1 to the Kick Decl. The Kick Decl. also reflects counsel’s detailed analysis of the factors described in Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116 (2008). Given the uncertainty and risks faced by the parties to this litigation, the parties have determined that a non-reversionary \$1,500,000 Settlement is fair and the most desirable way to resolve this matter.

II. Background and Analysis of Claims

A. It Is Very Common For A Case to Have Class and PAGA Claims Settled Together.

At the last hearing, the Court asked: (1) how common is it for both class and PAGA claims to be

¹ A true and correct copy of the fully executed Settlement Agreement is attached as Exhibit 3 to the Kick Decl. ISO Preliminary Approval filed herewith, and Exhibit 4 to it is the Notice Packet.

1 alleged in the same action and resolved in a single settlement in California trial courts? and (2) is the
2 proposed allocation of settlement funds between PAGA and class claims appropriate or common? The
3 parties have carefully considered the court's questions and answer them below.

4 First, regarding how common it is for a case such as this one to have both class and PAGA claims
5 resolved in a single settlement, the Los Angeles Superior Court, Complex Civil Department Checklist for
6 Preliminary Approval of Class Action Settlement (the "Checklist") has long recognized these types of
7 settlements, and even has specific sections pertaining to how to approach this issue. For example, the
8 Checklist at page 4 states as follows (emphasis added):

9 **If PAGA and Class Settlement:** The Release should provide an explanation that released claims
10 include all PAGA claims that could have been premised on the facts alleged in the Plaintiff's
11 Notice and aggrieved employees will release PAGA claims even if class members request
12 exclusion from the class. See *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th
13 476.)²

14 The Checklist also addresses the mechanics for providing notice to the Labor Workforce
15 Development Agency (LWDA) regarding settlements of these cases: "**Class cases which include a PAGA**
16 **claim** should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the
17 LWDA." (*Id.*, emphasis added.) In fact, just last night, June 29, 2022, at 9:35PM, Department 7 of the
18 Los Angeles Superior Court sent an email announcing a new optional model Settlement Agreement for
19 Class Action/PAGA cases such as this, which allows the parties to designate a portion of the gross
20 settlement amount for PAGA penalties to be divided between the LWDA and aggrieved employees.³

21 Second, the Declaration of Marc Feder ("Feder Decl."), one of the California's most respected
22 wage and hour mediators⁴ who acted as the mediator here, supports the proposed settlement of the class
23 and PAGA claims. Mr. Feder has 27 years of experience as a mediator and has "mediated thousands of
24 wage and hour class actions that include PAGA claims." (Feder Decl. ¶ 2.) His declaration attests to the
25 parties' arm's-length settlement negotiations, the common practice of settling these claims together
26 through an amended complaint, and his opinion that the \$50,000 allocated for PAGA penalties in this

27 ² See Checklist, at <https://www.lacourt.org/division/civil/pdf/PreliminaryApprovalOfClassActionSettlement.pdf>

28 ³ <https://www.lacourt.org/newsmedia/uploads/14202262914381222NRCLASSACTIONSETTLEMENTFORMS.pdf>

⁴ <https://frankandfeder.com/marc-feder/>.

1 settlement is fair, reasonable, and “well-within the range” of what he “typically see[s] in the wage and
2 hour actions that [he has] mediated.” Mr. Feder declares as follows:

3 “The settlement negotiations were at arm’s-length and the parties were adverse to each other and
4 forcefully advocated for their respective positions. Because the parties were unable to reach a
5 settlement during the mediation, I made a mediator’s proposal where **I recommended that the**
6 **parties settle both the class action wage and hour claims and PAGA claims for \$1.5 million,**
7 which would also require that Plaintiffs file an amended complaint to add the class claims. The
8 practice of amending a complaint to include both class action and PAGA wage and hour claims is
9 extremely common in the wage and hour actions that I have mediated. Moreover, **the \$50,000**
10 **allocation of the \$1.5 million gross settlement amount to PAGA claims is well-within the**
11 **range that I typically see in these wage and hour class actions. and I believe that it is a fair**
12 **and reasonable PAGA allocation for these claims.**

13 (Feder Decl. ¶¶ 3, 4.) (Emphasis added.) Mr. Feder concludes by stating, “In sum, in my experience as a
14 mediator who has mediated over a thousand PAGA cases that also include wage and hour class action
15 allegations as this case does, there is nothing unusual about this case in terms of the proposed PAGA
16 allocation from the gross settlement, and the proposed allocation to PAGA from the total settlement is
17 well within the range I see in cases such as this one.” (Feder Decl. ¶ 5.)

18 Of course, there is nothing unusual or controversial about Mr. Feder’s opinion or experience in
19 this regard. Most cases with class action allegations in Los Angeles County Superior Court wind up in the
20 Complex Department, rather than at Stanley Mosk. As stated in the concurrently filed Declaration of
21 Gregory Taylor, counsel for Plaintiffs, Mr. Taylor was tasked after the June 7th hearing to conduct a
22 survey of the Los Angeles County Complex Court, and in a very restricted amount of time found 33
23 hybrid wage and hour class action/PAGA cases in which the allocation to PAGA was similar to, or less
24 than, the allocation in this case. Here are a quick dozen examples from Mr. Taylor’s declaration, which
25 also attaches the Orders for Final Approval of the Class Action Settlements from the cases cited below:

26 1) In *Bautista v. Worldwide Flight Services, Inc.*, 2018 WL 3057766 (2018), the Hon. Carolyn B.
27 Kuhl of LASC approved a mixed PAGA/class action settlement in which 2.08% of the total
28 settlement was allocated to PAGA ($\$50,000 / \$2,400,000 = 0.0208$). (Taylor Decl., ¶ 3 (5))

2) In *Hernandez v. The Bicycle Casino LP*, 2018 WL 3484814 (2018), the Hon. Carolyn B. Kuhl of
LASC approved a mixed PAGA/class action settlement in which 1.9% of the total settlement
was allocated to PAGA ($\$33,334 / \$1,750,000 = 0.019$). (Taylor Decl., ¶ 3(15), Ex. A.)

- 1 3) In *Herrera v. Pharmavite LLC*, 2017 WL 9286742 (2017), the Hon. Carolyn B. Kuhl of LASC
2 approved a mixed PAGA/class action settlement in which 1.6% of the total settlement was
3 allocated to PAGA ($\$30,000 / \$1,925,000 = 0.016$). (Taylor Decl., ¶ 3(16), Ex. A.)
- 4 4) In *Robins, Jr. v. Versa Logistics, LLC*, 2018 WL 3222585 (2018), the Hon. Carolyn B. Kuhl of
5 LASC approved a mixed PAGA/class action settlement in which 0.2% of the total settlement
6 was allocated to PAGA ($\$2,500 / \$1,036,307.05 = .002$). (Taylor Decl., ¶ 3(26), Ex. A.)
- 7 5) In *Tharpe v. Sprint Corp.*, 2018 WL 3656550 (2018), the Hon. Carolyn B. Kuhl of LASC
8 approved a mixed PAGA/class action settlement in which 2.4% of the total settlement was
9 allocated to PAGA ($\$10,000 / \$409,411 = 0.024$). (Taylor Decl., ¶ 3(31), Ex. A.)
- 10 6) In *Torres v. Beths Kitchen Inc*, 2017 WL 3334657 (2017), the Hon. Kenneth R. Freeman of
11 LASC approved a mixed PAGA/class action settlement in which 1.25% of the total settlement
12 was allocated to PAGA ($\$5,000 / \$400,000 = .0125$). (Taylor Decl., ¶ 3(33), Ex. A.)
- 13 7) In *Marine v. Giltner Inc.*, 2017 WL 6888559 (2017), the Hon. Kenneth R. Freeman of LASC
14 approved a mixed PAGA/class action settlement in which 2.85% of the total settlement was
15 allocated to PAGA ($\$10,000 / \$350,000 = .0285$). (Taylor Decl., ¶ 3 (21), Ex. A.)
- 16 8) In *Tespan v. Preferred Freezer Services of Los Angeles*, 2017 WL 3951949 (2017), the Hon.
17 Kenneth R. Freeman approved a mixed PAGA/class action settlement in which 3.3% of the total
18 settlement was allocated to PAGA ($\$15,000 / \$450,000 = .033$). (Taylor Decl., ¶ 3(30), Ex. A.)
- 19 9) In *Branch v. PM Realty Group LP*, 2017 WL 9477977 (2017), the Hon. Maren E. Nelson of
20 LASC approved a mixed PAGA/class action settlement in which 1% of the total settlement was
21 allocated to PAGA ($\$10,000 / \$1,000,000 = .01$). (Taylor Decl., ¶ 3(4), Ex. A.)
- 22 10) In *Garrido v. American Air Liquide, Inc.*, 2018 WL 2267367 (2018), the Hon. Maren E. Nelson
23 of LASC approved a mixed PAGA/class action settlement in which 0.25% of the total settlement
24 was allocated to PAGA ($\$10,000 / \$4,000,000 = .0025$). (Taylor Decl., ¶ 3(9), Ex. A.)
- 25 11) In *Thomas v. Universal Home Care, Inc.*, 2018 WL 1751693 (2018), the Hon. Maren E. Nelson
26 of LASC approved a mixed PAGA/class action settlement in which 2.0% of the total settlement
27 was allocated to PAGA ($\$1,000 / \$500,000 = .002$) (Taylor Decl., ¶ 3(32), Ex. A.)
- 28 12) In *Sano v. Southland Management Group, Inc.*, 2013 WL 7231686 (2013), the Hon. William F.
Highberger of LASC approved a mixed PAGA/class action settlement in which 0.45% of the
total settlement was allocated to PAGA ($\$1,125 / \$250,000 = .0045$). (Taylor Decl., ¶ 3 (27))

Further, federal cases are completely consistent, and in accord, with these state court experiences.
Courts “repeatedly approve[] PAGA allocations of both smaller amounts and that comprised a smaller
portion of the total settlement consideration in the agreements at issue.” (See *Davis v. Cox Commc’ns
California, LLC*, No. 16cv989 BAS (BLM), 2017 WL 1496407, at *1 (S.D. Cal. Apr. 26, 2017)
(preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int’l, LLC*,

No. 12cv1551 LAB (NLS), 2014 WL 12571448, at *5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); Jack v. Hartford Fire Ins. Co., No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); Singer v. Becton Dickinson & Co., No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); Hopson v. Hanesbrands Inc., No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009) (approving \$11,250 PAGA allocation in \$1,026,000 settlement); In re Nordstrom Commission Cases, 186 Cal. App. 4th 576, 579 (2010) ("[T]he trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.").

Finally, the LWDA was informed of this action before it was filed, and also of this proposed Settlement and Motion. (Kick Decl. ¶ 17, Exhs. 6 and 7.) To date, it has not objected in any way.

In sum, the parties jointly believe that given the above, as well as further information they can provide if requested, the proposed PAGA allocation in this case is well within the range for approval, and higher than that approved by many very respected jurists in Los Angeles County and on the federal bench.

B. Facts of the Case.

This is a civil class action and law enforcement action under the California Private Attorneys General Act ("PAGA") seeking civil penalties, statutory penalties and attorneys' fees and costs. (See FAC.) Plaintiffs have alleged the following PAGA representative and class action claims on behalf of employees who have been employed during the relevant time period by Money Mart:

1. Failure to Pay Minimum Wages [Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 4-2001, § 4]
2. Failure to Pay Overtime Wages [Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3]
3. Failure to Provide Required Meal Periods [Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 4-2001, § 11]
4. Failure to Provide Required Rest Periods [Cal. Labor Code §§ 226.7, IWC Wage Order No. 4-2001, § 12]
5. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties [Cal. Labor Code § 2802(a), 1198 and IWC Wage Order No. 4-2001, § 9]
6. Failure to Furnish Accurate Itemized Wage Statements [Cal. Labor Code § 226(a); IWC Wage Order No. 4-2001, § 7]
7. Failure to Pay All Wages Due to Discharged and Quitting Employees [Cal. Labor Code §§ 201, 202, 203]
8. Unfair and Unlawful Business Practices [Cal. Bus. & Prof. Code §§ 17200 et. seq.]
9. Failure to Pay Timely and All Wages During Employment [Cal. Labor Code § 204]
10. Failure to Comply With Other Labor Code Provisions Specified in PAGA Notice Cal. Lab. Code

§§ 98.6, 206, 208, 1102.5, 1199]

11. Failure to Maintain Required Records [Cal. Labor Code §§ 226, 1174(d); IWC Wage Order No. 4-2001, § 7]

12. Civil Penalties Pursuant to PAGA [Cal. Lab. Code §§ 2698 et. seq.]

See First Amended Complaint (“FAC”), generally.

Money Mart is a corporation which, at all times relevant herein, conducted business within the County of Los Angeles of the State of California. Plaintiffs worked for Money Mart during the Class Period. Plaintiffs allege that Money Mart failed to pay minimum and overtime wages, provide proper meal breaks, rest breaks, reimbursement of expenses, wage statements, timely wages during employment and upon termination of employment, and maintain records. Money Mart denies each of the claims and contentions alleged in the Action. Plaintiffs agreed that DFC Global Corp. was not the employer and thus filed the Stipulation and [Proposed] Order for Dismissal of Defendant DFC Global Corp. Without Prejudice and for Leave to File First Amended Complaint, which the Court granted (Kick Decl. ¶18.)

The parties have engaged in substantial investigation and informal discovery. Plaintiffs and their counsel diligently pursued an investigation of the Class Members’ claims against Money Mart, any and all applicable defenses, and the applicable law. The investigation included the exchange of information pursuant to informal discovery, numerous meetings and conferences between Class Counsel and Money Mart’s counsel, review and analysis of payroll records pursuant to informal discovery, as well as other records requested by Class Counsel. (Kick Decl. ¶ 10.)

Money Mart retained respected and experienced class action defense counsel, Bartko Zankel Bunzel & Miller. Utilizing available class data, the parties were able to meet and confer regarding the issues in this case for several months, and the parties scheduled a mediation with experienced wage and hour mediator Marc Feder. (Kick Decl. ¶ 11.) The full-day mediation resulted in the parties’ acceptance of a mediator’s proposal. (Kick Decl. ¶ 11.)

Class Counsel analyzed the records and retained a wage-and-hour economic consulting firm, Berger Consulting, which prepared a detailed damages model. (Kick Decl. ¶¶ 10, 14.) Counsel for both parties were able to adequately assess the value of the claims. The parties ultimately reached a settlement, which they now submit to this Court for preliminary approval. The settlement negotiations at all times were adverse and at arm’s length. (Kick Decl. ¶ 11.) A true and correct copy of the fully-executed Settlement is attached to the Kick Declaration as Exhibit 3.

1 Money Mart contends that it has complied with all applicable laws. Money Mart disputes all
2 material allegations and all claims for damages and other relief made by Plaintiffs in the proposed FAC or
3 otherwise asserted during the course of the litigation of this action.

4 **III. Conditional Class Certification.**

5 A careful fairness review of the Settlement by the trial court satisfies concerns about the rights of
6 absent Class Members. Appellate courts in both federal and California's judicial systems routinely
7 approve pre-certification settlements that trial courts have reviewed. Wershba v. Apple Computer, Inc.,
8 91 Cal. App. 4th 240 (2001). The trial court is required to make a determination that the class
9 representative can and will adequately represent the interests of absent class members. The class
10 representative's claims need not be identical to those of the absent members. Nor are the trial court
11 required to conduct an evidentiary hearing on the issues. Lazar v. Hertz Corp., 143 Cal.App.3d 128, 140
12 (1983). Determining whether an action meets the standards of class certification requires a review of
13 section 382 of the California Code of Civil Procedure, which section provides: "[W]hen the question is
14 one of a common or general interest, or many persons, or when the parties are numerous, and it is
15 impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."
16 Cal. Civ. Proc. Code § 382. Here, the Class meets all the criteria.

17 **A. The Class.**

18 Wage-and-hour cases such as this matter "routinely proceed as class actions." Prince v. CLS
19 Transp., Inc., 118 Cal. App. 4th 1320, 1328 (2004). Obviously, many such cases settle. Here, the
20 Settlement was negotiated before the filing of a class certification motion. However, "[a] trial court
21 unquestionably ha[s] the authority to conditionally certify a class for settlement purposes." Hernandez v.
22 Vitamin Shoppe Indus. Inc., 174 Cal. App. 4th 1441, 1457 (2009). For purposes of the Settlement, the
23 parties seek to conditionally certify one Class: "all non-exempt employees who were employed by Money
24 Mart in California during the Claims Period," with the Claims Period defined as "the period from March
25 12, 2017 to the point in time where the class Workweeks reach 71,500, or until the Court grants
26 preliminary approval of the Agreement, whichever occurs first". (See Kick Decl. Ex. 1 at § VII.1(b), (e).)

27 **1. Numerosity and Ascertainability.**

28 Class certification is proper when the parties are numerous and it is impractical to bring them all

1 before the court. *See Int'l Molders' & Allied Workers' Local 164 v. Nelson*, 102 F.R.D. 457, 461 (N.D.
2 Cal. 1983) (explaining that a class size exceeding forty would satisfy the numerosity requirement); *Rose v.*
3 *City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (holding that forty-two members is sufficient for
4 numerosity); *Perez-Funez v. District Dir. Immigration and Naturalization Serv.*, 611 F. Supp. 990, 995
5 (C.D. Cal. 1984) (explaining that a class size of twenty-five members is sufficient for numerosity
6 purposes). Here, the Class is comprised of approximately 738 persons. (Kick Decl. ¶ 10.) Individual
7 putative Class Members are clearly ascertainable from a search of Money Mart's own records. The class
8 size here is not so great as to present significant issues of manageability.

9 **2. Common Issues of Fact and Law Predominate.**

10 As to each and every Class Member, issues of fact and law are common across the Class. The
11 Class Members are non-exempt employees who all worked for Money Mart during the Release Period and
12 received similar wage statements. The only significant "individual" or "non-common" issues will be the
13 specific dollar amount of recovery to which each Class Member is entitled. However, this does not defeat
14 class certification for settlement purposes, as the individual assessment of damages is commonly required
15 in all class-action cases. *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 743 (2004) ("[T]he
16 necessity for an individual determination of damages does not weigh against class certification.")

17 **3. The Claims of the Proposed Class Representatives are Typical.**

18 With respect to typicality, the claims of the named or representative plaintiff must be *similar* to
19 those of the putative class members. *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 474–75 (1981). The
20 claims of class members need not be identical to those of the named plaintiffs. *Classen v. Weller*, 145 Cal.
21 App. 3d 27, 46–47 (1983). The typicality requirement refers to the nature of the claim or defense of the
22 representative, and not to the specific facts from which it arose or the relief sought. *Seastrom v. Neways,*
23 *Inc.*, 149 Cal.App.4th 1496, 1502 (2007). Here, Plaintiffs contend, as the Class Representatives, that their
24 claims are quite similar to those of absent Class Members, all of whom formerly worked or currently work
25 for Money Mart, and all of whom were subject to the same employment procedures and received
26 substantially similar wage statements. (See Concurrently Filed Declarations of the Three Proposed Class
27 Representatives, Darlene Torres, Leanna Ruvalcaba and Marcella Bernal, collectively "Class Rep.
28 Decls.") Plaintiffs and all Class Members worked for Money Mart during the Class Period, and allegedly

1 received wage statements of the same format. All members of the Class have a common interest in
2 holding Money Mart responsible for any amounts that may be allegedly owed to them under the
3 provisions of the Labor Code.

4 **4. Plaintiffs and Class Counsel Will Adequately Represent the Class.**

5 For purposes of certifying a class action, adequacy of representation depends on whether plaintiff's
6 counsel is qualified to conduct proposed litigation, and plaintiff's interests are not antagonistic to interest
7 of the class. McGhee v. Bank of America, 60 Cal.App.3d 442, 450 (1976). Plaintiffs are adequate class
8 representatives. They have no conflicts of interest with any of the Class Members, as they share the same
9 desire to be made whole under the Labor Code. (Class Rep. Decls. ¶¶ 4, 5.) They are committed to
10 pursuing the claims of the Class Members, and their motivation in retaining counsel and pursuing this
11 action has solely been to collect owed amounts for all concerned, including their fellow Class Members.
12 (Class Rep. Decls. ¶¶ 7, 8.) Further, because Plaintiffs' claims are typical of other Class Members and are
13 not based on unique circumstances that might jeopardize the claims of the Class, there is no antagonism
14 between the Plaintiffs' interests and those of the Class.

15 The qualifications of Class Counsel are set forth in the accompanying declaration. Those
16 qualifications should assure the Court that the interests of the absent Class Members will be adequately
17 and vigorously represented. Plaintiffs' counsel are class action attorneys with a great deal of experience
18 handling complex wage and hour litigation similar to this case. Kick Declaration, ¶¶ 3-5. They are
19 "qualified, experienced and generally able to conduct the proposed litigation." Miller v. Woods, 148 Cal.
20 App. 3d 862, 874 (1983). The Kick Law Firm, APC has recovered millions of dollars for employee class
21 members in a myriad of wage-and-hour cases. (See, e.g., Kick Decl. ¶¶ 3-5.)

22 **IV. Summary of the Proposed Settlement.**

23 **A. The Settlement Amount and the Payments to Class Members.**

24 The Settlement will result in the creation of a \$1,500,000 Settlement Fund. (Kick Decl. Ex. 1 at
25 4:9-11.) This amount will be used to pay (a) civil penalties to the LWDA; (b) the fees and costs of the
26 Claims Administrator (as awarded by the Court) for providing Notice to the Class and for administering
27 the Settlement; (c) any incentive payment (as awarded by the Court) to Plaintiffs for their services in
28 connection with bringing and maintaining this action as Class Representatives; (d) attorneys' fees and

costs (as awarded by the Court); and (e) PAGA Payments for distribution to PAGA Employees. (Kick Decl. Ex. 1 at ¶ 11.1) As noted above, the remainder, or the “Net Settlement Amount”, will be distributed to Class Members. The estimated net average amount for participating members of the Class who are entitled to a financial benefit is approximately \$1,247.60.

B. Determination Of Benefits

After the Class Counsel’s Fees, Costs, and Expenses, all costs of claims administration, an approved incentive payment to the Class Representatives, and the PAGA Payments due to PAGA Employees and California Labor Workforce and Development Agency (“LWDA”) have been satisfied from the Settlement Fund, the remainder (the “Net Settlement Amount”) shall be available to pay Class Members (i.e. those who do not request exclusion). PAGA Payments for distribution to PAGA Employees shall be calculated as follows:

PAGA Payments due to PAGA Employees will be determined by the following three-step process: (1) the Settlement Administrator shall credit each PAGA Employee with PAGA Pay Period credits based on the data in the Class List, which shall be presumed accurate, subject to any objection or dispute as to the number of PAGA Periods, the process for which shall be described in the Class Notice; (2) the Settlement Administrator shall determine the PAGA Pay Period Dollar Value by dividing the total PAGA Payments to PAGA Employees by the number of PAGA Pay Periods credited to all PAGA Employees; and, (3) the Settlement Administrator shall determine the PAGA Payment due to each PAGA Employee by multiplying the number of PAGA Pay Periods credited to the individual PAGA Employee by the PAGA Pay Period Dollar Value.

The Settlement Payment to be paid to Class Members shall be calculated as follows:

The Settlement Payment to each Class Member will be paid based on their respective pro rata shares of the Net Settlement Amount, which shall be determined by the following three-step process: (1) the Settlement Administrator shall credit each Class Member with Workweek credits based on the data in the Class List, which shall be presumed accurate, subject to any objection or dispute as to the number of Workweeks, the process for which shall be described in the Class Notice; (2) the Settlement Administrator shall determine the Workweek Dollar Value by dividing the Net Settlement Amount by the number of Workweeks credited to all Class Members; and (3)

1 the Settlement Administrator shall determine the Settlement Payment due to each Class Member by
2 multiplying the number of Workweeks credited to the Class Member by Workweek Dollar Value.

3 *See* Kick Decl. Ex. 1, § VII.13(a)(i)-(ii).

4 Class Members need not take any action to receive payment under the Settlement. All unclaimed
5 Settlement Payments shall become null and void one hundred and eighty (180) days following the
6 issuance date on the settlement checks. The funds associated with any checks not properly or timely
7 negotiated shall be deposited with the State Controller of the State of California, pursuant to applicable
8 law. *Id.*, § VII.9(e).

9 After payment of a PAGA civil penalty of \$37,500 to the California Labor and Workforce
10 Development Agency, PAGA Payments for distribution to PAGA Employees (collectively \$12,500), class
11 administration expenses (\$11,000), attorneys' fees (\$500,000) and costs (\$8,212.70), and the proposed
12 class representative incentive payments (\$7,500 each, or \$22,500 total), the remainder is estimated to be
13 approximately \$920,787.30 (*See* Kick Decl. ¶15.) Assuming the Court approves the amounts set forth in
14 the Settlement for the class representative incentive payments (collectively \$22,500), attorneys' fees
15 (\$500,000) and costs (currently \$8,212.70 and up to \$10,000.00), costs of claims administration (\$11,000),
16 and payments to the LWDA (\$37,500), and PAGA Payments for distribution to PAGA Employees
17 (collectively \$12,500), the Settlement will result in an estimated average net payment of approximately
18 \$1,247 to each Class Member, inclusive of the proportionate PAGA share. Class Counsel concludes that
19 amount is a reasonable result as it is consistent with the average values in other wage and hour class
20 actions. Further, there is a risk that Plaintiffs' claims may fail, whether at trial or on appeal. There is also
21 a risk that the Class would not be certified.

22 The proposed Settlement will not have any effect on any other cases because there are no other
23 known cases pending in which similar claims are asserted. Therefore, the Settlement represents a fair,
24 reasonable and adequate resolution of this case.

25 **C. Tax Implications.**

26 Based upon an analysis of the facts of this Action, proposed Class Counsel determined that
27 payments to participating Class Members will be allocated between penalties (80%), and wages (20%).
28 PAGA Penalties will be characterized as only penalties. Taxes will be withheld on any wage portions paid

1 to Class Members. The amount allocated as penalties and interest paid to each Class Member shall be
2 paid without deduction or offset to reflect payment of alleged interest, penalties, and other non-wage
3 amounts, although Money Mart may issue an IRS Form 1099-Misc and/or IRS Form 1099-Int to reflect
4 these payments for penalties and interest, if required.⁵ The employer-side taxes are not included in the
5 gross settlement amount. (Kick Decl. Ex. 1 at § VII.8.)

6 **D. The Appointment of Class Counsel and the Claims Administrator.**

7 The parties have agreed to the appointment The Kick Law Firm, APC as Class Counsel. The
8 qualifications of Class Counsel are set forth in the accompanying Kick Declaration. (Kick Decl. ¶¶ 3–5.)
9 The parties have also obtained a bid from Simpluris for a capped cost of \$11,000 to provide Notice and
10 administer the class action, and recommend appointment of Simpluris for this purpose. (Kick Decl. ¶ 16.)

11 **E. Attorneys’ Fees and Costs.**

12 The Settlement provides that Class Counsel’s fees and costs shall be paid from the \$1,500,000
13 settlement amount, in an amount to be approved and ordered by the Court after consideration of Class
14 Counsel’s application for attorneys’ fees and costs. (Kick Decl., Ex. 1 at § VII.6.(a).) Money Mart has
15 agreed not to object to an attorneys’ fee award of up to 33-1/3% of the settlement amount (\$500,000) and
16 costs not to exceed \$10,000. (*Id.*) The request is well-within the range of fees generally sought and
17 approved in similar class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (“Empirical
18 studies show that, regardless whether the percentage method or the lodestar method is used fee awards in
19 class actions average around one-third of the recovery.”) Class Notice will provide that Class Counsel
20 may request up to this amount in fees and costs and that Class Members will have an opportunity to
21 object. Class Counsel will file their Motion for Award of Attorneys’ Fees and Costs on or before the date
22 of mailing of the Class Notice to Class Members, to be heard along with the final approval papers after the
23 administration process has been completed. Accordingly, compensation for Class Counsel will be left
24 entirely to the determination of the Court, with fair notice to Class Members. At the time of filing of the
25 motion, Class Counsel also will submit detail about their lodestar should the Court wish to perform a

26 ⁵ After the Settlement was signed by Plaintiffs, the Defendant added one additional sentence to it
27 pertaining to the adminisitrator, in section 8, stating: “The Settlement Administrator is charged with
28 preparing and mailing 1099s and W-2s in connection with payments made under this Agreement.” This
is the version which is attached, and Plaintiffs have been informed and are in favor of this addition.

1 lodestar cross-check of the percentage of benefit fee request.

2 **F. Class Notice-and Request for Exclusion.**

3 “[A] trial court has virtually complete discretion as to the manner of giving notice to class
4 members.” Chavez, 162 Cal. App. 4th, at 57 (2008). Notice to Class Plaintiffs will be given by first-class
5 mail, postage prepaid. (*See* Kick Decl. Ex. 2.) The proposed Notice will accurately and adequately
6 describe the Settlement and will inform Class Plaintiffs of their right to object to any aspect of it,
7 including the fees to be sought by Class Counsel. Each Class Plaintiff will have forty-five (45) days after
8 the original Notice is mailed or twenty-one (21) days after remailing to request exclusion. (Kick Decl. Ex.
9 1 at § VII.1(m).) Plaintiffs contend that the proposed mailing is the best means of giving notice under the
10 circumstances and will likely give actual notice to all of the Class Members. Regardless of whether a
11 Class Plaintiff excludes themselves from the Settlement, they will receive a check from the PAGA portion of
12 the Settlement (25% of \$50,000, to be divided among the PAGA Employees on a pro rata basis), and shall
13 release the PAGA claims herein. Class Plaintiffs cannot exclude themselves from the PAGA-portion of
14 the Settlement. Robinson v. Southern Counties Oil, 53 Cal.App.5th 476 (2020).

15 **G. Class Representative Service Award.**

16 The Settlement provides for an additional payment in the amount of up to \$7,500 to each Plaintiff
17 on account of the services that each has rendered to the Class in bringing this litigation and on account of
18 the time that each has devoted in support thereof. (Kick Decl., ¶ 16; Plaintiffs’ Decls., ¶¶ 4-8.) The
19 proposed service awards fall well within the range of reasonable incentive payments awarded to Class
20 Representatives in similar class actions. *See e.g. Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO.
21 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving “\$25,000
22 incentive award for each Class Representative” in wage an hour settlement); Garner v. State Farm Mut.
23 Auto. Ins. Co., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010)
24 (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more
25 where, as here, the class representative has demonstrated a strong commitment to the class”).

26 The service payment of up to \$7,500 to each Plaintiff shall be in addition to whatever portion of
27 the Settlement fund she is entitled to receive. In light of their willingness to come forward with this action
28 on behalf of the Class, and in light of their efforts in advancing the litigation, these proposed payments are

1 reasonable. Plaintiffs obtained the services of counsel, participated in informal discovery, and participated
2 throughout the process. (*See* Class Reps.’ Decls.). In doing so, they have successfully pursued claims that
3 may have never been brought. *See Crab Addision, Inc. v. Superior Court*, 169 Cal. App. 4th 958, 971
4 (2008) (“[e]mployees may be unaware of the violation of their rights and their right to sue.”).

5 **H. Releases.**

6 The Settlement provides that Plaintiffs and those Class Plaintiffs who do not opt out of the
7 Settlement, and the PAGA Employees will be deemed to release Defendant as follows:

8 3. **Release As To All Class Members.** As of the date Defendant funds the Settlement, the
9 Class Members, including Named Plaintiffs, release Defendant Money Mart and DFC, their respective
10 affiliates, and each of their past or present officers, directors, members, shareholders, employees, agents,
11 principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and reinsurers, and
12 their respective successors and predecessors in interest, subsidiaries, affiliates, joint ventures, owners, parent
13 companies and attorneys and each of their respective company-sponsored employee benefit plans and all of
14 their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents (the
15 “Released Parties”), from the “Released Claims” arising during the Class Period. This release is subject to
16 court approval. For purposes of this Agreement, the “Released Claims” are defined as all claims alleged in
17 the Complaint or arising out of the facts alleged in the Complaint, whether known or unknown, whether for
18 violation of any state or federal constitution, statute, rule, regulation, including the California Labor Code
19 and the California Wage Orders, whether for economic damages, restitution, penalties, liquidated damages,
20 or interest, including the following claims that the Released Parties:

21 (i) did not pay the Class Members all amounts owed, including for regularly
22 hourly pay, overtime premium, sick pay, Covid-19 sick pay, holiday pay, bonuses, incentive pay and all
23 other premiums required under the law;

24 (ii) failed to provide meal periods and rest breaks to the Class Members and
25 provide meal or rest period penalties;

26 (iii) failed to pay or timely pay the Class Members for all hours worked;

27 (iv) did not provide legally compliant accurate itemized wage statements;
28

1 (v) did not properly pay all wages to the Class Members upon the Class
2 Members' separation from employment;

3 (vi) did not properly reimburse Class Members for business expenses, including
4 the cost of using their cell phones and for mileage;

5 (vii) did not timely pay wages owed to Class Members; and

6 (viii) did not maintain accurate and required records.

7 (ix) engaged in discrimination, retaliation, and/or took adverse action against
8 Class Members for exercising their rights or engaging in protected activity.

9 (x) did not provide Class Members with timely and full payment of all wages
10 due and undisputed and/or as ordered by the Labor Commissioner.

11 (xi) failed to lawfully pay at the place of discharge or in the county where the
12 Class Member quit.

13 (xii) refused to perform its obligations to refrain from adopting or enforcing rules
14 designed to prevent disclosure of California and Federal wage and hour violations and/or retaliating against
15 Class Members who made such disclosures or for exercising their rights or engaging in protected activity.

16 (xiii) subjected Class Members to work for longer hours than those fixed by IWC
17 Wage Order No. 4-2001 or under conditions of labor prohibited by IWC Wage Order No. 4-2001, paying
18 less than the various minimums fixed by IWC Wage Order No. 4-2001, and knowingly and willfully
19 refusing and neglecting to comply with the provisions of IWC Wage Order No. 4-2001.

20 (xiv) and, arising from the foregoing, for alleged unlawful, unfair and/or
21 fraudulent business practices under California and Business and Professions Code sections 17200, et seq.
22 for the wage and hour violations alleged in the Complaint while employed by Defendant.

23 **Release As To All PAGA Employees.** As of the date Defendant funds the Settlement, the PAGA
24 Employees and the LWDA release the Released Parties from claims for penalties under the Private
25 Attorney General's Act of 2004 arising out of the Released Claims as alleged in Plaintiff's LWDA letter
26 and alleged in the Complaint during the PAGA Period ("PAGA Release"). PAGA Employees cannot opt
27 out of this Release of PAGA Claims. This release is subject to court approval.

28 (Kick Decl., Ex. 1 at §§ 3-4.)

1 **I. Affirmative Duties or Obligations Placed on Class Members.**

2 The Settlement does not impose any affirmative duties or obligations on the Class Members. In
3 order to participate in the Settlement, and receive a payment, Class Members need not submit a Claim
4 Form or take any action. Those Class members who do not request exclusion from the Settlement will
5 release Money Mart from the claims detailed above and receive a check for their portion of the Settlement.
6 (Kick Decl. Ex. 1 at § VII.18(c).)

7 **V. The Settlement Is Fair, Reasonable, and Adequate.**

8 The proposed Settlement is fair, reasonable, and adequate. According to the Court of Appeal:
9 The trial court must determine whether a class action settlement is fair and reasonable,
10 and has broad discretion to do so. That discretion is to be exercised through the
11 application of several well-recognized factors. The list, which “is not exhaustive and
12 should be tailored to each case,” includes “the strength of plaintiffs’ case, the risk,
13 expense, complexity and likely duration of further litigation, the risk of maintaining class
14 action status through trial, the amount offered in settlement, the extent of discovery
15 completed and the stage of the proceedings, the experience and views of counsel, the
16 presence of a governmental participant, and the reaction of the class members to the
17 proposed settlement.”
18 (Kullar, *supra*, 168 Cal. App. 4th at p. 128, quoting *Dunk*, *supra*, 48 Cal. App. 4th at p. 1801.) “The most
19 important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered
20 in settlement.” (Kullar, *supra*, 168 Cal. App. 4th at p. 130, citing *City of Detroit v. Grinnell Corp.*, 495
21 F.2d 448, 455 (9th Cir. 1974).) *Clark v. American Residential Servs. LLC*, 175 Cal. App. 4th 785, 799
22 (2009). An informed evaluation of a proposed settlement also requires “an understanding of the amount in
23 controversy and the realistic range of outcomes of the litigation.” *Clark*, 175 Cal. App. 4th at 801. The
24 estimated damages of the Class are set forth in the Kick Declaration. (Kick Decl. ¶¶ 10, 14.)

25 Regarding the PAGA settlement, PAGA provides that “[t]he superior court shall review and
26 approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). Other than
27 this general rule, “neither the California legislature, nor the California Supreme Court, nor the California
28 Courts of Appeal, nor the [LWDA] has provided any definitive answer to [the] question” of the
29 appropriate standard for approving the settlement of PAGA claims. *See Flores v. Starwood Hotels &*
30 *Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075 (C.D. Cal. 2017). *Williams v. Superior Court*, 3
31 Cal. 5th 531, 546 (2017) (PAGA “sought to remediate present violations and deter future ones”); *Arias v.*

1 Superior Court, 46 Cal. 4th 969, 986 (2009) (declared purpose of PAGA was to augment state
2 enforcement efforts to achieve maximum compliance with labor laws). Counsel already have reviewed
3 for this Court numerous allocations from Los Angeles County’s complex judges showing the proposed
4 allocation in this case is well within customary ranges. (Taylor Decl., ¶¶ 3(1)–(33).) Further, the
5 Supreme Court’s recent opinion in Viking River Cruises, Inc. v. Moriana (2022) 142 S.Ct. 1906 presents
6 other possible reasons why the proposed PAGA allocation is favorable to the LWDA.

7 Settlement is an attractive option for Plaintiffs and Money Mart, given the reasonable arguments
8 that can be made by both sides. Plaintiffs contends that Money Mart violated the Labor Code in numerous
9 ways discussed *supra*. Money Mart vigorously disputes all of Plaintiffs’ contentions. For example, one of
10 Plaintiff’s primary contentions in this case was that they were required to work partially “off the clock”,
11 that being when they would wait to be let in to the premises in question. (Kick Decl. ¶ 14.) Under
12 California law, any time an employee spends subject to an employer’s control is compensable. Morillion
13 v. Royal Packing Co. (2000) 22 Cal.4th 575, 583. Specifically, employees must be compensated “for all
14 hours worked” in accordance with California’s Minimum Wage Order. See MW-2014 § 2. “Hours
15 worked” means the time during which an employee is subject to the control of the employer and includes
16 all the time the employee is suffered or permitted to work whether or not required to do so. 8 Cal. Code
17 Regs. § 11010, subd. 2(A). Plaintiffs alleged that they and other Class members performed work for
18 Defendants off-the-clock for which they were not compensated, including during times designated as meal
19 and rest periods. Plaintiffs’ expert economic consultant assumed 30 minutes of off-the-clock time per
20 shift, and then extrapolated that to all class members, to equal approximately \$3,433,791 in damages.
21 (Kick Decl. ¶ 14.) However, Defendant, while denying violations, also provided counter-evidence that
22 even if such off-the-clock time occurred at all, it was a small fraction of what had been contended by
23 Plaintiffs. (Kick Decl. ¶ 14.) It also argued that the class would be uncertifiable due to hundreds of
24 individual inquiries as to each Class member’s experience with supposed working off the clock and
25 logging time worked. (Kick Decl. ¶ 14.)

26 As another example, Money Mart has argued that to award statutory penalties under section
27 226(e), Plaintiffs would have needed to show that Money Mart “knowingly and intentionally” issued wage
28 statements with unlawful deficiencies. *See* Labor Code section 226; Price v. Starbucks Corp., 192 Cal.

1 App. 4th 1136, 1142-43 (2011). There is a significant risk that Money Mart would have been able to
2 avoid liability due to a defense that it did not engage in a “knowing and intentional” violation—as its
3 policies are facially compliant with the Labor Code—and also Money Mart’s assertion that it should not
4 be penalized for mere technical violations that do not result in any injury. There are Court of Appeals
5 cases that support Money Mart’s position, and the California Supreme Court has not ruled on some of the
6 specific matters at issue in this case such as the wage statements. Arguably, late pay classes are difficult
7 to certify.

8 In sum, the total class damages as calculated by Plaintiffs’ economic consultants for mediation
9 equalled \$8,538,500. (Kick Decl. ¶¶ 10, 14.) Class Counsel believes the most likely result had this matter
10 gone to verdict and the class had prevailed on certification would have been an award of about half that, or
11 \$4 million. (Kick Decl. ¶¶ 14, 15.) If the risk for certification were calculated at 50%, this means a likely
12 award of approximately \$2 million. (*Id.*) As such, the \$1,450,000 from the \$1,500,000 being allocated to
13 the class damages equals 72.5% of this most likely result had the matter gone to trial. (*Id.*) And even if
14 the entire \$8,538,500 in damages were used as the comparison, with no discounts whatsoever, this means
15 the \$1,450,000 presented for approval for the class claims equals approximately 17 % of the total possible
16 damages had everything possible gone in favor of the plaintiffs on damages. Even this 17% represents a
17 reasonable percentage of the estimated recovery that could potentially be awarded at trial, as courts have
18 determined that settlements are reasonable even where plaintiffs recover only a small portion of their
19 actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 542, *aff’d*,
20 (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement amounts to only a fraction of the
21 potential recovery does not mean the settlement is unfair or inadequate.”) Indeed, “[a] settlement can be
22 satisfying even if it amounts to a hundredth or even—a thousandth of a single percent of the potential
23 recovery.” *Id.*; *see also Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17
24 (approving a settlement of \$75,000 when potential damages were \$1.2 million, or about 6%); *In re Toys R*
25 *US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers, not cash,
26 potentially worth a maximum of 3% if all possible claims were actually made, or \$391.5 million aggregate
27 voucher potential where the class could have recovered \$13.05 billion); *City of Detroit v. Grinnell Corp.*
28 (S.D.N.Y. 1972) 356 F. Supp. 1380, 1386, *aff’d in part, rev’d on other grounds*, (2d Cir. 1974) 495 F.2d

1 448 (a recovery of 3.2 % to 3.7 % of the amount sought is “well within the ball park”). As this Court
2 knows, the inquiry is not whether the settlement agreement represents the maximum potential recovery for
3 class members at trial, but whether the settlement, taken as a whole in light of the risks and delays of
4 litigation, is “fair, adequate, and reasonable.” Chavez, at 55.

5 Furthermore, as a class action, this case presents a clear risk of lengthy and expensive litigation. It
6 would probably be another two years before this case went to trial so that, *inter alia*, the parties could
7 properly complete class discovery, Plaintiffs could file a motion for certification, and the parties could file
8 cross-motions for summary judgment. (Kick Decl. ¶ 15.) That said, the parties have, in fact, conducted
9 sufficient informal discovery. Money Mart has provided relevant information regarding the wage
10 statements issued to the class. (Kick Decl. ¶ 10.) Nevertheless, the law makes clear that exhaustive,
11 protracted, and costly discovery need not be conducted in a class action before a settlement can be
12 reached. 7-Eleven Owners for Fair Franchising, 85 Cal. App. 4th 1135, 1150 (2000). “In the context of
13 class action settlements, ‘formal discovery is not a necessary ticket to the bargaining table’ where the
14 parties have sufficient information to make an informed decision about settlement... ‘[N]otwithstanding
15 the status of discovery, Plaintiff’s negotiators had access to a plethora of information regarding the facts of
16 their case.’” Linney v. Cellular Alaska P’ship, 151 F.3d 1234, 1239–40 (9th Cir. 1998). Here, there was
17 sufficient investigation conducted to permit counsel to enter into the Settlement.

18 The class settlement and PAGA civil penalties secured by the Settlement represent a fair
19 compromise of the claims in view of the risks of continued litigation and the hotly contested issues of law
20 and fact relating to the claims. The Settlement also accomplishes PAGA’s objectives by imposing
21 sufficient civil penalties “to punish and deter” Money Mart from committing any further violations. Cal.
22 Lab. Code § 2699(e)(2); Iskanian v. CLS Transp. Los Angeles, LLC, 59 Cal. 4th 348, 384 (2014).
23 Considering the inherent risks, hazards, and expenses of carrying the case through trial, Class Counsel is
24 of the opinion that the Settlement is fair, reasonable, and adequate. (Kick Decl. ¶¶ 14, 15.)

25 **VI. There Are No Known Similar Cases Pending In Other Jurisdictions.**

26 The proposed Settlement will not have any effect on any other cases because there are no other
27 known cases pending in other jurisdictions in which similar paystub claims are asserted for these
28 particular Class Members. Under the circumstances, proceeding as a class action is a superior means of

1 resolving this dispute, as the Class Members, PAGA Employees, and the Court will derive substantial
2 benefits. Class certification would serve as the only means to deter and redress the alleged Labor Code
3 violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the
4 probability that each class member will come forward ultimately to prove his or her separate claim to a
5 portion of the total recovery and whether the class approach would actually serve to deter and redress the
6 alleged wrongdoing). Also, individual actions arising out of the same operative facts could unduly burden
7 the courts and could produce inconsistent results, which is avoided by class treatment. Certification will
8 allow the claims “to be resolved at the same time, [will] eliminate the possibility of repetitive litigation
9 and afford [these] small claimants with a method of obtaining redress for claims which otherwise would
10 be too insignificant to warrant individual litigation.” *Bufile*, 162 Cal. App. 4th at 1208. That is so here.

11 **VII. Conclusion.**

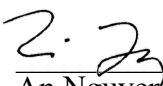
12 The parties respectfully submit that the \$1,500,000 Settlement with Money Mart is fair,
13 reasonable, and adequate. This Court should grant preliminary approval and (1) conditionally certify the
14 Class, (2) approve the form and method of Notice, (3) approve The Kick Law Firm, APC as Class
15 Counsel, (4) approve Plaintiffs Darlene Torres, Leanna Ruvalcaba and Marcella Bernal as Class
16 Representatives, (5) approve Simpluris as the proposed Settlement Administrator, (6) approve the
17 proposed mechanism for receiving notices of election to opt out of the Settlement, and (7) schedule the
18 Final Approval Hearing.

19
20 Dated: June 30, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

21 
22 _____
23 Taras Kick
24 Greg Taylor
25 Attorneys for Plaintiffs

BARTKO ZANKEL BUNZEL & MILLER

26 
27 _____
28 An Nguyen Ruda
Elizabeth Ferguson
Attorneys For Defendant

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7 Attorneys for Plaintiffs
DARLENE TORRES, LEANNA RUVALCABA
8 and MARCELLA BERNAL, individually, and
on behalf of similarly aggrieved
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
12

13
14 DARLENE TORRES, LEANNA
RUVALCABA AND MARCELLA
15 BERNAL, individuals, on their own behalf
and on behalf of all similarly aggrieved
16 employees,

17 Plaintiff,

18 v.
19

20 MONETARY MANAGEMENT OF
CALIFORNIA, INC., a foreign
21 corporation; and DOES 1 through 50,
inclusive,
22

23 Defendants.
24
25
26

Case No. 21STCV09917

Assigned for All Purposes to Hon. Terry
Green, Dept. 14

**DECLARATION OF TARAS KICK IN
SUPPORT OF JOINT MOTION BY
DEFENDANT AND PLAINTIFF FOR
PRELIMINARY APPROVAL OF CLASS-
ACTION AND PAGE SETTLEMENT**

Date: July 25, 2022

Time: 8:45AM

Place: Dept. 14

Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

Complaint Filed: March 12, 2021

1 class action, preliminary approval granted May 3, 2022); *In Re Southern California Gas Leak Cases*,
2 Judicial Council Coordinated Proceeding No. 4861, assigned to Hon. Daniel J. Buckley, Coordination
3 Trial Judge, Dept. SSC-1 (co-lead counsel and member of the class action steering committee, final
4 approval granted April 29, 2022); *Samano v. Deleons Transport Inc.*, Los Angeles County Superior Court,
5 Case No. 19STCV44589, assigned for all purposes to Hon. Elihu M. Berle (class and representative PAGA
6 action; final approval granted January 22, 2022); *Johnson, et al., v. Angel View*, San Bernardino County
7 Superior Court, Case No. CIVDS1935378 (class and representative PAGA action; final approval granted
8 November 18, 2021); *Imperial Wage And Hour Cases*, San Bernardino County Superior Court, Case No.
9 JCPDS5130 (class and representative PAGA action; final approval granted November 2, 2021); *Metzke*
10 *v. Thermo Fisher Scientific, Inc.*, San Francisco County Superior Court, Case No. CGC-19-581914 (class
11 and representative PAGA action; final approval granted October 28, 2021); *Story v. SEFCU*, United States
12 District Court for the Northern District of New York, Case No. 1:18-cv-00764 (an overdraft fee class
13 action, final approval granted on February 25, 2021); *Daves, et al. v. Amadeus Waterawys, Inc.*, Los
14 Angeles County Superior Court, Case No. 19STCV25203, assigned for all purposes to Hon. Ann I. Jones
15 (wage & hour class action; final approval granted January 8, 2021); *Smith v. Bank of Hawaii*, United States
16 District Court for the District of Hawaii, Case No. 1:16-cv-00513 (an overdraft fee class action, final
17 approval granted on December 22, 2020); *Coleman-Weathersbee v. Michigan State University Federal*
18 *Credit Union*, United States District Court for the Eastern District of Michigan, Case No. 2:19-cv-11674
19 (an overdraft fee class action, final approval granted on July 29, 2020); *Walker v. People's United Bank*,
20 United States District Court for the District of Connecticut, Case No. 3:17-cv-00304 (an overdraft fee
21 class action, final approval granted on June 29, 2020); *Salls v. Digital Federal Credit Union*, United States
22 District Court for the District of Massachusetts, Case. No. 18-cv-11262-TSH (an overdraft fee class action,
23 final approval granted in January 2020); *Pingston-Poling v. Advia Credit Union*, United States District
24 Court for the Western District of Michigan, Case No. 1:15-CV-1208 (an overdraft fee class action, final
25 approval granted in January 2020); *Lloyd v. Navy Federal Credit Union*, United States District Court for
26 the Southern District of California, Case No. 3:17-cv-01280 (an overdraft fee class action, final approval
27 granted May 18, 2019); *Ketner v. SECU Maryland*, Civil No.:1:15-CV-03594-CCB (D. MD. 2017) (an
28 overdraft fee class action, final approval granted January 11, 2018); *Towner v. 1st MidAmerica Credit*
29 *Union*, No. 3:15-cv-1162 (S.D. Ill. 2017) (an overdraft fee class action, final approval granted in
30 November 2017); *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (an
31 overdraft fee class action, final approval granted in August 2017); *Fry v. MidFlorida Credit Union*, United
32 States District Court for the Middle District of Florida, Case No. 8:15-CV-2743 (an overdraft fee class
33 action, final approval granted); *Ramirez v. Baxter Credit Union*, United States District Court for the

1 Northern District of California, Case No. 16-cv-03765-SI (an overdraft fee class action, final approval
2 granted); *Lynch v. San Diego County Credit Union*, San Diego County Superior Court, Case No. 37-2015-
3 00008551 (an overdraft fee class action, final approval granted); *Gunter v. United Federal Credit Union*,
4 United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC (an
5 overdraft fee class action, final approval granted); *Hernandez v. Point Loma Credit Union*, San Diego
6 County Superior Court, Case No. 37-2013-00053519 (an overdraft fee class action, final approval
7 granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No.
8 BC625500 (an overdraft fee class action, final approval granted in); *Morales v. Kern Schools Federal*
9 *Credit Union*, Kern County Superior Court, Case No. BCV-15-100538 (an overdraft fee class action, final
10 approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior
11 Court, Case No. 34-2013-00142667 (an overdraft fee class action, final approval granted); *Casey v.*
12 *Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC (an
13 overdraft fee class action, final approval granted); *Sewell v. Wescom Credit Union*, Los Angeles County
14 Superior Court No. BC5860 (an overdraft fee class action, final approval granted); *Fernandez v. Altura*
15 *Credit Union*, Riverside County Superior Court, Case No. RIC1610873 (an overdraft fee class action,
16 final approval granted); *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court,
17 Case No. BC628495 (an overdraft fee class action, final approval granted); *Bowens v. Mazuma Federal*
18 *Credit Union*, United States District Court for the Western District of Missouri, Case No. 15-00758-CV-
19 W-BP (an overdraft fee class action, final approval granted); *Santiago v. Meriwest Credit Union*,
20 Sacramento County Superior Court, Case No. 34-2015-00183730 (an overdraft fee class action, final
21 approval granted); *Howard v. Sage Software*, Los Angeles County Superior Court Case No. BC487140
22 (final approval granted); *Kirtley v. Wadekar*, United States District Court for the District of New Jersey,
23 Case No. 05-5383 (final approval granted); *Pereyra v. Mike Campbell & Associates*, Los Angeles County
24 Superior Court Case No. BC365631 (final approval granted); *Alston v. Pacific Bell*, Los Angeles County
25 Superior Court Case No. BC297863 (final approval granted); *Oshaben v. Monster Worldwide, Inc.*, et al.,
26 San Francisco County Superior Court Case No. CGC-06-454538 (final approval granted); *Cole v. T-*
27 *Mobile USA, et al.*, Central District of California Case No. 06-6649 (final approval granted)

28 5. The attorneys at this law firm who worked on the case include Sam Vahedi, Karen L.
29 Wallace, Daniel Bass, Roy K. Suh, Gregory Taylor, and Jeffrey C. Bills. All are also experienced in wage
30 and hour class actions. Mr. Bass was admitted to the California Bar in 2012. He graduated from the
31 Washington University School of Law School in St. Louis where he served as a Senior Editor for the
32 Washington University Law Review. He has devoted the majority of his career to assisting plaintiffs in
33 employment and class action cases. Mr. Suh is a 2011 graduate of the University of California Los Angeles

1 School of Law. Since becoming a member of the California Bar the same year, he has practiced
2 exclusively in plaintiffs' employment and consumer cases and is very experienced in California wage and
3 hour class action litigation. Ms. Wallace earned a Ph.D. in English from UCLA in 1998 and graduated
4 from Southwestern Law School in 2010. She was admitted to the California State Bar the same year. The
5 focus of Ms. Wallace's practice has been complex litigation in the areas of employment and consumer
6 law in both state and federal courts. Mr. Vahedi was admitted to the California Bar in 2012, and has spent
7 the majority of his practice litigating class actions, with a specialty in wage and hour class actions. Mr.
8 Taylor is a 2012 graduate of the University of Southern California, and a 2016 graduate of UCLA Law
9 School, where he was a Dean's Merit Scholar. Since graduating from law school Mr. Taylor has spent the
10 bulk of his career on California employment matters. Mr. Bils was admitted to the California Bar in 2014.
11 He graduated in 2014 from UCLA School of Law, where he was a Senior Editor for the UCLA Law
12 Review, and clerked as a Judicial Extern to the Honorable Consuelo Bland Marshall of the United States
13 District Court for the Central District of California.

14 6. The Kick Law Firm, APC undertook this case on a contingent basis, with the understanding
15 that we would not be compensated for our efforts unless the case was successful. To date, TKLF has not
16 been paid for any of its time spent on this matter. The time spent on this matter by the firm's attorneys has
17 required considerable work that could have, and would have, been spent on other billable matters. As a
18 result of having accepted and been devoted to this case, it is my informed belief this law firm wound up
19 not representing parties in cases it otherwise would have, and which in my opinion likely would have
20 compensated this firm at its hourly rates requested in this matter. As the proposed Class Counsel in this
21 matter is limited to attorneys of The Kick Law Firm, no other firm will be sharing fees.

22 7. This is a wage-and-hour class and PAGA action. Concurrently with this Motion, the Parties
23 are filing a Stipulation and [Proposed] Order for Dismissal of Defendant DFC Global Corp. Without
24 Prejudice and for Leave to File First Amended Complaint. Plaintiffs have alleged the following PAGA
25 representative and class action claims on behalf of employees who have been employed during the relevant
26 time period by Money Mart:

- 27 1. Failure to Pay Minimum Wages [Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 4-
28 2001, § 4]
- 29 2. Failure to Pay Overtime Wages [Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No.
30 4-2001, § 3]
- 31 3. Failure to Provide Required Meal Periods [Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197;
32 IWC Wage Order No. 4-2001, § 11]
- 33 4. Failure to Provide Required Rest Periods [Cal. Labor Code §§ 226.7, IWC Wage Order No.
4-2001, § 12]
5. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
[Cal. Labor Code § 2802(a), 1198 and IWC Wage Order No. 4-2001, § 9]
6. Failure to Furnish Accurate Itemized Wage Statements [Cal. Labor Code § 226(a); IWC

- 1 Wage Order No. 4-2001, § 7]
2 7. Failure to Pay All Wages Due to Discharged and Quitting Employees [Cal. Labor Code §§
3 201, 202, 203]
4 8. Unfair and Unlawful Business Practices [Cal. Bus. & Prof. Code §§ 17200 et. seq.]
5 9. Failure to Pay Timely and All Wages During Employment [Cal. Labor Code § 204]
6 10. Failure to Comply With Other Labor Code Provisions Specified in PAGA Notice Cal. Lab.
7 Code §§ 98.6, 206, 208, 1102.5, 1199]
8 11. Failure to Maintain Required Records [Cal. Labor Code §§ 226, 1174(d); IWC Wage Order
9 No. 4-2001, § 7]
10 12. Civil Penalties Pursuant to PAGA [Cal. Lab. Code §§ 2698 et. seq.]

11 8. Defendant Money Mart is a corporation which, at all times relevant herein on information
12 and belief, conducted business within the County of Los Angeles of the State of California. Plaintiffs
13 worked for Money Mart during the Class Period. Plaintiffs allege that Money Mart failed to pay minimum
14 and overtime wages, provide proper meal breaks, rest breaks, reimbursement of expenses, wage
15 statements, timely wages during employment and upon termination of employment, and maintain records.
16 Money Mart denies each of the claims and contentions alleged by Plaintiffs in the Action

17 9. The investigation in this case included the exchange of information pursuant to informal
18 discovery, numerous meetings and conferences between Class Counsel and Money Mart's counsel.
19 Among other things, Plaintiffs requested and Defendants produced an extensive body of documents and
20 data on Class members, including timesheets for Class members, pay summaries, and other key employee
21 statistics, payroll records, as well as written policies and other pertinent employment documents. Utilizing
22 available class data, the parties were able to meet and confer regarding the issues in this case for several
23 months. Further, Plaintiffs retained a wage and hour economic consulting group, Berger Consulting, to
24 which Plaintiffs turned over all of the information they received from Defendant, and Berger Consulting
25 analyzed the information and provided a mediation analysis report. Based on the data, Berger concluded
26 potential class action damages of \$8,538,500 if Plaintiffs prevailed on all the class theories, and a class
27 size of approximately 738 class members.

28 10. After performing all of this work, the parties participated in a mediation with highly
29 experienced California wage and hour mediator Marc Feder. Based on the ground-work performed in
30 advance of the mediation, Class Counsel was able to act intelligently and effectively in negotiating at the
31 mediation. All negotiations at all times were adversarial and at arm's length. The full-day mediation
32 resulted in the parties' acceptance of a mediator's recommendation of \$1,500,000. It is that settlement
33 which is now being brought to this Court for approval. Following that successful mediation, the Parties
drafted and executed a long form agreement, the material terms of which are contained in the proposed
Settlement Agreement.

1 11. The settlement is embodied in the parties' Joint Stipulation of Class Action Settlement (the
2 "Settlement Agreement," "Settlement"), attached to this Declaration as Exhibit 3. After it was signed by
3 Plaintiffs, the Defendant added one additional sentence to it pertaining to the administrator, in section 8,
4 stating: "The Settlement Administrator is charged with preparing and mailing 1099s and W-2s in
5 connection with payments made under this Agreement." This is the version which is attached, and
6 Plaintiffs have been informed and are in favor of this addition.

7 12. The Notice Packet to be mailed to all members of the Settlement Class upon Preliminary
8 Approval is attached to this Declaration as Exhibit 4.

9 13. The investigation and discovery conducted in this matter give Class Counsel a sound
10 understanding of the merits of the respective positions in this case, including Defendant's defenses, and
11 to evaluate the reasonable value range of the claims of the Class. Class Counsel assessed a large body of
12 data and information prior to mediation and settlement, and, as stated, also retained a wage and hour
13 economics expert to analyze the data, Berger Consulting. Based on this investigation, discovery, and
14 evaluation, and with the assistance of our expert, Class Counsel believes that the settlement terms and
15 conditions in the proposed settlement are fair to class members. Berger Consulting calculated total class-
16 wide damages at \$8,538,500 if Plaintiffs were to prevail on liability on all of their contentions and on class
17 certification. One of the main contentions by Plaintiffs in this case included that they were forced to work
18 "off the clock" because when checking in to the stores they would have to wait to be admitted into the
19 locations, as the locations were secure locations. Plaintiffs' economists used an average of 30 minutes
20 "off the clock" time for purposes of that damages calculation, and came up with a class-wide total of
21 \$3,443,791 for "off the clock" claims. However, Defendant, without admitting liability, presented
22 evidence that not only would this issue vary from class member to class member, thereby arguably making
23 certification difficult, but also that the "off the clock" time, if it existed at all, was a very small fraction of
24 the thirty minutes, more in the range of five minutes. Other arguments that Class Counsel has considered
25 in arriving at a more likely class-wide damages number include that Defendant may have contended that
26 Plaintiff's claims under Labor Code § 226 are derivative of Plaintiff's underlying claims and have no
27 value because arguably California law does not currently allow wage statement penalties derivative of
28 meal or rest period premium claims. *See Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444, 474
29 (2019) ("we hold that section 226.7 actions do not entitle employees to pursue the derivative penalties in
30 sections 203 and 226");¹ *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308 (same as to §
31 226 claims). Additionally, Defendant may have contended that the Class suffered no actual "injury" as
32

33 ¹ The California Supreme Court has agreed to hear the *Naranjo* case. Cal. Supreme Court Case No. B256232.

1 required under Labor Code § 226(e) and that any violation of the Labor Code was not “knowing and
2 intentional.” Defendant also may have contended that failure to reimburse necessary business expenses,
3 despite Labor Code § 2802(a) requiring an employer to indemnify an employee for all necessary
4 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties,
5 did not apply here as there was a security entrance device provided to class members which they could
6 have used in lieu of using their own phones, and therefore Defendant could have argued it did not fail to
7 reimburse Class members for any business expenses whatsoever during the Class Period. In reviewing all
8 of the damages issues, including considering the above arguments, it is my estimate that if Plaintiff were
9 to prevail on liability at trial, the class damages would have been in the range of \$4 million. I also believe
10 it is reasonable to discount the number by 50% for likelihood of certification risk and risk in other motions,
11 meaning reasonable likely class-wide damages of approximately \$2 million. The proposed \$1,450,000 of
12 the \$1,500,000 allocated towards the class component of the settlement equals 72.5% of that.

13 14. I also have considered other issues when assessing whether the proposed settlement is fair.
14 These include the risks of losing on appeal, the possibility of the law changing, the time value of money,
15 and the inability to collect on a large judgment, among other things. Furthermore, this action clearly
16 involves complex legal issues. With regard to expected duration, litigating Plaintiff’s claims through trial
17 (and perhaps through an appellate process) could last several years if the proposed settlement is not
18 approved, which would be extremely expensive for all parties and delay or jeopardize what is now a
19 certain recovery for the putative Class. These are some of the other reasons why I am in support of the
20 proposed settlement.

21 15. The Settlement Agreement provides a proposed service award payment of \$7,500 to each
22 Plaintiff, which is intended to recognize the time, effort, and risk that the named Plaintiffs undertook in
23 bringing this case and helping to secure the relief obtained for the members of the Class. Plaintiffs have
24 both been helpful in this matter, have been available to discuss matters with counsel, provide documents
25 and information as needed, and were available during the mediation. They also each have provided a
26 declaration in support of the proposed settlement, and those are filed concurrently.

27 16. The parties have selected Simpluris Inc. to act as the Settlement Administrator. Simpluris
28 has served us as settlement administrator in numerous class actions similar to this one. Simpluris’s bid is
29 capped at \$11,000, and in my opinion is fair and reasonable considering the size of the Class, the number
30 of pages to be mailed to Class members, the services provided by the Settlement Administrator including,
31 posting of information and case documents on a website, skip tracing and remailing returned mail,
32 handling payroll tax calculations, and other necessary duties that will be carried out. Attached as Exhibit
33 5 to this Declaration is a true and correct copy of the bid we received from Simpluris.

17. On December 18, 2020, Plaintiffs submitted notice of their intention to litigate various alleged Labor Code violations, pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Lab. Code § 2698, *et seq.*, to the Labor and Workforce Development Agency (“LWDA”). A true and correct copy of that PAGA Notice is attached as Exhibit 6. Further, I am informed that on June 30, 2022, attorney Gregory Taylor of this office submitted the Settlement Agreement and this Motion, including notice of the hearing date, to the LWDA through its portal. Attached as Exhibit 7 is a true and correct copy of the confirmation from the LWDA.

18. The parties were before this Court on June 7, 2022, seeking this preliminary approval, but for some reason the Court did not yet have in its file the First Amended Complaint (“FAC”) which had amended the complaint to add class action allegations. Therefore, at the time of that June 7 hearing, the Court was unaware that the case was both a class action and PAGA case, and continued the hearing to July 25, 2022, so as to get the FAC before it. In reality, though the Court already had granted the parties’ Joint Stipulation for Leave to File FAC on June 2, 2022, even though for some reason the Court did not have the FAC in its file at the time of the hearing. This Court’s June 2, 2022, Order granting the filing of the FAC is attached as Exhibit 2. For the Court’s convenience, in case the Court still does not have that FAC in its file, for the Court’s convenience the parties now have attached it as Exhibit 1 to this declaration.

I declare under the penalty of perjury the foregoing is true and correct to the best of my belief and knowledge.

Executed this 30th day of June 2022 at Los Angeles, California.

Taras Kick

Exhibit 1

Taras Kick (State Bar No. 143379)
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Attorneys for Plaintiffs Darlene Torres, Leanna
 Ruvalcaba, and Marcella Bernal, individuals, on
 their own behalf and on behalf of all similarly
 situated and aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DARLENE TORRES, LEANNA
 RUVALCABA, AND MARCELLA
 BERNAL, individuals, on their own behalf and
 on behalf of all similarly situated and aggrieved
 employees,

Plaintiffs,

v.

MONETARY MANAGEMENT OF
 CALIFORNIA, INC., a foreign corporation; and
 DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 21STCV09917

*Assigned for all purposes to Hon. Terry Green,
 Department 14*

CLASS AND REPRESENTATIVE ACTION

**FIRST AMENDED CLASS AND PRIVATE
 ATTORNEYS GENERAL ACT
 REPRESENTATIVE ACTION COMPLAINT
 FOR VIOLATIONS OF THE CALIFORNIA
 LABOR CODE**

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide Required Meal Periods
4. Failure to Provide Required Rest Periods
5. Failure to Indemnify Employees for Necessary
Expenditures Incurred in Discharge of Duties
6. Failure to Furnish Accurate Itemized Wage
Statements
7. Failure to Pay Timely and All Wages Due to
Discharged and Quitting Employees
8. Unfair and Unlawful Business Practices
9. Failure to Pay Timely Wages During
Employment
10. Failure to Maintain Required Records
11. Failure to Comply With Other Labor Code
Provisions Specified in PAGA Notice
12. Civil Penalties Pursuant to PAGA

DEMAND FOR JURY TRIAL

Action Filed: March 12, 2021

Trial Date: August 8, 2022

- 1 -

1 **NATURE OF ACTION**

2 1. DARLENE TORRES, LEANNA RUVALCABA, AND MARCELLA BERNAL
3 (“PLAINTIFFS”), bring this first amended class and representative action complaint on behalf of
4 themselves other similarly situated and similarly aggrieved current and former non-exempt employees,
5 who work and/or worked in the State of California for MONETARY MANAGEMENT OF
6 CALIFORNIA, INC. (“DEFENDANT”), a foreign corporation against DEFENDANT to remedy
7 DEFENDANT’s illegal wage payment policies and practices during the relevant statutory periods, for
8 which PLAINTIFFS seek damages, restitution, statutory and civil penalties, injunctive relief, interest,
9 attorneys’ fees and costs, and all other legal and equitable remedies deemed just and proper under
10 California law.

11 **JURISDICTION AND VENUE**

12 2. The Superior Court of the State of California has jurisdiction over this matter because, at
13 all relevant times, PLAINTIFFS have been a residents of the State of California and PLAINTIFFS are
14 informed and believe that DEFENDANT is qualified to do business in California, that DEFENDANT
15 maintains offices and facilities and transacts business in the County of Los Angeles, and that
16 DEFENDANT regularly conducts business in California. Furthermore, no federal question is at issue
17 because PLAINTIFFS’ claims are based solely on California law. On May 13, 2021, DEFENDANT
18 answered the original complaint filed in this action and therefore consented to the jurisdiction of the
19 California Superior Court.

20 3. Venue is proper in this judicial district and in the County of Los Angeles, California
21 because PLAINTIFFS are informed and believe that persons similarly aggrieved performed work for
22 DEFENDANT in the County of Los Angeles, DEFENDANT maintains offices and facilities and transacts
23 business in the County of Los Angeles, and because DEFENDANT’s illegal payroll policies and practices,
24 which are the subject of this action, were applied to aggrieved employees in the County of Los Angeles.

25 **PLAINTIFF AND CLASS MEMBERS/AGGRIEVED EMPLOYEES**

26 4. PLAINTIFFS, at all times relevant to this action, were residents of the State of California
27 and employees of DEFENDANT.

28 5. PLAINTIFFS bring this action as individuals and on behalf of the following similarly

1 situated class of individuals: all current and former non-exempt employees of DEFENDANT in the State
2 of California at any time within the period beginning four (4) years prior to the original March 12, 2021
3 filing of this action until the Court grants preliminary approval of the proposed class action settlement or
4 when the number of class workweeks as defined in the proposed class settlement agreement reaches
5 71,500, whichever occurs first (“CLASS MEMBERS”).¹

6 6. PLAINTIFFS bring this action against DEFENDANT, on behalf of themselves and other
7 aggrieved current and former non-exempt employees who worked for DEFENDANT in the State of
8 California at any time during the relevant statutory period preceding the filing of this action and continuing
9 while this action is pending (“AGGRIEVED EMPLOYEES”) to recover: civil penalties pursuant to
10 California Labor Code §§ 2698, *et seq* (“PAGA”) for DEFENDANT’s violations of the California Labor
11 Code. PLAINTIFFS reserve the right to name additional PAGA representatives.

12 7. During the relevant statutory period, DEFENDANT employed PLAINTIFFS and
13 AGGRIEVED EMPLOYEES pursuant to employment agreements that were partly written, partly oral,
14 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANT acted pursuant
15 to, and in furtherance of, its policies and practices of not paying PLAINTIFFS and AGGRIEVED
16 EMPLOYEES all wages earned and due through methods and schemes which include, but are not limited
17 to, failing to pay all minimum wages due, including minimum wage payments for off-the-clock work;
18 failing to pay all overtime wages due; failing to timely provide compliant meal periods (or to pay
19 compensation for a lack thereof); failing to timely provide compliant rest periods (or to pay compensation
20 for a lack thereof); failing to indemnify employees for necessary expenditures incurred in discharge of
21 duties; failing to furnish accurate itemized wage statements to employees; failing to timely pay all wages
22 to due at time of discharge or quitting; failing to timely pay all wages due during employment; and failing
23 to maintain accurate records, failure to pay sick pay, Covid-19 sick pay, holiday pay, bonuses, incentive
24 pay, and all other premiums required under the law, all in violation of the California Labor Code and the
25 applicable Welfare Commission (“IWC”) Orders.

26 ¹ Unless otherwise stated, PLAINTIFFS bring all factual allegations regarding PLAINTIFFS’ relevant
27 interactions with DEFENDANT based on personal knowledge and all other allegations based on
28 information and belief including those based on PLAINTIFFS’ counsel’s investigation. Each allegation
in the instant Complaint is supported by evidence or is likely to be supported by evidence after a reasonable
opportunity for further investigation and discovery. 3 -

1 8. As a direct and proximate result of DEFENDANT's unlawful acts and omissions,
2 PLAINTIFFS and AGGRIEVED EMPLOYEES have suffered, and continue to suffer, from loss of
3 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
4 Court. Accordingly, PLAINTIFFS bring this action against DEFENDANT to recover civil penalties
5 pursuant to PAGA for unpaid wages earned and due including, but not limited to, unpaid minimum wages,
6 unpaid overtime wages, unpaid meal period wages, unpaid rest period wages, unpaid wages due to
7 discharged and quitting employees, failure to provide accurate itemized wage statements, failure to
8 maintain required records, failure to reimburse reasonable and necessary business expenses, and interest,
9 attorneys' fees, costs, and expenses.

10 **DEFENDANT AND DOES 1-50**

11 9.
12 PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT is, and at all times
13 relevant to this action was, a corporation organized and existing under the laws of the State of
14 Delaware. PLAINTIFFS are further informed and believe, and thereon allege, that the State of
15 California, at all times relevant to this action, authorized DEFENDANT to conduct and that
16 DEFENDANT did conduct business in the state of California, under California Corporate Number
17 C2137523, including in offices and facilities in the County of Los Angeles.

18 10. PLAINTIFFS do not presently know the true names and capacities of DOES 1 through 50,
19 inclusive. PLAINTIFFS, therefore, sue such DOE defendants under fictitious names. PLAINTIFFS are
20 informed and believe, and thereon allege, that each defendant designated as a DOE is in some manner
21 highly responsible for the occurrences alleged herein, and that PLAINTIFFS and AGGRIEVED
22 EMPLOYEES' injuries and damages, as alleged herein, were proximately caused by the conduct of such
23 DOE defendants. PLAINTIFFS will seek leave of court to amend this Complaint to allege the true names
24 and capacities of such DOE defendant when ascertained.

25 11. PLAINTIFFS are informed and believe, and thereon alleges, that DEFENDANT and
26 DOES 1 through 50 (hereinafter, "DEFENDANTS"), at all times relevant to this action, committed acts
27 and omissions in concert with each other. PLAINTIFFS are informed and believes, and thereon allege,
28 that there has been a unity of interest and ownership between the DEFENDANTS such that any corporate

1 individuality and separateness between them has ceased, that they are alter egos of each other, and that if
2 DEFENDANTS' acts are treated as those of DEFENDANT alone, an inequitable result will follow.

3 12. PLAINTIFFS are informed and believe, and thereon allege, that, at all times relevant in
4 this action, DEFENDANTS were the joint employers, alter egos, divisions, affiliates, integrated
5 enterprises, subsidiaries, parents, principals, sisters, related entities, co-conspirators, agents, partners, joint
6 venturers, masters, servants, joint enterprisers, and/or guarantors, actual or ostensible, of each other.
7 PLAINTIFFS are informed and believe, and thereon allege, that, at all times relevant to this action, each
8 of the DEFENDANTS was completely dominated by his, her or its co-defendant and had authority, actual
9 or ostensible, to perform the actions alleged herein. However, PLAINTIFFS allege each of these theories
10 of joint liability in the alternative whenever not doing so would result in a contradiction with
11 PLAINTIFFS' other allegations.

12 13. PLAINTIFFS are informed and believe, and thereon allege, that, at all times relevant to
13 this action, to the extent that certain actions and omissions were perpetrated by certain DEFENDANTS,
14 the remaining DEFENDANTS condoned, authorized, and ratified such acts and omissions. Accordingly,
15 whenever PLAINTIFFS allege that any of the DEFENDANTS committed an act or omission,
16 PLAINTIFFS attribute such allegations to each of the DEFENDANTS individually, jointly, and severally.
17 However, PLAINTIFFS allege each of these theories of joint liability in the alternative whenever not
18 doing so would result in a contradiction with PLAINTIFFS' other allegations.

19 14. As a direct and proximate result of DEFENDANTS' unlawful actions, PLAINTIFFS and
20 AGGRIEVED EMPLOYEES have suffered, and continue to suffer, from monetary losses in amounts as
21 yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

22 **PAGA FACTUAL ALLEGATIONS**

23 **Civil Penalties Under the Labor Code Private Attorneys General Act of 2004**

24 **[Cal. Labor Code § 2698, *et seq.*]**

25 15. Pursuant to PAGA, California Labor Code §§ 2698-2699.5, PLAINTIFFS bring this action
26 against DEFENDANTS on behalf of themselves and AGGRIEVED EMPLOYEES in the State of
27 California.

28 16. On or about December 18, 2020, and pursuant to California Labor Code § 2699.3,

1 PLAINTIFFS gave written notice (the “PAGA Notice”) by online filing with the California Labor and
2 Workforce Development Agency (“LWDA”) and by certified mail to DEFENDANT MONETARY
3 MANAGEMENT OF CALIFORNIA, INC. and former defendant DFC GLOBAL CORP. alleging the
4 specific provisions of the California Labor Code and IWC Wage Orders that PLAINTIFFS allege
5 DEFENDANTS violated along with the facts and theories supporting the alleged violations.
6 PLAINTIFFS’ notice to the LWDA was followed by PLAINTIFFS’ payment of a \$75.00 filing fee.
7 Because the LWDA did not provide PLAINTIFFS with notice of its intent to investigate the alleged
8 violations in the 65 calendar days that have lapsed, PLAINTIFFS have complied with all of the
9 requirements set forth in California Labor Code § 2699.3 to commence a representative action against
10 DEFENDANTS on behalf of themselves and other AGGRIEVED EMPLOYEES of DEFENDANTS. A
11 true and correct copy of the notice to the PAGA Notice attached as **EXHIBIT A**.

12 **Failure to Pay Minimum Wages**

13 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 4-2001, § 4]**

14 17. During the relevant statutory period, as part of DEFENDANTS’ illegal wage payment
15 policies and practices, DEFENDANTS routinely deprived PLAINTIFFS and AGGRIEVED
16 EMPLOYEES of all minimum wages earned and due by requiring, permitting or suffering PLAINTIFFS
17 and AGGRIEVED EMPLOYEES to work off the clock, including but not limited to requiring
18 PLAINTIFFS and AGGRIEVED EMPLOYEES to perform off-the-clock work before their workday(s)
19 to communicate with “Four Star,” to sanitize the work area, wipe walls, wipe benches, wipe countertops,
20 mop floors, clean desks and chairs, clean breakroom tables and chairs, clean door handles, clean bathroom
21 faucets, clean light switches, clean tablets in the lobby, clean telephones, clean shared desktops, computer
22 keyboards, and mice, vacuum entryways and high traffic areas, remove trash, clean restrooms, spot-clean
23 walls, spot-clean carpets, clean spills, and clean and disinfect lunch tables regularly and at the end of every
24 break work through meal and rest periods; by illegally and inaccurately recording time during which
25 PLAINTIFFS and AGGRIEVED EMPLOYEES worked; by failing to properly maintain PLAINTIFFS’
26 and AGGRIEVED EMPLOYEES’ records; failing to provide accurate itemized wage statements to
27 PLAINTIFFS and AGGRIEVED EMPLOYEES for each pay period while failing to compensate
28 PLAINTIFFS and AGGRIEVED EMPLOYEES for all minimum wages including minimum wages for

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split shifts as required under California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, § 4.

18. DEFENDANTS have knowingly and willfully refused to perform their obligations to compensate PLAINTIFFS and AGGRIEVED EMPLOYEES for all minimum wages earned and all hours worked in violation of California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, § 4.

Failure to Pay Overtime Wages

[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3]

19. During the relevant statutory period, as part of DEFENDANTS' illegal wage payment policies and practices, DEFENDANTS routinely deprived PLAINTIFFS and AGGRIEVED EMPLOYEES of all overtime wages earned and due by requiring, permitting or suffering PLAINTIFFS and AGGRIEVED EMPLOYEES to work off the clock, work through meal and rest periods, by illegally and inaccurately recording time which PLAINTIFFS and AGGRIEVED EMPLOYEES worked; by failing to properly maintain PLAINTIFFS and AGGRIEVED EMPLOYEES' records; failing to provide accurate itemized wage statements to PLAINTIFFS and AGGRIEVED EMPLOYEES for each pay period while failing to compensate PLAINTIFFS and AGGRIEVED EMPLOYEES for all overtime wages calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, and at two (2) times the regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek as required under California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3.

20. DEFENDANTS have knowingly and willfully refused to perform their obligations to compensate PLAINTIFFS and AGGRIEVED EMPLOYEES for all overtime wages earned and all hours worked in violation of California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 4-2001, § 3.

Failure to Provide Required Meal Periods

[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 4-2001, § 11]

21. During the relevant statutory period, as part of DEFENDANTS' illegal wage payment

1 policies and practices, DEFENDANTS routinely deprived PLAINTIFFS and AGGRIEVED
2 EMPLOYEES of all wages earned and due by requiring, permitting or otherwise suffering PLAINTIFFS
3 and AGGRIEVED EMPLOYEES to take less than a 30-minute meal period, or to work through them, by
4 failing to relieve them of all duties during their purported meal periods, and by failing to otherwise provide
5 timely and uninterrupted required meal periods to PLAINTIFFS and AGGRIEVED EMPLOYEES as
6 required under California Labor Code §§ 226.7, 512 and IWC Wage Order No. 4-2001, § 11.

7 22. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order No.
8 4-2001, § 11 by failing to compensate PLAINTIFFS and AGGRIEVED EMPLOYEES, who were not
9 provided with timely and uninterrupted meal periods, one additional hour of compensation at each
10 employee's regular rate of pay for each workday that a meal period was not provided.

11 **Failure to Provide Required Rest Periods**

12 **[Cal. Labor Code §§ 226.7, IWC Wage Order No. 4-2001, § 12]**

13 23. During the relevant statutory period, as part of DEFENDANTS' illegal wage payment
14 policies and practices, DEFENDANTS routinely deprived PLAINTIFFS and AGGRIEVED
15 EMPLOYEES of all wages earned and due by requiring, permitting or otherwise suffering PLAINTIFFS
16 and AGGRIEVED EMPLOYEES to take less than a 10-minute rest period, or to work through them, by
17 failing to relieve them of all duties during their purported rest periods, and by failing to otherwise provide
18 timely and uninterrupted required rest periods to PLAINTIFFS and AGGRIEVED EMPLOYEES as
19 required under California Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 12.

20 24. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order No.
21 4-2001, § 12 by failing to compensate PLAINTIFFS and AGGRIEVED EMPLOYEES, who were not
22 provided with timely and uninterrupted rest periods, one additional hour of compensation at each
23 employee's regular rate of pay for each workday that a rest period was not provided.

24 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

25 **[Cal. Labor Code § 2802(a), 1198 and IWC Wage Order No. 4-2001, § 9]**

26 25. During the relevant statutory period, as part of DEFENDANTS' illegal policies and
27 practices, DEFENDANTS failed to indemnify PLAINTIFFS and AGGRIEVED EMPLOYEES for all
28 business expenses and/or losses incurred in direct consequence of the discharge of their duties while

1 working under the direction of DEFENDANTS including, but not limited to, by failing to reimburse
2 PLAINTIFFS and AGGRIEVED EMPLOYEES for expenses they incurred in complying with
3 DEFENDANTS' requirements to undergo training, under which DEFENDANTS required PLAINTIFFS
4 and AGGRIEVED EMPLOYEES to incur travel and other expenses to attend required training sessions,
5 including out-of-town; and by failing to reimburse PLAINTIFFS and AGGRIEVED EMPLOYEES for
6 expenses they incurred in complying with DEFENDANTS' requirement to use PLAINTIFFS' and
7 AGGRIEVED EMPLOYEES' personal cell phone(s) to call into "Four Star" to request authorization to
8 proceed to the front door of the store before beginning work.

9 26. DEFENDANTS have knowingly and willfully refused to perform their obligations to
10 indemnify PLAINTIFFS and AGGRIEVED EMPLOYEES for all business expenses and/or losses
11 incurred in direct consequence of the discharge of their duties while working under the direction of
12 DEFENDANTS in violation of California Labor Code § 2802(A), 1198 and IWC Wage Order 4-2001,
13 § 9.

14 **Failure to Furnish Accurate Itemized Wage Statements**

15 **[Cal. Labor Code § 226(a); IWC Wage Order No. 4-2001, § 7]**

16 27. During the relevant statutory period, as part of DEFENDANTS' illegal wage payment
17 policies and practices, DEFENDANTS routinely deprived PLAINTIFFS and AGGRIEVED
18 EMPLOYEES of their entitlements to timely and accurate itemized wage statements in writing showing
19 each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any
20 applicable piece rate if the employee is paid on a piece-rate basis, the commission rate or amount of sales
21 from commissions, all deductions made, net wages earned, the inclusive dates of the period for which the
22 employee is paid, the name of the employee and only the last four digits of his or her Social Security
23 number or employee identification number, the name and address of the legal entity or entities employing
24 PLAINTIFFS and AGGRIEVED EMPLOYEES, and all applicable hourly rates in effect during each pay
25 period and the corresponding number of hours worked at each hourly rate as required under California
26 Labor Code § 226(a) and IWC Wage Order No. 4-2001, § 7.

27 28. DEFENDANTS have knowingly and willfully refused to perform their obligations to
28 provide PLAINTIFFS and AGGRIEVED EMPLOYEES with timely and accurate wage statements in

1 violation of California Labor Code § 226(a) and IWC Wage Order No. 4-2001, § 7.

2 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

3 **[Cal. Labor Code §§ 201, 202, 203]**

4 29. During the relevant statutory period, as part of DEFENDANTS' illegal wage payment
5 policies and practices, DEFENDANTS routinely deprived PLAINTIFFS and/or AGGRIEVED
6 EMPLOYEES of all timely wage payments due to discharged and quitting employees by either failing to
7 compensate PLAINTIFFS and/or AGGRIEVED EMPLOYEES all earned and unpaid wages immediately
8 at the time of discharge as required under California Labor Code § 201 or by failing to pay earned and
9 unpaid wages no later than 72 hours after the employee quit his or her employment, unless the employee
10 provided 72 hours previous notice of his or her intention to quit, in which case the employee was entitled
11 to his or wages at the time of quitting as required under California Labor Code § 202, and by failing to
12 pay PLAINTIFFS and/or AGGRIEVED EMPLOYEES waiting time penalties in the form of continued
13 compensation to the employee at the same rate for up to 30 workdays.

14 30. DEFENDANTS have knowingly and willfully refused to perform their obligations to
15 compensate PLAINTIFFS and/or AGGRIEVED EMPLOYEES for wage payments due to discharged and
16 quitting employees in violation of California Labor Code §§ 201 and 202.

17 **Failure to Pay Timely Wages During Employment**

18 **[Cal. Labor Code § 204]**

19 31. During the relevant statutory period, as part of DEFENDANTS' illegal wage payment
20 policies and practices, DEFENDANTS routinely deprived PLAINTIFFS and AGGRIEVED
21 EMPLOYEES of all timely wage payments during their employment by failing to compensate
22 PLAINTIFFS and AGGRIEVED EMPLOYEES with all wages due for all labor performed between the
23 1st and 15th days of any calendar month between 16th and 26th day of the month during which the labor
24 was performed; by failing to compensate PLAINTIFFS and AGGRIEVED EMPLOYEES with all wages
25 due for all labor performed between the 16th and last days of any calendar month by the 1st and 10th day
26 of the following calendar month, and by failing to compensate PLAINTIFFS and AGGRIEVED
27 EMPLOYEES with all wages due, for labor in excess of the normal work period, by no later than the
28 payday of the next regular payroll period as required under California Labor Code § 204.

1 32. DEFENDANTS have knowingly and willfully refused to perform their obligations to
2 compensate PLAINTIFFS and AGGRIEVED EMPLOYEES with timely wage payments during their
3 employment for all hours worked in violation of California Labor Code § 204.

4 **Failure to Maintain Required Records**

5 **[Cal. Labor Code §§ 226, 1174(d); IWC Wage Order No. 4-2001, § 7]**

6 33. During the relevant statutory period, as part of DEFENDANTS' illegal wage payment
7 policies and practices, DEFENDANTS routinely failed to maintain accurate records including, but not
8 limited to, time records showing when PLAINTIFFS and AGGRIEVED EMPLOYEES began and ended
9 each work period, time records showing when PLAINTIFFS and AGGRIEVED EMPLOYEES began and
10 ended each meal period, time records showing the total daily hours PLAINTIFFS and AGGRIEVED
11 EMPLOYEES worked, payroll records showing the total wages paid to PLAINTIFFS and AGGRIEVED
12 EMPLOYEES including the value of all compensation actually furnished, and records showing the total
13 worked during the payroll period and applicable rates of pay as required under California Labor Code §§
14 226, 1174(d) and IWC Wage Order No. 4-2001, § 7.

15 34. During the relevant statutory period, DEFENDANTS knowingly and intentionally failed
16 to maintain accurate records pertaining to PLAINTIFFS and AGGRIEVED EMPLOYEES' employment
17 with DEFENDANTS in violation of California Labor Code §§ 226, 1174(d) and IWC Wage Order No. 4-
18 2001, § 7.

19 **Failure to Comply With Other Labor Code Provisions Specified in PAGA Notice**

20 35. During the relevant statutory period, as part of DEFENDANTS' illegal wage payment
21 policies and practices, DEFENDANTS violated numerous other Labor Code and wage order requirements
22 as specified in the PAGA Notice, including but not limited to Labor Code § 98.6 for discriminating,
23 retaliating, or taking adverse action against PLAINTIFFS and/or AGGRIEVED EMPLOYEES for
24 exercising their rights; Labor Code § 206 for failing to provide PLAINTIFFS and/or AGGRIEVED
25 EMPLOYEES with timely and full payment of all wages due and undisputed and/or as ordered by the Labor
26 Commissioner; Labor Code § 208 for failing to lawfully pay at the place of discharge or in the county
27 where PLAINTIFFS and/or AGGRIEVED EMPLOYEES quit; Labor Code § 1102.5 for refusing to
28 perform its obligations to refrain from adopting or enforcing rules designed to prevent disclosure of

1 California and Federal wage and hour violations and/or retaliating against PLAINTIFFS and/or
2 AGRIEVED EMPLOYEES who made such disclosures or for exercising their rights or engaging in
3 protected activity; and Labor Code § 1199 for failing to comply with the requirements of IWC Wage
4 Order No. 4-2001, including by subjecting PLAINTIFFS and/or AGGRIEVED EMPLOYEES to work
5 for longer hours than those fixed by this wage order, under conditions of labor prohibited by this wage
6 order, paying less than the various minimums fixed by the wage order, and knowingly and willfully
7 refusing and neglecting to comply with the provisions of the wage order.

8 **CLASS ACTION DESIGNATION**

9 36. This action is appropriately suited as a class action because:

10 a. The potential class is a significant number and joinder of all current and former
11 employees individually would be impractical.

12 b. This action involves common questions of law and fact to the potential class
13 because the action focuses on DEFENDANTS' systematic course of illegal payroll practices and policies,
14 which were applied to all non-exempt employees in violation of the California Labor Code, the applicable
15 IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair business
16 practices arising from such violations.

17 c. PLAINTIFFS' causes of action are typical of the class because PLAINTIFFS are
18 informed, believe and thereon allege that DEFENDANTS subjected all non-exempt employees to identical
19 violations of the California Labor Code, the applicable IWC Wage Orders, and the California Business
20 and Professions Code.

21 d. PLAINTIFFS are able to fairly and adequately protect the interests of all members
22 of the class because it is in PLAINTIFFS' best interests to prosecute the causes of action alleged herein
23 to obtain full compensation due to them for all services rendered and hours worked.

24 **FIRST CAUSE OF ACTION**

25 **Failure to Pay Minimum Wages**

26 **[Cal. Labor Code §§ 1182.12, 1197 and IWC Wage Order No. 4-2001, §§ 4 & 5**

27 **or other applicable IWC Wage Orders]**

28 **(Against all DEFENDANTS)**

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1 37. Pursuant to California Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-
2 2001, §§ 4 and 5 or other applicable IWC Wage Orders, California has fixed minimum wage rates, has
3 required employers in California to pay their employees no less than the minimum for all hours worked
4 in the payroll period, has provided that minimum wages for employees fixed by the IWC or by state law,
5 is the minimum wage to be paid to employees, and that payment of a lower wage than the minimum so
6 fixed is unlawful.

7 38. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
8 entitled to the protections of California Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-
9 2001, §§ 4 and 5 or other applicable IWC Wage Orders. During the relevant statutory periods,
10 DEFENDANTS routinely deprived PLAINTIFFS and CLASS MEMBERS of all minimum wages earned
11 and due by requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock,
12 work through meal and rest periods, by illegally and inaccurately recording time during which
13 PLAINTIFFS and CLASS MEMBERS worked, by failing to properly maintain PLAINTIFFS and CLASS
14 MEMBERS' records, by failing to provide accurate itemized wage statements to PLAINTIFFS and
15 CLASS MEMBERS for each pay period, while failing to compensate PLAINTIFFS and CLASS
16 MEMBERS for all minimum wages for all hours worked as required under California Labor Code §§
17 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, §§ 4 and 5 or other applicable IWC Wage Orders.
18 PLAINTIFFS and CLASS MEMBERS also claim that they did not receive sick pay, Covid-19 sick pay,
19 holiday pay, bonuses, incentive pay, and all other premiums required under the law. As a proximate result,
20 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, substantial losses related to
21 the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
22 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their respective
23 detriments in amounts according to proof at time of trial, and within the jurisdiction of this Court.

24 39. DEFENDANTS' conduct described herein violates California Labor Code §§ 1182.12,
25 1197, 1198 and IWC Wage Order No. 4-2001, §§ 4 and 5 or other applicable IWC Wage Orders. As a
26 proximate result of the aforementioned violations, PLAINTIFFS and CLASS MEMBERS have been
27 damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 98.6,
28 200, 201, 202, 203, 204, 206, 208, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 1198, 1199 and other

1 applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS
2 MEMBERS are entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus
3 interest, penalties, attorneys' fees, expenses, and costs of suit.

4 **SECOND CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **[Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 4-2001, § 3**

7 **or other applicable IWC Wage Orders]**

8 **(Against all DEFENDANTS)**

9 40. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are
10 consistent with this cause of action, as if fully set forth herein.

11 41. Pursuant to California Labor Code §§ 510, 1198 and IWC Wage Order No. 4-2001, § 3 or
12 other applicable IWC Wage Orders, California has required employers to pay their employees at one and
13 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or
14 forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with
15 double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
16 in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

17 42. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
18 entitled to the protections of California Labor Code §§ 510, 1198 and IWC Wage Order No. 4-2001, § 3
19 or other applicable IWC Wage Orders. During the relevant statutory periods, DEFENDANTS routinely
20 deprived PLAINTIFFS and CLASS MEMBERS of all overtime wages earned and due by requiring,
21 permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock, work through meal
22 and rest periods, by illegally and inaccurately recording time during which PLAINTIFFS and CLASS
23 MEMBERS worked, by failing to properly maintain PLAINTIFFS and CLASS MEMBERS' records, by
24 failing to provide accurate itemized wage statements to PLAINTIFFS and CLASS MEMBERS for each
25 pay period, while failing to compensate PLAINTIFFS and CLASS MEMBERS for all overtime wages
26 calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight
27 (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh
28 consecutive workday, and at two (2) times the regular rate of pay for all hours worked in excess of twelve

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1 (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive
2 day of work in any workweek as required under California Labor Code §§ 510, 1198 and IWC Wage
3 Order No. 4-2001, § 3 or other applicable IWC Wage Orders.

4 43. In violation of California law, DEFENDANTS have knowingly and willfully refused to
5 perform their obligations to compensate PLAINTIFFS and CLASS MEMBERS for all wages earned and
6 all hours worked. As a proximate result, PLAINTIFFS and CLASS MEMBERS have suffered, and
7 continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such
8 wages, and expenses and attorneys' fees in seeking to compel DEFENDANTS to fully perform their
9 obligations under state law, all to their respective detriments in amounts according to proof at time of trial,
10 and within the jurisdiction of this Court.

11 44. DEFENDANTS' conduct described herein violates California Labor Code §§ 510, 1198
12 and IWC Wage Order No. 4-2001, § 3 or other applicable IWC Wage Orders. Therefore, pursuant to
13 California Labor Code §§ 200, 201, 202, 203, 204, 226, 500, 510, 558, 558.1, 1194, 1197.1, 1198 and
14 other and other applicable provisions under the California Labor Code and IWC Wage Orders,
15 PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them
16 by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Provide Required Meal Periods**

19 **[Cal. Labor Code §§ 226.7, 512, 1198; IWC Wage Order No. 4-2001, § 11**

20 **or other applicable IWC Wage Orders]**

21 **(Against all DEFENDANTS)**

22 45. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are
23 consistent with this cause of action, as if fully set forth herein.

24 46. Pursuant to California Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001,
25 § 11 or other applicable IWC Wage Orders, California has prohibited employers from employing person
26 for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except
27 that when a work period of not more than six (6) hours will complete the day's work the meal period may
28 be waived by mutual consent of the employer and the employee. California has also prohibited employers

1 from employing a person for a work period of more than ten (10) hours per day without providing the
2 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
3 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the
4 employee only if the first meal period was not waived. California has also required that unless an employee
5 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty"
6 meal period and counted as time worked. Moreover, if an employer fails to provide an employee a meal
7 period in accordance with the applicable provisions of the relevant IWC Wage Order, then the employer
8 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
9 workday that the meal period is not provided.

10 47. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
11 entitled to the protections of California Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-
12 2001, § 11 or other applicable IWC Wage Orders. During the relevant statutory periods, DEFENDANTS
13 failed to provide PLAINTIFFS and CLASS MEMBERS meal periods, or to pay one (1) additional hour
14 of compensation at PLAINTIFFS and CLASS MEMBERS' regular rates of compensation for each
15 workday that a meal period was not provided, as required under the foregoing provisions of the California
16 Labor Code and IWC Wage Orders by, among other things: requiring, permitting or suffering
17 PLAINTIFFS and CLASS MEMBERS to work past five (5) hours from the starts of their shifts before
18 starting a meal period; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work
19 past ten (10) hours from the starts of their shifts before starting a second meal period; requiring, permitting
20 or suffering PLAINTIFFS and CLASS MEMBERS to take meal periods of less than 30 minutes or that
21 were otherwise not duty-free inasmuch as DEFENDANTS failed to relieve PLAINTIFFS and CLASS
22 MEMBERS of all of their duties or maintained control over them during that time; failing to count all
23 times that DEFENDANTS failed to provide PLAINTIFFS and CLASS MEMBERS duty-free 30-minute
24 meal periods as time worked for the purposes of minimum wage and overtime wage payments; failing to
25 pay PLAINTIFFS and CLASS MEMBERS one (1) hour of pay at their regular rates of compensation for
26 each workday that the meal period was not provided; in violation of California Labor Code §§ 226.7, 512,
27 1198 and IWC Wage Order No. 4-2001, § 11 or other applicable IWC Wage Orders.

28 48. DEFENDANTS' conduct described herein violates California Labor Code §§ 226.7, 510,

512, 1194, 1197, 1198 and IWC Wage Order No. 4-2001, § 11 or other applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 226.7(c), 500, 510, 558, 558.1, 1194, 1194.2, 1197.1, 1198 and other applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FOURTH CAUSE OF ACTION

Failure to Provide Required Rest Periods

[Cal. Labor Code §§ 226.7, 1198; IWC Wage Order No. 4-2001, § 12

or other applicable IWC Wage Orders]

(Against all DEFENDANTS)

49. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are consistent with this cause of action, as if fully set forth herein.

50. Pursuant to California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001, § 12 or other applicable IWC Wage Orders, California has required that employers shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period, that the authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, that a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours, and that authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. California has also required that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

51. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees entitled to the protections of California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001, § 12 or other applicable IWC Wage Orders. During the relevant statutory periods, DEFENDANTS failed to provide PLAINTIFFS and CLASS MEMBERS rest periods, or to pay one (1) additional hour of compensation at PLAINTIFFS and CLASS MEMBERS' regular rates of compensation for each workday that a rest period was not provided, as required under the foregoing provisions of the California Labor

Code and IWC Wage Order by, among other things: requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work past three and one-half (3 1/2) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted first rest period; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work past six (6) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted second rest period; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work past ten (10) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted third rest period; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to take rest periods of less than 10 minutes or that were otherwise not duty-free inasmuch as DEFENDANTS failed to relieve PLAINTIFFS and CLASS MEMBERS of all of their duties or maintained control over them during that time; failing to pay PLAINTIFFS and CLASS MEMBERS one (1) hour of pay at their regular rates of compensation for each workday that the rest period was not provided; in violation of California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001, § 12 or other applicable IWC Wage Orders.

52. DEFENDANTS' conduct described herein violates California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001, § 12 or other applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 226.7(c), 558, 558.1, 1194, 1194.2, 1197.1, 1198 and other applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FIFTH CAUSE OF ACTION

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

[Cal. Labor Code § 2802(a); IWC Wage Order No. 4-2001, § 9

or other applicable IWC Wage Orders]

(Against all DEFENDANTS)

53. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are consistent with this cause of action, as if fully set forth herein.

54. Pursuant to California Labor Code §§ 2802(a), 1198, and IWC Wage Order No. 4-2001, §

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1 9 or other applicable IWC Wage Orders, California has required that employers indemnify employees for
2 all necessary expenditures or losses incurred by an employee in direct consequence of the discharge of his
3 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless
4 the employee, at the time of obeying the directions, believed them to be unlawful.

5 55. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
6 entitled to the protections of California Labor Code §§ 2802(a), 1198, and IWC Wage Order No. 4-2001,
7 § 9 or other applicable IWC Wage Orders. During the relevant statutory periods, DEFENDANTS
8 knowingly and willfully failed to indemnify PLAINTIFFS and CLASS MEMBERS for all business
9 expenses and/or losses incurred in direct consequence of the discharge of their duties while working under
10 the direction of DEFENDANTS including, but not limited to, by failing to reimburse PLAINTIFFS and
11 CLASS MEMBERS for expenses they incurred in complying with DEFENDANTS' instructions to
12 PLAINTIFF and CLASS MEMBERS to call into security prior to store opening and at store closing, for
13 which PLAINTIFFS and CLASS MEMBERS used their personal cell phones; work from locations away
14 from Employer's regular business locations, without providing them reimbursement for use of personal
15 vehicles to drive to and from such locations; and clean and sanitize Employer's regular business location,
16 without providing them all supplies, tools, and/or equipment to perform such work.

17 56. In violation of California law, DEFENDANTS have knowingly and willfully refused to
18 perform their obligations to indemnify PLAINTIFFS and CLASS MEMBERS for all monies they
19 expended in necessary expenditures or losses incurred. As a proximate result, PLAINTIFFS and CLASS
20 MEMBERS have suffered, and continue to suffer, substantial losses related to the use and enjoyment of
21 such unreimbursed monies, and expenses and attorneys' fees in seeking to compel DEFENDANTS to
22 fully perform their obligations under state law, all to their respective detriment in amounts according to
23 proof at time of trial, and within the jurisdiction of this Court.

24 57. DEFENDANTS' conduct described herein violates California Labor Code § 2802(a) 1198,
25 and IWC Wage Order No. 4-2001, § 9 or other applicable IWC Wage Orders. Therefore, pursuant to
26 California Labor Code §§ 2802(b), 2802(c), 2802(d), 1198 and other applicable provisions under the
27 California Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to
28 recover the unreimbursed amounts owed to them by DEFENDANTS, plus interest, penalties, attorneys'

1 fees, expenses, and costs of suit.

2 **SIXTH CAUSE OF ACTION**

3 **Failure to Furnish Accurate Itemized Wage Statements**

4 **[Cal. Labor Code §§ 226(a), 226(e)(2)(B); IWC Wage Order No. 4-2001, § 7**

5 **or other applicable IWC Wage Orders]**

6 **(Against all DEFENDANTS)**

7 58. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are
8 consistent with this cause of action, as if fully set forth herein.

9 59. Pursuant to California Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order
10 No. 4-2001, § 7 or other applicable IWC Wage Orders, California has required that employers
11 semimonthly or at the time of each payment of wages set by the employer, furnish each of its employees
12 an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked
13 by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
14 is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period
15 for which the employee is paid, (7) the name of the employee and only the last four digits of his or her
16 social security number or an employee identification number other than a social security number, (8) the
17 name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
18 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
19 California law has stated that an employee is deemed to suffer injury for purposes of this subdivision if
20 the employer fails to provide accurate and complete information as required by any one or more of items
21 of the foregoing nine (9) enumerated items and the employee cannot promptly and easily determine from
22 the wage statement alone, *inter alia*, the amount of the gross wages or net wages paid to the employee
23 during the pay period or any of the other information required to be provided on the itemized wage
24 statement pursuant to enumerated items (2) to (4), inclusive, (6), and (9).

25 60. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
26 entitled to the protections of California Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order
27 No. 4-2001, § 7 or other applicable IWC Wage Orders. During the relevant statutory periods,
28 DEFENDANTS failed to provide PLAINTIFFS and CLASS MEMBERS accurate itemized wage

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1 statements as required under the foregoing provisions of the California Labor Code and IWC Wage Order
2 by, among other things: failing to provide accurate writings showing each and every one of the nine (9)
3 enumerated items required by Labor Code § 226(a), failing to provide accurate writings enabling
4 PLAINTIFFS and CLASS MEMBERS to promptly and easily determine from the wage statement alone
5 their total hours worked, all forms of premium payments earned and due including payments for overtime,
6 meal period, rest period and split shift premiums, all deductions, the inclusive dates for which they were
7 paid, and/or all applicable hourly rates in effect during the pay period and the corresponding number of
8 hours worked at each hourly rate by the employee, and by other methods to be discovered, in violation of
9 California Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 4-2001, § 7 or other
10 applicable IWC Wage Orders.

11 61. In violation of California law, DEFENDANTS have knowingly and willfully refused to
12 perform their obligations to provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and
13 itemized wage statements in accordance with California Labor Code §§ 226(a), 226(e)(2)(B), 1198, and
14 IWC Wage Order No. 4-2001, § 7 or other applicable IWC Wage Orders. As a proximate result,
15 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, substantial losses related to
16 the use and enjoyment of accurate itemized wage statements, and expenses and attorneys' fees in seeking
17 to compel DEFENDANTS to fully perform their obligations under state law, all to their respective
18 detriments in amounts according to proof at time of trial, and within the jurisdiction of this Court.

19 62. DEFENDANTS' conduct described herein violates California Labor Code § 226(a), 1198,
20 and IWC Wage Order No. 4-2001, § 7 or other applicable IWC Wage Orders. Therefore, pursuant to
21 California Labor Code §§ 226(e)(1), 226(e)(2)(B), 226(h), 1198, and IWC Wage Order No. 4-2001, § 7,
22 PLAINTIFFS and CLASS MEMBERS are entitled to recover the greater of all actual damages or fifty
23 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
24 employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four
25 thousand dollars (\$4,000), and are entitled to an award of costs and reasonable attorney's fees.

26 **SEVENTH CAUSE OF ACTION**

27 **Failure to Timely Pay All Wages Due to Discharged and Quitting Employees**

28 **[Cal. Labor Code §§ 201(a), 202, 203]**

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(Against all DEFENDANTS)

63. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are consistent with this cause of action, as if fully set forth herein.

64. Pursuant to California Labor Code §§ 201(a), 202, and 203, California has required that employers pay their employees all wages earned and unpaid at the time of discharge, or if an employee quits, not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting, and that if an employer willfully fails to timely pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

65. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees entitled to the protections of California Labor Code §§ 201, 202 and 203. During the relevant statutory periods, DEFENDANTS failed to timely pay PLAINTIFFS and CLASS MEMBERS all wages due at the times they were discharged or at the times they quit under the foregoing provisions of the California Labor Code and IWC Wage Order No. 4-2001, or other applicable IWC Wage Orders by, among other things: failing to pay all earned wages to PLAINTIFFS and CLASS MEMBERS in full; failing to pay all earned wages to PLAINTIFFS and CLASS MEMBERS at the time DEFENDANTS discharged them or within 72 hours of the times they quit; and by failing to pay PLAINTIFFS and CLASS MEMBERS wages as a penalty from the due date thereof at the same rate until paid; and by other methods to be discovered, in violation of California Labor Code §§ 201(a), 202, and 203.

66. In violation of California law, DEFENDANTS have knowingly and willfully refused to perform their obligations to provide PLAINTIFFS and CLASS MEMBERS with timely and full payment of all wages earned and unpaid at the time of discharge or quitting in accordance with California Labor Code §§ 201, 202, and 203. As a proximate result, PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, substantial losses related to the use and enjoyment of all final wages owed and due to them including the penalties due to them as a result of DEFENDANTS' failures, and expenses and attorneys' fees in seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their respective detriments in amounts according to proof at time of trial, and within the jurisdiction of

1 this Court.

2 67. DEFENDANTS' conduct described herein violates California Labor Code §§ 201, 202 and
3 203. Therefore, pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 226.7(c), 500, 510, 558,
4 558.1, 1194, 1194.2, 1197.1, 1198 and other applicable provisions under the California Labor Code and
5 IWC Wage Order No. 4-2001, or other applicable IWC Wage Orders IWC Wage Orders, PLAINTIFFS
6 and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by
7 DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

8 **EIGHTH CAUSE OF ACTION**

9 **Representative Action for Unfair and Unlawful Business Practices**

10 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

11 **(Against all DEFENDANTS)**

12 68. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are
13 consistent with this cause of action, as if fully set forth herein.

14 69. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, sometimes called
15 California's Unfair Competition Law ("UCL"), California has prohibited employers from engaging in
16 unlawful, unfair or fraudulent business acts or practices, which may include an employer's violations of
17 the California Labor Code sections which prohibit employers from unlawfully withholding wages from
18 an employee. Pursuant to § 17203, any person who engages, has engaged, or proposes to engage in unfair
19 competition may be enjoined in any court of competent jurisdiction to prevent the use or employment by
20 any person of any practice which constitutes unfair competition, or as may be necessary to restore to any
21 person in interest any money or property, real or personal, which may have been acquired by means of
22 such unfair competition. Furthermore, § 17203 provides that any person may pursue representative claims
23 or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and
24 complies with Section 382 of the Code of Civil Procedure.

25 70. Each and every one of DEFENDANTS' acts and omissions in violation of the California
26 Labor Code and/or the applicable IWC Wage Orders as alleged herein including, but not limited to,
27 DEFENDANTS' willful failure and refusal to pay minimum wages, DEFENDANTS' willful failure and
28 refusal to pay overtime wages, DEFENDANTS' willful failure and refusal to provide meal periods or pay

1 wages in lieu thereof, DEFENDANTS' willful failure and refusal to provide rest periods or pay wages in
2 lieu thereof, DEFENDANTS' willful failure and refusal to indemnify for necessary business expenses,
3 DEFENDANTS' willful failure and refusal to furnish accurate itemized wage statements, and
4 DEFENDANTS' willful failure and refusal to timely pay all wages due at time of discharge or quitting,
5 constitutes an unfair and unlawful business practice under California Business and Professions Code §§
6 17200 *et seq.*

7 71. DEFENDANTS' violations of California wage and hour laws constitute a business practice
8 because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a significant
9 period of time, and in a systematic manner, to the detriment of PLAINTIFFS, CLASS MEMBERS and
10 members of the general public. DEFENDANTS, pursuant to their deliberate engagement in unfair
11 competition practices, have avoided payment of wages, reimbursement of expenses, and the provision of
12 other entitlements owed to PLAINTIFFS and CLASS MEMBERS as a result of their employment
13 relationships with DEFENDANTS, as required by the California Labor Code, the California Code of
14 Regulations, and the applicable IWC Wage Orders. Further, DEFENDANTS have failed to record, report,
15 and pay the correct sums of assessment including, but not limited to, payroll tax assessments, to the state
16 authorities under the California Labor Code and other applicable regulations as a direct consequence and
17 result of DEFENDANTS' wrongful wage underpayments alleged herein.

18 72. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS
19 have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFFS, CLASS
20 MEMBERS, and members of the general public. DEFENDANTS should be made to disgorge their ill-
21 gotten gains and to restore them to PLAINTIFFS, CLASS MEMBERS and state authorities.

22 73. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and CLASS
23 MEMBERS to preliminary and permanent injunctive relief including, but not limited to, orders that
24 DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and CLASS MEMBERS the wages
25 and other compensation unlawfully withheld from them, along with the correct sums of assessment
26 including, but not limited to, payroll tax assessment to state authorities under the California Labor Code
27 and other applicable regulations. PLAINTIFFS and CLASS MEMBERS are entitled to restitution of all
28 monies to be disgorged from DEFENDANTS in an amount according to proof at the time of trial, and

1 within the jurisdiction of this Court.

2 **NINTH CAUSE OF ACTION**

3 **Failure to Pay Timely Wages During Employment**

4 **[Cal. Labor Code § 204]**

5 **(Against all DEFENDANTS)**

6 74. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are
7 consistent with this cause of action, as if fully set forth herein.

8 75. Pursuant to California Labor Code §§ 201(a) and 204, California has required that
9 employers timely pay their employees all wages due for all labor performed between the 1st and 15th days
10 of any calendar month between 16th and 26th day of the month during which the labor was performed; all
11 wages due for all labor performed between the 16th and last days of any calendar month by the 1st and
12 10th day of the following calendar month; all wages due, for labor in excess of the normal work period,
13 by no later than the payday of the next regular payroll period.

14 76. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
15 entitled to the protections of California Labor Code §§ 201 and 204. During the relevant statutory periods,
16 DEFENDANTS failed to timely pay PLAINTIFFS and CLASS MEMBERS all wages due for all labor
17 performed between the 1st and 15th days of any calendar month between 16th and 26th day of the month
18 during which the labor was performed; all wages due for all labor performed between the 16th and last
19 days of any calendar month by the 1st and 10th day of the following calendar month; all wages due, for
20 labor in excess of the normal work period, by no later than the payday of the next regular payroll period,
21 in violation of California Labor Code §§ 201(a) and 204.

22 77. In violation of California law, DEFENDANTS have knowingly and willfully refused to
23 perform their obligations to provide PLAINTIFFS and CLASS MEMBERS with timely payment of all
24 wages due for all labor performed between the 1st and 15th days of any calendar month between 16th and
25 26th day of the month during which the labor was performed; all wages due for all labor performed
26 between the 16th and last days of any calendar month by the 1st and 10th day of the following calendar
27 month; all wages due, for labor in excess of the normal work period, by no later than the payday of the
28 next regular payroll period, in accordance with California Labor Code §§ 201 and 204. As a proximate

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1 result, PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, substantial losses
2 related to the use and enjoyment of all wages owed and due to them including the penalties due to them
3 as a result of DEFENDANTS' failures, and expenses and attorneys' fees in seeking to compel
4 DEFENDANTS to fully perform their obligations under state law, all to their respective detriments in
5 amounts according to proof at time of trial, and within the jurisdiction of this Court.

6 78. DEFENDANTS' conduct described herein violates California Labor Code §§ 201 and 204.
7 Therefore, pursuant to California Labor Code §§ 201, 204, and other applicable provisions under the
8 California Labor Code and IWC Wage Order No. 4-2001, or other applicable IWC Wage Orders IWC
9 Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover one hundred dollars (\$100)
10 for the initial violation and two hundred dollars (\$200) per employee for each subsequent violation, plus
11 25 percent of the amount unlawfully withheld plus interest, penalties, attorneys' fees, expenses, and costs
12 of suit.

13 **TENTH CAUSE OF ACTION**

14 **Failure to Maintain Required Records**

15 **[Cal. Labor Code §§ 226, 1174(d); IWC Wage Order No. 4-2001, § 7]**

16 **(Against all DEFENDANTS)**

17 79. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are
18 consistent with this cause of action, as if fully set forth herein.

19 80. Pursuant to California Labor Code §§ 226, 1174(d) and IWC Wage Order No. 4-2001, §
20 7, California has required that employers to maintain accurate records including, but not limited to, time
21 records showing when PLAINTIFFS and CLASS MEMBERS began and ended each work period, time
22 records showing when PLAINTIFFS and CLASS MEMBERS began and ended each meal period, time
23 records showing the total daily hours PLAINTIFFS and CLASS MEMBERS worked, payroll records
24 showing the total wages paid to PLAINTIFFS and CLASS MEMBERS including the value of all
25 compensation actually furnished, and records showing the total worked during the payroll period and
26 applicable rates of pay as required.

27 81. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
28 entitled to the protections of California Labor Code §§ 226, 1174(d) and IWC Wage Order No. 4-2001, §

1 7. During the relevant statutory periods, DEFENDANTS failed to maintain accurate records including,
2 but not limited to, time records showing when PLAINTIFFS and CLASS MEMBERS began and ended
3 each work period, time records showing when PLAINTIFFS and CLASS MEMBERS began and ended
4 each meal period, time records showing the total daily hours PLAINTIFFS and CLASS MEMBERS
5 worked, payroll records showing the total wages paid to PLAINTIFFS and CLASS MEMBERS including
6 the value of all compensation actually furnished, and records showing the total worked during the payroll
7 period and applicable rates of pay, in violation of California Labor Code §§ 226, 1174(d) and IWC Wage
8 Order No. 4-2001, § 7.

9 82. In violation of California law, DEFENDANTS have knowingly and willfully refused to
10 perform their obligations to maintain accurate records pertaining to PLAINTIFFS and CLASS
11 MEMBERS' employment with DEFENDANTS in violation of California Labor Code §§ 226, 1174(d)
12 and IWC Wage Order No. 4-2001, § 7.

13 83. As a proximate result, PLAINTIFFS and CLASS MEMBERS have suffered, and continue
14 to suffer, substantial losses as a result of DEFENDANTS' failures, and expenses and attorneys' fees in
15 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their respective
16 detriments in amounts according to proof at time of trial, and within the jurisdiction of this Court.

17 84. DEFENDANTS' conduct described herein violates California Labor Code §§ 226, 1174(d)
18 and IWC Wage Order No. 4-2001, § 7. Therefore, pursuant to California Labor Code §§ 226(e)(1), 226(h),
19 and IWC Wage Order No. 4-2001, § 7, PLAINTIFFS and CLASS MEMBERS are entitled to recover the
20 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
21 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed
22 an aggregate penalty of four thousand dollars (\$4,000), and are entitled to an award of costs and reasonable
23 attorney's fees.

24 **ELEVENTH CAUSE OF ACTION**

25 **Failure Comply With Other Labor Code Provisions Specified in PAGA Notice**

26 **[Cal. Lab. Code §§ 98.6, 206, 208, 1102.5, 1199]**

27 **(Against all DEFENDANTS)**

28 85. PLAINTIFFS incorporate all facts alleged in the preceding paragraphs, which are

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1 consistent with this cause of action, as if fully set forth herein.

2 86. Pursuant to the Labor Code provisions specified in the PAGA Notice, including but not
3 limited to California Labor Code §§ 98.6, 206, 208, 1102.5, and 1199, PLAINTIFFS and CLASS
4 MEMBERS were entitled to protection against DEFENDANTS' discrimination, retaliation, or other
5 adverse action for exercising their rights or engaging in protected activity; DEFENDANTS' failure to
6 timely and fully pay all wages due and undisputed and/or as ordered by the Labor Commissioner;
7 DEFENDANTS' failure to abide by the requirements specified in IWC Wage Order No. 4-2001;
8 DEFENDANTS' failure to lawfully pay at the place of discharge or in the county where PLAINTIFFS
9 and/or CLASS MEMBERS quit; DEFENDANTS' refusal to perform their obligations to refrain from
10 adopting or enforcing rules designed to prevent disclosure of California and Federal wage and hour
11 violations; and other claims against DEFENDANTS arising out of the facts alleged in the PAGA Notice.

12 87. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
13 entitled to the protections of these provisions of the Labor Code and IWC Wage Order No. 4-2001.

14 88. In violation of California law, DEFENDANTS have knowingly and willfully refused to
15 perform their obligations in violation of to California Labor Code §§ 98.6, 206, 208, 1102.5, and 1199,
16 and other Labor Code sections specified in the PAGA Notice.

17 89. As a proximate result, PLAINTIFFS and CLASS MEMBERS have suffered, and continue
18 to suffer, substantial losses as a result of DEFENDANTS' failures, and expenses and attorneys' fees in
19 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their respective
20 detriments in amounts according to proof at time of trial, and within the jurisdiction of this Court.

21 **TWELFTH CAUSE OF ACTION**

22 **Representative Action for PAGA Civil Penalties**

23 **[Cal. Lab. Code §§ 2698 *et. seq.*]**

24 **(Against all DEFENDANTS)**

25 90. PLAINTIFFS refer to and incorporates by reference all facts alleged in the foregoing
26 paragraphs consistent with this cause of action as if fully set forth herein.

27 91. Each PLAINTIFF is an "aggrieved employee" within the meaning of California Labor
28 Code § 2699(c), and a proper representative to bring a civil action on behalf of herself and other current

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1 and former employees of DEFENDANTS pursuant to the procedures specified in California Labor Code
2 § 2699.3 because each PLAINTIFF was employed by DEFENDANTS and the alleged violations of the
3 California Labor Code were committed against each PLAINTIFF during the relevant period. Accordingly,
4 PLAINTIFFS seek to recover civil penalties through a representative action permitted by PAGA and the
5 California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class certification is
6 not required.

7 92. Pursuant to PAGA, California Labor Code §§ 2698, *et seq.*, PLAINTIFFS seek to recover
8 civil penalties from DEFENDANTS including, but not limited to, penalties under California Labor Code
9 §§ 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1198, and 2802 in a
10 representative action for the violations set forth above.

11 93. Pursuant to California Labor Code § 2699(a), PLAINTIFFS seek civil penalties for
12 DEFENDANTS' violations of California Labor Code provisions for which a civil penalty is specifically
13 provided including, but not limited to, the following:

14 a. Pursuant to California Labor Code § 210, for violations of California Labor Code
15 § 204, DEFENDANTS are subject to a civil penalty in the amount of one hundred dollars (\$100) for the
16 initial violation and two hundred dollars (\$200) per employee for each subsequent violation.

17 b. Pursuant to California Labor Code § 226.3, for violations of California Labor Code
18 § 226(a), DEFENDANTS are subject to a civil penalty in the amount of two hundred and fifty dollars
19 (\$250) per aggrieved employee for the initial pay period in which a violation occurs and one thousand
20 dollars (\$1,000) per aggrieved employee for each subsequent violation.

21 c. Pursuant to California Labor Code § 558(a), "[a]ny employer or other person acting
22 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision
23 regulating hours and days of work in any order of the Industrial Welfare Commission" including
24 California Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty
25 provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay
26 period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent
27 violation for each underpaid employee for each pay period for which the employee was underpaid.

28 d. Pursuant to California Labor Code § 1174.5, for violations of California Labor

Code § 1174(d), DEFENDANTS are subject to a civil penalty of five hundred dollars (\$500).

e. Pursuant to California Labor Code § 1197.1, for violations of IWC Wage Order No. 4-2001, § 4, which provides that an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

94. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. PLAINTIFF seeks such civil penalties under Labor Code § 2699(f) for DEFENDANTS' violations of California Labor Code provisions for which a civil penalty is not specifically provided including, but not limited to, California Labor Code §§ 201, 202, 203, 221, 226.7, 1194, 1197, 1198, and 2802.

95. PLAINTIFFS additionally seek reasonable attorney's fees and costs pursuant to California Labor Code § 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, on their own behalf and on behalf of CLASS MEMBERS and AGGRIEVED EMPLOYEES, respectfully pray for relief against DEFENDANTS, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial as alleged herein for unpaid minimum wage compensation, unpaid overtime wage compensation, unpaid meal period and rest period premium payments, failure to indemnify employees for necessary expenditures and/or losses incurred in discharging their duties, failure to furnish accurate itemized wage statements, failure to pay wages timely, and failure to pay all wages due to discharged and quitting employees;

2. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

3. For actual and/or statutory damages and/or penalties according to proof including, but not

- 30 -

1 limited to, all penalties authorized by the California Labor Code §§ 203, 206, 226(e), 1199, and Wage
2 Order No. 4-2001, § 20;

3 4. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§
4 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing
5 for pre-judgment interest;

6 5. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1194,
7 2699(g)(1), 2802, California Civil Code § 1021.5, and/or any other applicable provisions providing for
8 attorneys' fees and costs;

9 6. For an accounting of all monies due to PLAINTIFFS and CLASS MEMBERS arising from
10 DEFENDANTS' unfair and unlawful business practices;

11 7. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as
12 disgorged profits arising from DEFENDANTS' unfair and unlawful business practices;

13 8. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh
14 and Eighth Causes of Action as a class action;

15 9. For an order appointing PLAINTIFF as class representative and PLAINTIFF's counsel as
16 class counsel;

17 10. For civil penalties according to proof including, but not limited to, the amount of all civil
18 penalties authorized by California Labor Code §§ 98.6, 210, 226.3, 558, 1102.5, 1174.5, 1197.1, 2699(a)
19 and (f) or any other applicable civil penalty provisions authorized under California law; and

20 11. For such further relief that the Court may deem just and proper.

21 DATED: May 12, 2022

THE KICK LAW FIRM, APC

22
23 By: Taras Kick

24 Taras Kick
25 Karen L. Wallace
26 Greg Taylor

27 Attorneys for Plaintiffs Darlene Torres, Leanna
28 Ruvalcaba, and Marcella Bernal, on their own behalf
and on behalf of all similarly aggrieved employees

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable by jury as of right.

DATED: May 12, 2022

THE KICK LAW FIRM, APC

By: Taras Kick
Taras Kick
Karen Wallace

Attorneys for Plaintiffs Darlene Torres, Leanna
Ruvalcaba, and Marcella Bernal, on their own
behalf and on behalf of all similarly aggrieved
employees

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 815 Moraga Drive Los Angeles, CA 90049.

On June 9, 2022, I served the following document or documents:

**FIRST AMENDED CLASS AND PRIVATE ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION COMPLAINT FOR VIOLATIONS OF THE CALIFORNIA
LABOR CODE**

☒ **By electronic service (via electronic filing service provider).** I caused the documents to be electronically transmitted to Case Anywhere, an electronic filing service provider, at www.caseanywhere.com pursuant to the Court's Electronic Case Management Order governing the matter and mandating electronic service to person(s) at the address(es) listed below. The transmission was reported as complete and without error to the addressees as stated below.

AN NGUYEN RUDA
aruda@bzbm.com
BEN SCHNAYERSON
bschnayerson@bzbm.com
BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation
One Embarcadero Center, Suite 800
San Francisco, California 94111

Attorneys for Defendants
MONETARY MANAGEMENT OF
CALIFORNIA and DFC GLOBAL CORP.

///

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct.

3 Executed on June 9, 2022.

4 /s/ Alina L. Muresan

5 Alina L. Muresan
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Exhibit 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 14

21STCV09917

**DARLENE TORRES, et al. vs MONETARY MANAGEMENT
OF CALIFORNIA, INC., A FOREIGN CORPORATION, et al.**

June 2, 2022

8:45 AM

Judge: Honorable Terry Green
Judicial Assistant: M. Ventura
Courtroom Assistant: P. Cortez

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order

The Court has received and reviewed the Stipulation and Proposed Order for dismissal of Defendant DFC Global Corp. without prejudice and for leave to file First Amended Complaint, submitted on May 13, 2022.

The Stipulation and Order is signed, filed and incorporated herein with reference to the online court file this date.

The Court orders DFC Global, Corp., a foreign corporation in Complaint filed by Darlene Torres, et al. on 03/12/2021 dismissed without prejudice.

The Court orders counsel to e-file their First Amended Complaint forthwith.

Clerk is to give notice.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 06/02/2022
PLAINTIFF/PETITIONER: Darlene Torres et al		Sherri R. Carter, Executive Officer / Clerk of Court By: <u>M. Ventura</u> Deputy
DEFENDANT/RESPONDENT: Monetary Management of California, Inc., a foreign corporation et al		
CERTIFICATE OF MAILING		CASE NUMBER: 21STCV09917

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Court Order) of 06/02/2022 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

X Daniel J Bass
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

An Nguyen Ruda
BARTKO ZANKEL BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 06/3/2022

By: M. Ventura
Deputy Clerk

CERTIFICATE OF MAILING

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 06/02/2022 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>M. Ventura</u> Deputy
PLAINTIFF/PETITIONER: Darlene Torres et al		
DEFENDANT/RESPONDENT: Monetary Management of California, Inc., a foreign corporation et al		
CERTIFICATE OF MAILING		CASE NUMBER: 21STCV09917

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Order - Dismissal upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

An Nguyen Ruda
BARTKO ZANKEL BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111

Daniel J Bass
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

Jeffrey Charles Bils
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815 Moraga Drive
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Roy K. Suh
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

Taras Kick
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 06/2/2022

By: M. Ventura
Deputy Clerk

CERTIFICATE OF MAILING

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp FILED Superior Court of California County of Los Angeles 06/02/2022 Sheri R. Carter, Executive Officer / Clerk of Court By: <u>M. Ventura</u> Deputy
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012		
PLAINTIFF(S): Darlene Torres et al		
DEFENDANT(S): Monetary Management of California, Inc., a foreign corporation et al		
ORDER OF DISMISSAL		CASE NUMBER: 21STCV09917

On the motion of the Court, and
 ___ pursuant to the provisions of section _____ of the Civil Code of Procedures,
 ___ pursuant to Local Policy and / or Local Rules,
 it is hereby ordered that the within action is dismissed
 ___ with prejudice as to _____ ☒ without prejudice as to _____
 ___ entire action _____ complaint only
 ___ cross complaint of _____
☒ other DFC Global, Corp., a foreign corporation

It is further ordered that _____
 to recover costs as provided by law
 ___ in the sum of \$ _____
 ___ per filing memorandum of costs (1033 CCP et. Seq.)



Terry Green

Terry Green / Judge

Judicial Officer

Dated: 06/02/2022

ORDER OF DISMISSAL

Exhibit 3

1 AN NGUYEN RUDA (SBN 215453)
aruda@bzbm.com
2 ELIZABETH FERGUSON (SBN 318934)
bschnayerson@bzbm.com
3 BARTKO ZANKEL BUNZEL & MILLER
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4 One Embarcadero Center, Suite 800
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5 Telephone: (415) 956-1900
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6 Attorneys for Defendant
7 MONETARY MANAGEMENT OF
CALIFORNIA

8 TARAS KICK (SBN 143370)
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9 KAREN L. WALLACE (272309)
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10 SAM VAHEDI (SBN 282660)
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11 THE KICK LAW FIRM, APC
12 815 Moraga Drive
Los Angeles, California 90049
13 Telephone: (310) 395-2988
Facsimile: (310) 395-2088

14 Attorneys for Plaintiffs
15 DARLENE TORRES, LEANNA RUVALCABA
and MARCELLA BERNAL, individually, and
16 on behalf of similarly aggrieved

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

19 DARLENE TORRES, LEANNA
RUVALCABA AND MARCELLA BERNAL,
20 individuals, on their own behalf and on behalf
of all similarly aggrieved employees,

21 Plaintiffs,

22 v.

23 MONETARY MANAGEMENT OF
24 CALIFORNIA, INC., a foreign corporation;
and DOES 1 through 50, inclusive,

25 Defendants.
26

Case No. 21STCV09917

**STIPULATION FOR CLASS ACTION
SETTLEMENT**

Assigned for All Purposes to:
Hon. Terry Green, Dept. 14

Action Filed: 3/12/2021
FAC Filed: 4/XX/2022

INTRODUCTION

28 Plaintiffs Darlene Torres, Leanna Ruvalcaba, and Marcella Bernal ("Named Plaintiffs") and

1 Defendant Monetary Management of California, Inc. ("Money Mart" or "Defendant"), hereby
2 submit this Stipulation for Class Action Settlement ("Stipulation," "Settlement" or "Agreement") to
3 the Court for its consideration. This Stipulation is filed in conjunction with Plaintiffs' Motion for
4 Preliminary Approval of Class Action Settlement, which Money Mart does not oppose. Named
5 Plaintiffs' lawsuit is premised on claims that Money Mart failed to pay minimum wages; failed to
6 pay overtime wages; failed to pay all wages during employment; failed to provide compliant meal
7 periods or pay required premiums; failed to permit compliant rest breaks or pay required premiums;
8 failed to indemnify employees for necessary expenditures incurred in discharge of duties; failed to
9 provide accurate itemized wage statements; failed to pay all wages due upon separation of
10 employment; failed to pay wages within the required time; failed to keep accurate records; violations
11 of Business and Professions Code §§ 17200, et seq.; and enforcement of Labor Code § 2698, et. seq.
12 ("PAGA").

13 **STIPULATION AND SETTLEMENT AGREEMENT**
14 **OF CLASS ACTION CLAIMS**

15 This Stipulation is made by Named Plaintiffs on behalf of themselves and the "Class
16 Members" as defined herein, on the one hand, and Money Mart, on the other hand, in the above-
17 captioned action ("Class Action" or "Action") pending in the Superior Court for the State of
18 California, County of Los Angeles, and subject to the approval of the Court.

19 **I. Class Certification.**

20 Solely for purposes of this Settlement, Named Plaintiffs and Money Mart (collectively,
21 "Parties") stipulate and agree to settle the Action as a class action. The Parties stipulate and agree
22 to the certification of the Class Action against Money Mart for purposes of this Settlement only.
23 Named Plaintiffs will have dismissed without prejudice claims against DFC Global, Corp. ("DFC"),
24 which does not have non-exempt employees in California. Named Plaintiffs were never employees
25 of DFC.

26 Should, for whatever reason, the Settlement not become final, the fact that the Parties were
27 willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall
28 not be admissible in connection with, the issue of whether a class should be certified in a non-

1 settlement context in this Action and shall have no bearing on, and shall not be admissible in
2 connection with, the issue of whether a class should be certified in any other lawsuit. Money Mart
3 expressly reserves its right to oppose class certification should this Settlement not become final.

4 **II. Procedural History.**

5 On December 17, 2020, Named Plaintiffs submitted a Private Attorneys General Act, Cal.
6 Labor Code § 2698, et seq. (“PAGA”) notice to the Labor & Workforce Development Agency, and
7 served Money Mart and DFC with this same notice. On March 12, 2021, Named Plaintiffs filed their
8 original complaint as a representative action under PAGA against Money Mart and DFC on behalf
9 of themselves and all similarly situated employees. The Parties will file a Joint Stipulation and
10 Proposed Order Granting Leave to File a First Amended Complaint as putative class action adding
11 class action wage and hour claims against Money Mart to the PAGA action concurrently with
12 Named Plaintiffs’ Notice of Motion and Unopposed Motion for Preliminary Approval of Class-
13 Action Settlement. Named Plaintiffs have filed a request for dismissal without prejudice as to DFC.

14 **III. Investigation in the Action.**

15 The Parties have conducted significant informal discovery, and Named Plaintiffs have
16 conducted an investigation of the facts and law during the twelve-month period of time in which the
17 parties have litigated this Action. Such informal discovery and investigation has included, *inter*
18 *alia*, the exchange of hundreds of pages of documents and policies, as well as a significant sample
19 size of payroll records and timekeeping data used by Named Plaintiffs and Class Counsel (as defined
20 below) to determine potential violations of California wage-and-hour laws, if any, as well as the
21 scope of damages in the event violations could be proven. Class Counsel has further investigated
22 the applicable law as applied to the facts discovered regarding the alleged claims, damages, and
23 potential defenses thereto. In pertinent part, the investigation has yielded the following: Named
24 Plaintiffs generally allege that Class Plaintiffs (as defined below) have suffered damages; that
25 Money Mart did not pay Class Plaintiffs all wages and overtime premiums owed to them; that
26 Money Mart did not pay Class Plaintiffs all premium wages for meal and rest period violations;
27 that Money Mart did not provide Class Plaintiffs with legally compliant accurate itemized wage
28 statements; that Money Mart did not reimburse Class Plaintiffs for all business expenses; that

1 Money Mart failed to pay wages to the Class Plaintiffs within the required time; that Money Mart
2 failed to maintain employment records as required by law; that Money Mart owes wages, penalties,
3 liquidated damages, waiting time penalties, interest, attorneys' fees, or other damages based on a
4 failure to fully or timely compensate Class Plaintiffs for all hours worked at any time on or before
5 the last day of the Class Period while working for Money Mart (whether based on contract, the
6 California Wage Orders, the California Labor Code, or any other applicable law); that Money Mart
7 engaged in alleged unlawful, unfair and/or fraudulent business practices under California's Business
8 and Professions Code 17200 *et seq.*; that Money Mart violated the Labor Code Private Attorney
9 General's Act of 2004 ("the PAGA Claim"); and that Class Plaintiffs were harmed by the conduct
10 alleged in the Action. Thus, Named Plaintiffs demand various amounts for wages, penalties,
11 interest, costs, attorneys' fees, and other damages, on behalf of themselves and all Class Plaintiffs.

12 Based upon a thorough review of the law and facts of this case, Money Mart contends that
13 there is no basis for damages, attorneys' fees, liquidated damages, waiting time penalties, and/or
14 any other penalties to be assessed against it pursuant to California state law because Class Plaintiffs
15 were at all times properly paid all wages owed (including overtime) and were properly provided all
16 meal and rest periods as required under California law. As such, all amounts properly owed to Class
17 Plaintiffs were timely paid to them, and Money Mart disputes that Class Plaintiffs are owed any
18 additional wages. Money Mart denies that it failed to properly pay meal period or rest period
19 premium wages when required under applicable law, including but not limited to, the legal precedent
20 of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Money Mart denies that it
21 failed to provide legally compliant accurate itemized wage statements; denies that they failed to
22 maintain employment records as required by law; denies that it failed to reimburse Class Plaintiffs
23 for business expenses; denies that it did not pay wages within the required time; denies that it did
24 not properly pay all wages to Class Plaintiffs upon their separation from their employment; and
25 denies that it owes or owed wages, penalties, interest, attorneys' fees, or other damages related to
26 the underlying claims during the Class Period. Nevertheless, given the risks inherent in litigation
27 and in the spirit of compromise, Money Mart, Named Plaintiffs, and Class Members hereby agree
28 to compromise all claims and forego any and all claims for liquidated damages and/or penalties

1 against Money Mart and the Released Parties pursuant to the California Labor Code and California
2 Wage Orders, and any other applicable law, in return for payments made pursuant to this Stipulation.

3 **IV. Benefits of Settlement to Class Members.**

4 Named Plaintiffs recognize the expense and length of continued proceedings necessary to
5 continue the litigation against Money Mart through trial and through any possible appeals. Named
6 Plaintiffs have also taken into account the uncertainty and risk of denial of a motion for class
7 certification and the uncertain outcomes resulting from further litigation, and the difficulties and
8 delays inherent in such litigation. Named Plaintiffs are also aware of the burdens of proof necessary
9 to establish liability for the claims asserted in the Action, Money Mart's defenses thereto, and the
10 difficulties in establishing damages for the Named Plaintiffs and Class Members. Named Plaintiffs
11 have also taken into account the settlement negotiations to date and a lengthy mediation
12 commencing on October 21, 2021, before Marc Feder, a renowned expert mediator of class actions,
13 representative actions, and collective actions, especially those in the wage-and-hour arena such as
14 the Action, and the fact that the Settlement is the product of a mediator's proposal. Moreover, the
15 mediator's proposal was accepted by the Parties only after further efforts on behalf of the mediator
16 to convey facts and arguments from Money Mart to the Named Plaintiffs, and vice versa, in an effort
17 to maximize the likelihood that a mediator's proposal would be accepted by both Parties. Based on
18 the foregoing, Named Plaintiffs have determined that the Settlement set forth in this Agreement is
19 a fair, adequate, and reasonable settlement, and is in the best interests of the Class Plaintiffs.

20 **V. Money Mart's Reasons for Settlement.**

21 Money Mart has concluded that further defense of this litigation would be protracted and
22 expensive. Substantial amounts of time, energy, and resources of Money Mart have been and, unless
23 this Settlement is made, will continue to be devoted to the defense of the claims asserted by Named
24 Plaintiffs on behalf of themselves and the putative class. Money Mart also assessed the risk of a
25 finding of liability against it and have taken into account the settlement negotiations to date. Money
26 Mart, therefore, agreed to settle in the manner and upon the terms set forth in this Agreement to put
27 to rest the Claims as set forth in the Action.

28 **VI. Money Mart's Denials of Wrongdoing.**

1 Money Mart has denied and continues to deny each of the claims and contentions alleged by
2 Named Plaintiffs in the Action. Money Mart has repeatedly asserted and continues to assert
3 defenses thereto and have expressly denied and continue to deny any wrongdoing or legal liability
4 arising out of any of the facts or conduct alleged in the Action. Money Mart has also denied and
5 continues to deny, *inter alia*, that Named Plaintiffs and the Class Members have suffered damages,
6 that Money Mart owes wages, penalties, liquidated damages, waiting time penalties, interest,
7 attorneys' fees, or other damages of any kind, whether based on contract, the California Wage
8 Orders, or the wage-and-hour laws which would be applicable to any Class Member's employment
9 with Released Parties (as defined below) during the Class Period, or otherwise.

10 **VII. Class Claims.**

11 Named Plaintiffs, on behalf of themselves and all Class Plaintiffs (as defined below), have
12 claimed and continue to claim that the Released Claims (as defined below) have merit and give rise
13 to liability on the part of Money Mart. Neither this Agreement nor any documents referred to herein,
14 nor any action taken to carry out this Agreement, will be construed or used as an admission by or
15 against any Party (including Money Mart, Named Plaintiff, Class Plaintiffs, counsel, or Released
16 Parties, all as defined below), as to the merits or lack thereof of the claims asserted..

17 NOW, THEREFORE, IT IS HEREBY STIPULATED, by and among Named Plaintiffs, on
18 behalf of themselves and the Class Members on the one hand, and Money Mart on the other hand,
19 and subject to the approval of the Court, that the Class Action is hereby being compromised and
20 settled pursuant to the terms and conditions set forth in this Agreement upon the Effective Date (as
21 defined below), subject to the recitals set forth herein above, which by this reference become an
22 integral part of this Agreement, and subject to the following terms and conditions:

23 **1. Definitions:**

24 (a) "Class Counsel" refers to Taras Kick and Karen L. Wallace and Sam Vahedi
25 of The Kick Law Firm, APC.

26 (b) "Class Plaintiffs" and "Class" are defined as all non-exempt employees who
27 were employed by Money Mart in California during the Claims Period. Class Plaintiffs and Class
28 comprise all putative class members as alleged in the proposed First Amended Complaint

1 (hereinafter referred to as "Complaint"). The Parties estimate there are approximately 738 Class
2 Plaintiffs.

3 (c) "Action" or "Class Action" refers to the action entitled *Darlene Torres,*
4 *Leanna Ruvalcaba, and Marcella Bernal, individually, on their own behalf and on behalf of all*
5 *similarly aggrieved employees v. Monetary Management of California, Inc., a foreign*
6 *corporation; DFC Global Corp., a foreign corporation; and Does 1 through 50, inclusive,* in
7 Superior Court of the State of California, County of Los Angeles, Case No. 21STCV09917, filed on
8 March 12, 2021, and as proposed to be amended subsequently.

9 (d) "Class Members" comprise all Class Plaintiffs who do not affirmatively opt
10 out of and exclude themselves from the Class in a timely manner, as defined herein.

11 (e) "Claims Period" is defined as the period from March 12, 2017, to the point
12 in time where the class Workweeks reach 71,500, or until the Court grants preliminary approval of
13 the Agreement, whichever occurs first.

14 (f) "Money Mart" means Monetary Management of California, Inc.

15 (g) "DFC" means DFC Global Corp.

16 (h) "Defendant" means defendant Money Mart.

17 (i) The "Effective Date" is defined as follows: If no objection to this Settlement
18 or to any of the terms and or conditions of the Stipulation are filed by a Class Member or any
19 intervenor to this action, the Effective Date shall occur on the day that the Court enters an order of
20 final approval of this settlement and enters judgment; however, if any objection to this Settlement
21 or to any of the terms and or conditions of the Stipulation is filed by any Class Member or intervenor
22 to the Action, the Effective Date shall occur upon the expiration of the time for the filing any appeal
23 of the order of final approval of this settlement and/or the judgment. If an appeal is filed or any writ
24 granted, then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved,
25 and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ.

26 (j) "Enhancement Award" means the sum to be paid to the Named Plaintiffs, as
27 an enhancement for their singular role in undertaking this Action, and for the risks and work
28 attendant to this role, which award shall be deducted from the "Settlement Fund."

1 (k) **“Named Plaintiffs”** means Plaintiff Darlene Torres, Leanna Ruvalcaba, and
2 Marcella Bernal.

3 (l) **“Net Settlement Amount”** means the Settlement Fund, less all of the
4 following: (i) Named Plaintiff’s Enhancement Awards; (ii) Class Counsel’s attorneys’ fees;
5 (iii) Class Counsel’s litigation costs and expenses; (iv) all expenses incurred by Simpluris (the
6 “Settlement Administrator”), the third-party claims administrator selected by the Parties; and
7 (v) PAGA Payments to PAGA Employees and the California Labor and Workforce Development
8 Agency (the “LWDA”).

9 (m) **“Objection/Exclusion/Dispute Deadline”** means forty-five (45) days after
10 the original Notice is mailed to the Class Members or twenty-one (21) days after remailing,
11 whichever is later. If the last deadline falls on a Sunday or federal or state holiday, the time to object
12 or seek exclusion will be extended to the next day on which the U.S. Postal Service is open.

13 (n) **“PAGA Period”** is defined as the period from January 6, 2020, through the
14 point in time where the class Workweeks reach 71,500, or the Court grants preliminary approval of
15 the class action settlement, whichever occurs first.

16 (o) **“PAGA Employees”** is defined as Class Plaintiffs who performed work for
17 Money Mart in California during the PAGA Period, regardless of whether they opt out of the Class
18 Settlement. The Parties estimate there are approximately 316 PAGA Employees.

19 (p) **“PAGA Payment”** means a PAGA Employee’s pro-rata share of the
20 Settlement Fund allocated to the PAGA Claim. Fifty thousand dollars and zero cents (\$50,000.00)
21 will be payable from the Settlement Fund to the LWDA and PAGA Employees, seventy-five percent
22 (75%) of which shall be distributed to the LWDA, and twenty-five percent (25%) of which shall be
23 distributed to PAGA Employees on a pro rata basis.

24 (q) **“PAGA Pay Period”** means any biweekly pay period during which a PAGA
25 Employee worked at least one (1) day or is otherwise identifiable as Money Mart’s non-exempt
26 employee in the state of California in Money Mart’s records during the PAGA Period, which the
27 Settlement Administrator preliminarily and finally assigns as credits to individual PAGA
28 Employees when calculating individual PAGA Payments.

1 (r) **“PAGA Pay Period Dollar Value”** means the dollar value for each PAGA
2 Pay Period credit assigned to PAGA Employees, which shall be determined by dividing the PAGA
3 Payment to PAGA Employees by the aggregate number of all PAGA Pay Period credits assigned to
4 all PAGA Employees.

5 (s) **“Payment Date”** means the date by which Class Members receive payment
6 of their Settlement Payments and PAGA Payments.

7 (t) **“Settlement Fund”** means One Million Five Hundred Thousand Dollars and
8 zero cents (\$1,500,000.00), which is the maximum amount Defendant shall be required to pay under
9 this Agreement, and is inclusive of all attorneys’ fees, attorneys’ costs, incentive awards, claims
10 administration expenses, alleged damages, and PAGA Payment amounts. The employers’ share of
11 all state and federal payroll taxes such as FICA, FUTA, UI, ETT, and SDI (“Payroll Taxes”) are not
12 included in the Settlement Fund.

13 (u) **“Settlement Payment(s)”** mean the individual amounts to be paid to Class
14 Members pursuant to the terms of this Settlement, and exclusive of any PAGA Payments required
15 to be paid to PAGA Employees.

16 (v) **Complaint (“Complaint”)** means the First Amended Complaint proposed to
17 be filed with the Court in this Action.

18 (w) **“Workweek(s)”** is any week in which a member of the Settlement Class
19 worked at least one day for the Defendant.

20 (x) **“Workweek Dollar Value”** means the dollar value for each Workweek credit
21 assigned to Class Members, which shall be determined by dividing the Net Settlement Amount by
22 the aggregate number of all Workweek credits assigned to all Class Members.

23 **2. Full Investigation.** Plaintiffs have fully investigated the factual and legal bases for
24 the causes of action asserted in the Class Action. Given the disagreement between the Parties as to
25 the viability of the claims raised by Plaintiffs in the Class Action, the Parties believe the Settlement
26 provided for herein is a fair, adequate, and reasonable settlement.

27 **3. Release As To All Class Members.** As of the date Defendant funds the Settlement,
28 the Class Members, including Named Plaintiffs, release Defendant Money Mart and DFC, their

1 respective affiliates, and each of their past or present officers, directors, members, shareholders,
2 employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants,
3 insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries,
4 affiliates, joint ventures, owners, parent companies and attorneys and each of their respective
5 company-sponsored employee benefit plans and all of their respective officers, directors,
6 employees, administrators, fiduciaries, trustees, and agents (the "Released Parties"), from the
7 "Released Claims" arising during the Class Period. This release is subject to court approval. For
8 purposes of this Agreement, the "Released Claims" are defined as all claims alleged in the
9 Complaint or arising out of the facts alleged in the Complaint, whether known or unknown, whether
10 for violation of any state or federal constitution, statute, rule, regulation, including the California
11 Labor Code and the California Wage Orders, whether for economic damages, restitution, penalties,
12 liquidated damages, or interest, including but not limited to claims that the Released Parties:

13 (i) did not pay the Class Members all amounts owed, including for
14 regularly hourly pay, overtime premium, sick pay, Covid-19 sick pay, holiday pay, bonuses,
15 incentive pay, and all other premiums required under the law;

16 (ii) failed to provide meal periods and rest breaks to the Class Members
17 and provide meal or rest period penalties;

18 (iii) failed to pay or timely pay the Class Members for all hours worked;

19 (iv) did not provide legally compliant accurate itemized wage statements;

20 (v) did not properly pay all wages to the Class Members upon the Class
21 Members' separation from employment;

22 (vi) did not properly reimburse Class Members for business expenses,
23 including the cost of using their cell phones and for mileage;

24 (vii) did not timely pay wages owed to Class Members;

25 (viii) did not maintain accurate and required records;

26 (ix) engaged in discrimination, retaliation, and/or took adverse action
27 against Class Members for exercising their rights or engaging in protected activity;
28

1 (x) did not provide Class Members with timely and full payment of all
2 wages due and undisputed and/or as ordered by the Labor Commissioner;

3 (xi) failed to lawfully pay at the place of discharge or in the county where
4 the Class Member quit;

5 (xii) refused to perform its obligations to refrain from adopting or
6 enforcing rules designed to prevent disclosure of California and Federal wage and hour violations
7 and/or retaliating against Class Members who made such disclosures or for exercising their rights
8 or engaging in protected activity;

9 (xiii) subjected Class Members to work for longer hours than those fixed
10 by IWC Wage Order No. 4-2001 or under conditions of labor prohibited by IWC Wage Order No.
11 4-2001, paying less than the various minimums fixed by IWC Wage Order No. 4-2001, and
12 knowingly and willfully refusing and neglecting to comply with the provisions of IWC Wage Order
13 No. 4-2001;

14 (xiv) and, arising from the foregoing, for alleged unlawful, unfair and/or
15 fraudulent business practices under California and Business and Professions Code sections 17200,
16 *et seq.* for the wage-and-hour violations alleged in the Complaint while employed by Defendant.

17 4. **Release As To All PAGA Employees.** As of the date Defendant funds the
18 Settlement, the PAGA Employees and the LWDA release the Released Parties from claims for
19 penalties under the Private Attorney General's Act of 2004 arising out of the Released Claims as
20 alleged in Plaintiff's LWDA letter and alleged in the Complaint during the PAGA Period ("PAGA
21 Release"). PAGA Employees cannot opt out of this Release of PAGA Claims. This release is
22 subject to court approval.

23 5. **General Release By Named Plaintiffs; 1542 Waiver by Named Plaintiffs.** In
24 addition to the release made by the Class Members set forth in Paragraphs 3 and 4 hereof, upon
25 approval of this Stipulation, Named Plaintiffs shall be deemed to have generally released any and
26 all claims, demands and causes of action of every kind and nature, whether known or unknown,
27 suspected or unsuspected, which the Named Plaintiffs now own or hold or at any time heretofore
28 have owned or held against the Released Parties, or any of them, arising out of, resulting from, or

1 in any way related to any transaction, agreement, occurrence, act, or omission whatsoever occurring,
2 existing, or omitted at any time before the Named Plaintiffs' signing of this Agreement.

3 Named Plaintiffs elect to waive the benefits of Section 1542 of the California Civil Code,
4 which states

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
6 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
7 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8 **6. Allocation of Settlement Fund.**

9 (a) Class Counsel intends to move the Court for an award of attorneys' fees
10 compensating Class Counsel for its representation of the Class Members in this matter in an amount
11 equal to thirty-three percent and one-third (33 1/3%) of the Settlement Fund, equal to Five Hundred
12 Thousand dollars (\$500,000), the entire amount of which is to be deducted from the Settlement Fund.
13 Class Counsel also intends to move the Court for an Order reimbursing Class Counsel's actual
14 litigation costs and expenses in an amount not to exceed Ten Thousand Dollars (\$10,000), claims
15 administration fees and costs incurred by the Settlement Administrator in an amount not to exceed
16 Eleven Thousand Dollars (\$11,000), and an Enhancement Award in an amount not to exceed a Seven
17 Thousand Five Hundred Dollars (\$7,500) to each Named Plaintiff. The attorneys' fees, litigation
18 costs, claims administration costs and Enhancement Awards are to be paid out of the Settlement Fund
19 as explained below and shall not be an additional cost to Defendant. Fifty Thousand Dollars
20 (\$50,000) of the Settlement Fund shall be allocated to the PAGA Claim pursuant to California Labor
21 Code sections 2698, et. seq. From the \$50,000 attributed to the PAGA Claim, 75% shall be paid to
22 the LWDA, and 25% shall be distributed back into the Settlement Fund for the benefit of the PAGA
23 Employees.

24 (b) If the Court does not approve any of the awards as requested and described
25 above, then the difference not awarded shall be added to the Net Settlement Amount and distributed
26 between the Class Members on a pro rata basis based on a percentage of each individual Class
27 Member's Settlement Award.

1 (c) The Settlement Fund shall equal the amount available to pay all Settlement
2 Payments to the Class Members; Class Counsel's Fees Award; Class Counsel's litigation costs and
3 expenses; claims administration fees and costs; Enhancement Award to Named Plaintiff; and PAGA
4 Payments to PAGA Employees and the LWDA.

5 7. **Allocation of Net Settlement Amount.** Class Members will receive a Settlement
6 Payment from the Net Settlement Amount. There shall be no requirement that any Class Plaintiff
7 submit a claim form to become a Class Member. Class Members who do not negotiate the
8 Settlement Payment shall be subject to the full release of claims as set forth in Paragraph 3 above.
9 The Net Settlement Amount will be distributed to Class Members. The Net Settlement Amount will
10 be allocated to the Class for distribution to the Class Members on a pro-rata basis, based on each
11 Class Members' total earned compensation during the Class Claims Period. Class Plaintiffs who
12 opt out cannot be Class Members and therefore will not receive a distribution from the Net
13 Settlement Amount, except PAGA Employees cannot opt out of the PAGA release or receiving a
14 PAGA Payment. Class Plaintiffs who do not opt out in a timely manner automatically become Class
15 Members and need not submit a claim form in order to receive a distribution from the Net Settlement
16 Amount.

17 8. **Basis for Distribution.** Class Settlement Payments will be made on a pro-rata basis
18 to all Class Members who do not opt out in a timely manner. The Settlement Payments paid to the
19 Class Members will be allocated between penalties (80%), and wages (20%). PAGA Payments will
20 be characterized as only penalties. Taxes will be withheld on any wage portions paid to Class
21 Members. The amount allocated as penalties and interest paid to each Class Member shall be paid
22 without deduction or offset to reflect payment of alleged interest, penalties, and other non-wage
23 amounts, although Defendant may issue an IRS Form 1099-Misc and/or IRS Form 1099-Int to
24 reflect these payments for penalties and interest, if required. The Settlement Administrator is
25 charged with preparing and mailing 1099s and W-2s in connection with payments made under this
26 Agreement. The employer-side taxes are not included in the gross settlement amount.

1 **9. Additional Distribution Details.**

2 (a) Time for Distribution of the Settlement Payments and PAGA Payments.

3 Settlement Payments and PAGA Payments shall be made on a one-time basis. Within thirty (30)
4 calendar days after the Effective Date, the Settlement Fund shall be paid to the Settlement
5 Administrator for proper distribution under the terms of this Settlement. The Parties agree that all
6 Settlement Payments will be allocated as recommended by the Settlement Administrator in
7 conformance with applicable tax laws with IRS Forms issued accordingly, as required by law. Class
8 Members shall take full and complete responsibility for any and all tax liability incurred by them
9 resulting from sums paid to them pursuant to this settlement and Agreement.

10 (b) Opt-Outs. Excluded from receiving a Settlement Payment under the terms of
11 this Agreement are all Class Plaintiffs who submit a valid and timely request for exclusion from the
12 class action settlement. PAGA Employees cannot opt out of the PAGA Release or receiving
13 payment of their PAGA Payments.

14 (c) Class Members Who Fail to Negotiate Settlement Payment. It is possible,
15 but not certain, that one or more Class Members who receive the Settlement Payment will fail to
16 negotiate this payment within the one hundred and eighty (180) day negotiation period described in
17 Section 9(d) below. Such individuals will remain Class Members and the amount of the Settlement
18 Payment made to them will be treated as unclaimed funds as described in Section 9(d) below.

19 (d) Disposition of Unclaimed Funds. All unclaimed Settlement Payments and
20 PAGA Payments shall become null and void one hundred and eighty (180) days following the
21 issuance date on the settlement checks. The funds associated with any checks not properly or timely
22 negotiated shall be deposited with the State Controller of the State of California, pursuant to
23 applicable law. They shall not be remitted to the Department of Industrial Relations. Class Members
24 who fail to negotiate their check(s) within the specified time limit shall remain bound by the
25 Settlement and its releases.

26 **10. Fees Award, Costs, and Enhancement Award.**

27 (a) Class Counsel shall petition the Court for an award of attorneys' fees and
28 costs. Defendant shall not, directly or indirectly, oppose or contest this request. Class Counsel shall

1 not be permitted to apply to the Court for or accept any additional payments for fees or interest, and
2 the fees and costs agreed upon in this Stipulation shall be for all claims for attorneys' fees and costs
3 past, present, and future incurred in the Action.

4 (b) An IRS 1099 Form will be issued to Class Counsel with respect to its award
5 of attorneys' fees and costs.

6 (c) Class Counsel may apply for an Enhancement Award in an amount not to
7 exceed \$7,500 allocated to each of the Named Plaintiffs for their time and effort spent pursuing the
8 Action, and for the risks undertaken for fees and costs in the event of an unsuccessful outcome in
9 this Action. Defendant agrees not to oppose such an application, so long as it is consistent with the
10 provisions of this Agreement. The Enhancement Award shall be paid out of the Settlement Funds
11 and shall not constitute an additional expense for Defendant. In addition to the Enhancement
12 Awards, Named Plaintiffs are eligible to receive a Settlement Payment and PAGA Payment. The
13 Enhancement Award will not be taxed as wages. For such award, Named Plaintiffs will each receive
14 an IRS 1099 Form.

15 **11. Time for Distribution.**

16 (a) Within fourteen (14) business days of the Settlement Administrator's receipt
17 of the Settlement Funds, the Settlement Administrator shall mail checks to Class Counsel, or send
18 by wire, the payment of the Enhancement Award and Class Counsel's awarded Fees and Costs

19 (b) Within fourteen (14) business days of the Settlement Administrator's receipt
20 of the Settlement Funds, the Settlement Administrator shall mail a check to the LWDA for the
21 LWDA's portion of the PAGA Payment.

22 (c) Within thirty (30) business days of the Settlement Administrator's receipt of
23 the Settlement Funds, the Settlement Administrator shall mail the Settlement Payment checks to the
24 individual Class Members, and the PAGA Payment checks to the PAGA Employees.

25 **12. Responsibilities of Defendant.** Within 30 calendar days after Preliminary
26 Approval, Defendant will provide the Settlement Administrator with an electronic spreadsheet
27 containing the following information for Class Plaintiffs if available: (1) full name; (2) last known
28 address; (3) last known telephone number; (4) social security number or taxpayer identification

1 number; (5) start and end dates of employment as a non-exempt employee of Money Mart in the
2 State of California; (6) total Workweeks worked during the Class Period; (7) total PAGA Pay
3 Periods worked during the PAGA Period; and (8) any other information the Settlement
4 Administrator reasonably requires to carry out its settlement administration duties (hereinafter
5 “Class List”). Before receipt of this data, the Settlement Administrator will agree to execute and to
6 abide by a Confidentiality Agreement to maintain this information as confidential and not to disclose
7 it to anyone or any person, including Named Plaintiffs and Class Counsel. This confidentiality is
8 necessary to protect the privacy of the individual Class Members and will not affect Class Counsel’s
9 ability to discharge its fiduciary duties. In the event of a dispute as to the calculation of income
10 earned for time worked, Defendant will provide backup information to Class Counsel and the
11 Settlement Administrator regarding the dispute. Defendant will cooperate with the Settlement
12 Administrator to locate Class Plaintiffs whose original Notice packets have been returned to the
13 Settlement Administrator as undeliverable and if the Settlement Administrator has been
14 unsuccessful in locating an updated address by way of social security computer search or other
15 means available to the Settlement Administrator.

16 **13. Calculation of Settlement Payment and PAGA Payment.**

17 (a) The Settlement Administrator, in conjunction with Defendant and Class
18 Counsel, will calculate the amounts to be paid to the Class Plaintiffs in accordance with the terms
19 and provisions of this Agreement. The payments will be determined as follows:

20 (i) PAGA Payments due to PAGA Employees will be determined by the
21 following three-step process: (1) the Settlement Administrator shall credit each PAGA Employee
22 with PAGA Pay Period credits based on the data in the Class List, which shall be presumed accurate,
23 subject to any objection or dispute as to the number of PAGA Periods, the process for which shall
24 be described in the Class Notice; (2) the Settlement Administrator shall determine the PAGA Pay
25 Period Dollar Value by dividing the total PAGA Payments to PAGA Employees by the number of
26 PAGA Pay Periods credited to all PAGA Employees; and (iii) the Settlement Administrator shall
27 determine the PAGA Payment due to each PAGA Employee by multiplying the number of PAGA
28 Pay Periods credited to the individual PAGA Employee by the PAGA Pay Period Dollar Value.

1 (ii) The Settlement Payment to each Class Member will be paid based on
2 their respective pro rata shares of the Net Settlement Amount, which shall be determined by the
3 following three-step process: (1) the Settlement Administrator shall credit each Class Member with
4 Workweek credits based on the data in the Class List, which shall be presumed accurate, subject to
5 any objection or dispute as to the number of Workweeks, the process for which shall be described
6 in the Class Notice; (ii) the Settlement Administrator shall determine the Workweek Dollar Value
7 by dividing the Net Settlement Amount by the number of Workweeks credited to all Class Members;
8 and (iii) the Settlement Administrator shall determine the Settlement Payment due to each Class
9 Member by multiplying the number of Workweeks credited to the Class Member by the Workweek
10 Dollar Value.

11 (b) Class Plaintiffs who opt out cannot be Class Members and therefore will not
12 receive a distribution of the Settlement Payment. PAGA Employees cannot opt out of receiving the
13 PAGA Payments and releasing PAGA Claims.

14 (c) Class Counsel will be provided access to all calculations and all data forming
15 the basis for such determinations, subject to the confidentiality provisions in Section 12 and
16 redactions to protect Class Plaintiffs' privacy. The Court shall retain jurisdiction over the
17 correctness of such calculations and the amount of payment due, and the parties shall submit any
18 disagreements regarding these issues to the Court for determination.

19 (d) The Settlement Administrator shall have the authority and obligation to make
20 payments and disbursements in the manner set forth herein to Class Members and PAGA Employees
21 from the Settlement Fund calculated in accordance with the methodology set out in this Agreement
22 and orders of the Court and subject to verification by Class Counsel.

23 (e) No person shall have any claim against Defendant, Defendant's Counsel,
24 Named Plaintiffs, the Class, Class Members, Class Counsel or the Settlement Administrator based
25 on distributions and payments made in accordance with this Agreement, once approved by the
26 Court.

27 **14. No Injunctive Relief.** As part of this Settlement, Defendant shall not be required to
28 enter into any consent decree, nor shall Defendant be required to agree to any provision for

1 injunctive relief. Defendant shall not be required as part of the Settlement to modify or eliminate
2 any of its personnel, compensation or payroll practices, or adopt any new personnel, compensation
3 or payroll practices.

4 **15. Notice/Approval of Settlement and Settlement Implementation.** As part of this
5 Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval
6 of the Settlement, certifying a Class, notifying all Class Plaintiffs, obtaining final Court approval
7 of the Settlement, and processing the Settlement Payments and PAGA Payments.

8 (a) **Preliminary Settlement Approval.** Class Counsel will file, concurrently
9 herewith, a Motion For an Order of Preliminary Approval of the Settlement, certification of the
10 Class for settlement purposes only, request for dismissal without prejudice of claims against DFC,
11 and setting a date for the hearing to obtain final approval of the Settlement (“Order of Preliminary
12 Approval” or “Order”). In support of the Application for an Order of Preliminary Approval, Class
13 Counsel will submit this Agreement, which sets forth the terms of this Settlement, and will include
14 proposed forms of the class notice and other documents necessary to implement the Settlement. The
15 proposed Order on Preliminary Approval shall provide for notice of the Settlement and related
16 matters to be sent to Class Plaintiffs as specified herein.

17 **16. Notice to Class Plaintiffs.** Notice of the Settlement shall be provided to the Class
18 Plaintiffs who may submit objections to the Settlement, and/or requests for exclusion from the Class,
19 using the following procedures:

20 (a) **Settlement Administrator.** Simpluris shall be retained to serve as Settlement
21 Administrator. Simpluris has provided notification and/or claims administration services in more
22 than 5,000 cases. Of these, more than 3,000 were Labor & Employment cases. Over the past
23 10 years, Simpluris has handled approximately \$600 million in settlements. Subject to Defendant’s
24 and Class Counsel’s agreement to perform some or all of said tasks, as set forth in this Agreement,
25 the Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice of
26 Pendency of Class Action Settlement and Final Hearing (“Notice”) (in the form substantially similar
27 to **Exhibit 1** attached hereto), as directed by the Court to all Class Plaintiffs; determining the amount
28 of all payments to Class Members, along with the amount of all payroll tax deductions to be

1 withheld, if any; monitoring the opt-outs and objections to the Settlement; advising Class Counsel
2 and Counsel for Defendant on a bi-weekly basis of the status; drafting, and mailing Settlement
3 Payment checks to Class Members and PAGA Payment checks to PAGA Employees; addressing
4 questions from Class Members regarding the Settlement; and for such other tasks as the Parties
5 mutually agree or the Court orders the Settlement Administrator to perform. The Parties each
6 represent they do not have any financial interest in the Settlement Administrator or otherwise have
7 a relationship with the Settlement Administrator that could create a conflict of interest. Defendant
8 shall also be responsible for paying over to the Settlement Administrator at such times as requested
9 by the Settlement Administrator those amounts necessary to enable the Settlement Administrator to
10 pay the Class Members, Class Counsel, Named Plaintiffs, LWDA, PAGA Employees and the
11 Settlement Administrator.

12 (b) Notice By First Class Mail. Within thirty (30) calendar days after receipt of
13 the Class List as provided herein, the Settlement Administrator shall send a Notice to all Class
14 Plaintiffs via First Class regular U.S. mail, using the most current mailing address information for
15 Class Plaintiffs as provided by Defendant to the Settlement Administrator from Defendant's records.
16 Any Notices returned to the Settlement Administrator as non-delivered before the
17 Objection/Exclusion/Dispute Deadline specified above, shall be sent to the forwarding address
18 affixed thereto. If no forwarding address is provided, then the Settlement Administrator shall
19 promptly attempt to determine a correct address using a simple computer or other search using the
20 social security number of the individual involved (if available to Defendant) and shall re-mail the
21 Notice to the address that is located, if any. Defendant will cooperate with the Settlement
22 Administrator in efforts to locate Class Plaintiffs should the Settlement Administrator be unable to
23 obtain a correct forwarding address. The Notice will provide a website for the Los Angeles County
24 Superior Court with instructions to determine if there is a change in the date or location of the
25 approval hearing.

26 **17. Procedure for Opting In, Objecting to or Requesting Exclusion from Class**
27 **Action Settlement.**
28

1 (a) Procedure for Participating in the Class. Class Plaintiffs who do not opt out
2 will automatically participate in the Settlement. Class Plaintiffs do not need to opt in or return any
3 claim form in order to participate in the Settlement.

4 (b) Procedure for Objecting. The Notice shall provide that Class Members who
5 wish to object to the Settlement can either appear at the final approval hearing to object or mail to
6 the Settlement Administrator a written statement objecting to the Settlement and reasons therefore,
7 or a written notice of intention to appear at the final approval hearing and object. Such written
8 statement must be postmarked on or before the Objection/Exclusion/Dispute Deadline. The date of
9 the postmark on the return mailing envelope shall be the exclusive means used to determine whether
10 an objection has been timely submitted.

11 (c) Procedure for Requesting Exclusion. Class Plaintiffs who wish to exclude
12 themselves from the Class must submit a written statement requesting exclusion from the Class on
13 or before the Objection/Exclusion/Dispute Deadline, as provided in the Notice. Such written request
14 for exclusion must contain the name, address, telephone number, and last four digits of the Social
15 Security number or tax identification number of the person requesting exclusion, must be returned
16 by mail to the Settlement Administrator at the specified address, and must be postmarked on or
17 before the Objection/Exclusion/Dispute Deadline. The date of the postmark on the return mailing
18 envelope shall be the exclusive means used to determine whether a request for exclusion has been
19 timely submitted. Any Class Plaintiff who opts out of the Class will not be entitled to any recovery
20 under the Settlement, will not release any claims, and will have no right to object to the Settlement
21 or appeal from a final judgment approving the Settlement. PAGA Employees cannot opt out of the
22 PAGA Release or receiving payment of their PAGA Payments.

23 (d) Class Plaintiffs who fail to submit a valid and timely request for exclusion on
24 or before the Objection/Exclusion/Dispute Deadline shall be bound by all terms of the Settlement
25 and any final judgment entered in this Class Action if the Settlement is approved by the Court,
26 regardless of whether or not they have made an objection to the Settlement. No later than twenty-
27 one (21) court days before the final approval hearing of the Settlement, the Settlement Administrator
28 shall provide Defendant's Counsel and Class Counsel with a complete list of all Class Plaintiffs who

1 have timely requested exclusion from the Class, along with the number of participating Class
2 Members, gross settlement amount paid to all Class Members, and low, high, and average payment
3 to participating Class Members.

4 (e) The Parties agree to use their best efforts to carry out the terms of this
5 Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
6 Class Members to submit written objections to the Settlement or requests for exclusion from the
7 Settlement Class, or appeal from the Court's final judgment. At their option, Defendant is permitted
8 to circulate and post memoranda on company letterhead encouraging and soliciting Class Plaintiffs'
9 participation to become a Class Member and share in the Settlement Fund. At their option,
10 Defendant may also verbally solicit participation from Class Plaintiffs and advise Class Plaintiffs
11 verbally and/or in writing that no person will be retaliated against for participating in the Settlement
12 Fund. Defendant shall not retaliate against any Class Plaintiff who participates in, disputes shares,
13 objects, or opts out of, this Settlement.

14 **18. Defendant's Option to Terminate Settlement.** If, after the
15 Objection/Exclusion/Dispute Deadline and before the Final Approval Hearing date, persons who
16 otherwise would be members of the Class have filed with the Court timely requests for exclusion
17 from the Settlement Class in accordance with Paragraph 17 above, and such persons total in number
18 greater than 5% of the Class Plaintiffs, Defendant shall have, in its sole discretion, the option to
19 terminate this Settlement. If Defendant chooses to exercise this option, Defendant shall provide
20 Class Counsel with written notice of the termination and file a notice thereof with the Court at least
21 ten (10) court days following notification of the final number of opt outs by the Settlement
22 Administrator. If Defendant elects to terminate the Settlement, they must pay the Settlement
23 Administrator costs to date.

24 **19. Tax Issues and Qualified Settlement Fund.**

25 (a) This Settlement does not constitute tax advice to any recipient of monies.
26 Defendant will not be held responsible for any individual tax liability in any way related to this
27 Settlement found to exist on behalf of Class Members who do not timely exclude themselves from
28 the Settlement.

1 (b) The Parties understand and agree that the Settlement Fund will qualify and be
2 characterized as a Qualified Settlement Fund ("QSF") under the provisions of the U.S. Treasury
3 Regulations 1.468B-1 and 1.468B-5, and the QSF will be taxed as a separate entity for purposes of
4 all federal, state, and local taxes, and further agree to treat the QSF on a basis consistent therewith,
5 that the QSF will be characterized as the employer of all Final Settlement Class Members for
6 purposes of determining all tax obligations associated with any and all payments under this
7 Settlement Agreement. The QSF will bear full responsibility for all taxes associated with the QSF,
8 Class Settlement Payments, and PAGA Payments under this Settlement Agreement, with the
9 exception of employer-side taxes, which shall be paid by Defendants.

10 (c) The Settlement Administrator shall be responsible for ensuring that all taxes
11 associated with the Settlement are timely paid to the appropriate authorities. The Settlement
12 Administrator's responsibilities include the following: (1) filing all federal, state, and local
13 employment tax returns, income tax returns, and other tax returns associated with the taxes;
14 (2) timely and proper filing of all required federal, state, and local information returns (e.g., 1099s,
15 W-2s, etc.) with the appropriate taxing authorities; (3) informing Defendant of its obligations to pay
16 employer-side taxes on the Settlement Payments and PAGA Payments; and (4) completion of any
17 other steps necessary for compliance with any tax obligations of the QSF under federal, state, and
18 local law. In addition, the Settlement Administrator shall timely make such elections as necessary
19 or advisable to carry out the provisions of this section. Such elections shall be made in compliance
20 with the procedures and requirements contained in the QSF regulations. It shall be the responsibility
21 of the Settlement Administrator to timely and properly prepare and deliver all necessary
22 documentation for signature as may be required, and thereafter to cause the appropriate filing of
23 such documentation to occur. To the extent that, for any period of time, the QSF is not treated as a
24 "qualified settlement fund" within the meaning of the U.S. Treasury Regulations 1.468B-1 and
25 1.468B-5, the Settlement Administrator shall promptly notify Class Counsel and Defendant's
26 Counsel of such event.

27 (d) All taxes (including any interest or penalties) arising with respect to income
28 earned by the QSF, including any taxes or tax detriments that may be imposed upon or incurred by

1 Defendant with respect to any income earned by the QSF for any period during which the QSF does
2 not qualify as a “qualified settlement fund” for federal or state income tax purposes, shall be paid
3 from the QSF as Settlement Administration costs. All expenses and costs incurred in connection
4 with the operation and implementation of this section including without limitation, expenses of
5 attorneys and/or accountants and mailing and distribution expenses related to filing or failing to file
6 the tax returns described herein, shall be paid from the QSF as Settlement Administration costs.

7 **20. Final Settlement Approval Hearing and Entry of Final Judgment.** The final
8 settlement approval hearing shall be conducted to determine final approval of the Settlement at
9 which time the Court will also hear motions addressing the amounts properly payable for (i) the
10 Class Counsel’s attorneys’ fee and litigation costs and expenses awards, and (ii) Named Plaintiffs’
11 Enhancement Award. Upon final approval of the Settlement by the Court at or after the final
12 settlement approval hearing, the Parties shall present an order granting final approval and judgment.
13 After entry of the final judgment, the Court shall have continuing jurisdiction pursuant to California
14 Code of Civil Procedure Section 664.6 solely for purposes of addressing: (i) settlement
15 administration matters and (ii) such post-final judgment matters as may be appropriate under court
16 rules or as set forth in this Agreement. After entry of final judgment, the Settlement Administrator
17 shall post the final judgment on its website and print the website on the settlement checks sent to
18 Class Members.

19 **21. Defendant’s Legal Fees, Costs and Expenses.** All of Defendant’s own legal fees,
20 costs, and expenses incurred in this Action shall be borne by Defendant. The Parties agree to
21 cooperate in the settlement administration process and to make all reasonable efforts to control and
22 minimize the costs and expenses incurred in administration of the settlement, noting that the cost of
23 administering the settlement shall be deducted from the Settlement Fund upon approval by the
24 Court.

25 **22. Nullification of Settlement Agreement.** In the event: (i) the Court does not enter
26 the Order specified herein; (ii) the Court does not finally approve the Settlement and does not enter
27 a Final Judgment as provided herein, which becomes final as a result of the occurrence of the
28 Effective Date; or (iii) the Settlement does not become final for any other reason, this Settlement

1 Agreement shall be null and void and any order or judgment entered by the Court, in furtherance of
2 this Settlement shall be treated as void *ab initio*. Should event (i), (ii), or (iii) above occur, the
3 Parties and any funds yet to be awarded under this Settlement shall be returned to their respective
4 statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties
5 shall proceed in all respects as if this Settlement Agreement had not been executed, except that any
6 fees already incurred by the Settlement Administrator shall be paid for by the Parties. All other
7 administration of the Settlement shall be stayed pending final resolution of the appeal or other
8 appellate review.

9 **23. Appraisal and Certification By Settlement Administrator.** The Settlement
10 Administrator shall keep Defendant, Defendant's counsel and Class Counsel apprised of all
11 distributions from the Settlement Fund (to the extent the Settlement Administrator is responsible for
12 any such distribution) and upon completion of administration of that portion of the Settlement, the
13 Settlement Administrator shall provide written certification of such completion to the Court and
14 counsel for all Parties.

15 **24. Privacy of Documents and Information.** Named Plaintiffs and Class Counsel
16 agree that none of the documents and information provided to them by Defendant as part of
17 settlement and approval thereof shall be used for any purpose other than in furtherance of the
18 settlement of this Class Action. Upon demand within 75 days after the Settlement Fund has been
19 funded by Defendant, Class Counsel and Named Plaintiffs shall either destroy, or return to
20 Defendant, all materials production by Defendant in their possession pertaining to this Action.

21 **25. No Admission By the Parties.** Defendant and the Released Parties deny any and all
22 claims alleged in this Class Action and deny all wrongdoing whatsoever. This Agreement is not a
23 concession or admission of liability and shall not be used against Defendant or any of the Released
24 Parties as an admission or indication with respect to any claim of any fault, concession or omission
25 by Defendant or any of the Released Parties. Whether or not the Settlement is finally approved,
26 neither the Settlement, nor any document, statement, proceeding, or conduct related to this
27 Agreement, nor any reports or accounts thereof, shall in any event be:
28

1 (a) construed as, offered or admitted in evidence as, received as, or deemed to be
2 evidence for any purpose adverse to the Released Parties, including, but not limited evidence of a
3 presumption, concession, indication, or admission by any of the Released Parties of any liability,
4 fault, wrongdoing, omission, concession or damage; or

5 (b) disclosed, referred to or offered or received in evidence against any of the
6 Released Parties, in any further proceeding in the Class Action, or any other civil, criminal or
7 administrative action or proceeding except for purposes of settling this Class Action pursuant to this
8 Agreement.

9 **26. Exhibits and Headings.** The terms of this Agreement include the terms set forth in
10 the attached Exhibit 1, which is incorporated by this reference as though fully set forth herein. Any
11 Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
12 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
13 constitute a part of this Agreement.

14 **27. Interim Stay of Proceedings.** The Parties agree to stay all proceedings in the Class
15 Action, except such proceedings necessary to implement and complete the Settlement, pending the
16 final settlement approval hearing to be conducted by the Court.

17 **28. Amendment or Modification.** This Agreement may be amended or modified only
18 by a written instrument signed by counsel for all Parties or their successors-in-interest.

19 **29. Entire Agreement.** This Agreement and any attached Exhibits constitute the entire
20 agreement among these Parties, and no oral or written representations, warranties, or inducements
21 have been made to any Party concerning this Agreement or its Exhibits other than the
22 representations, warranties, and covenants contained and memorialized in such documents.

23 **30. Severability.** If any term of this Agreement is unenforceable, or should any term be
24 contrary to state or federal law or regulation, that term shall be deemed to be deleted. However, the
25 validity and enforceability of the remaining terms shall not be affected by the deletion of the
26 unenforceable terms.

27 **31. Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
28 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate

1 this Agreement and to take all appropriate action required or permitted to be taken by such Parties
2 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
3 effectuate the terms of this Agreement. The Parties will cooperate with each other and use their best
4 efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach
5 agreement on the form or content of any document needed to implement the Settlement, or on any
6 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the
7 Parties may seek the assistance of the Court to resolve such disagreement. The person(s) signing
8 this Agreement on behalf of Defendant represents and warrant that they are authorized to sign this
9 Agreement on behalf of Defendants.

10 **32. Binding on Successors and Assigns.** This Agreement shall be binding upon, and
11 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined. Named
12 Plaintiffs represent, covenant, and warrant that they have not directly or indirectly, assigned,
13 transferred, or encumbered any of the Released Claims.

14 **33. Counterparts.** This Agreement may be executed in one or more counterparts. All
15 executed counterparts and each of them shall be deemed to be one and the same instrument provided
16 that counsel for the Parties to this Agreement shall exchange among themselves original signed
17 counterparts.

18 **34. This Settlement is Fair, Adequate, and Reasonable.** The Parties believe this
19 Settlement is a fair, adequate, and reasonable settlement of this Class Action and have arrived at this
20 Settlement in arms-length negotiations, taking into account all relevant factors, present and
21 potential. This Settlement was reached after extensive negotiations, discovery, and a review of
22 portions of Defendant's business records, payroll records, timekeeping records, and employment
23 policies, and as further described in the declarations of counsel submitted in support of Order of
24 Preliminary Approval of Settlement.

25 **35. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to
26 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and
27 judgments entered in connection therewith, and the parties and their counsel hereto submit to the
28

jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

36. **Cooperation and Drafting.** Each of the parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, same shall not be construed against any of the parties.

37. **Governing Law.** All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted according to the laws of the state of California, without giving effect to any conflict of law principles or choices of law principles.

38. **Invalidity of Any Provision.** Before declaring any provision of this Agreement invalid, the Court shall first try to construe the provision as valid to the extent possible under the law so as to render all provisions of this Agreement valid and enforceable.

39. **Limitation on Publicity/Confidentiality.** Counsel for Named Plaintiffs and the Class shall not publicize this settlement in any way, nor shall they be permitted to contact or respond to any requests from the press (including print, television, radio, internet, or any other media) regarding this settlement, except to refer them to the Court's file for further information. Except for the agreed-upon motions and notices and as otherwise stated in this Stipulation, the Parties shall not at any time make any announcement of the settlement of this case or otherwise publicize such settlement.

The Parties and their respective counsel agree that, other than filing the necessary documentation for approval of this Settlement, or otherwise required by law, they shall keep strictly confidential the terms of this Settlement, the negotiations with respect thereto, and/or any other matters relating to the Action. The foregoing shall not prohibit the Parties or their respective counsel from disclosing information concerning this Settlement and the Action to (1) Class Members, or (2) their employees and agents to the extent necessary to effectuate the terms of the Settlement or who otherwise have a business need to know the terms. The Parties and their counsel may also disclose information concerning the Settlement to their respective counsel, tax advisors, insurance regulators, and external auditors who have first agreed to keep said information confidential and to not disclose it to others. The foregoing shall not prohibit or restrict such disclosure as is required

1 by law or as may be necessary for the prosecution of claims relating to the performance or
2 enforcement of this Agreement, or prohibit or restrict the Parties and their counsel from responding
3 to any inquiry about this settlement or its underlying facts and circumstances by any governmental
4 agency, or any regulatory or self-regulatory agency or organization. To the extent permitted by law,
5 with respect to any such disclosure pursuant to the foregoing sentence, the Parties and their counsel
6 shall provide the other Party with as much notice as possible of any request to make any above-
7 described disclosure, and will use best efforts to ensure that if such disclosure occurs it will occur
8 in a manner designed to maintain the confidentiality of this settlement to the fullest extent possible.

9 Class Counsel will also be permitted to list the case name, number, and claims in declarations
10 to prove their qualifications in other cases. Named Plaintiffs shall not respond to any inquiries
11 directed to them by Class Plaintiffs or any other person or entity. Named Plaintiffs must refer all
12 such inquiries to Class Counsel.

13 **40. Named Plaintiffs' Waiver of Right to be Excluded and Object.** Named Plaintiffs
14 agree to sign this Agreement, and by signing this Agreement, agree that they are bound by the terms
15 herein stated and further agree not to request to be excluded from the Class and agree not to object
16 to any of the terms of this Agreement. Any such request for exclusion or objection shall therefore
17 be void and of no force or effect.

18 **IT IS SO STIPULATED, THROUGH ALL PARTIES AND COUNSEL OF RECORD.**

19
20 DATED: April ____, 2022

DARLENE TORRES

21
22 By: _____

23
24 DATED: April ____, 2022

LEANNA RUVALCABA

25
26 By: _____

1 not disclose it to others. The foregoing shall not prohibit or restrict such disclosure as is required
2 by law or as may be necessary for the prosecution of claims relating to the performance or
3 enforcement of this Agreement, or prohibit or restrict the Parties and their counsel from responding
4 to any inquiry about this settlement or its underlying facts and circumstances by any governmental
5 agency, or any regulatory or self-regulatory agency or organization. To the extent permitted by law,
6 with respect to any such disclosure pursuant to the foregoing sentence, the Parties and their counsel
7 shall provide the other Party with as much notice as possible of any request to make any above-
8 described disclosure, and will use best efforts to ensure that if such disclosure occurs it will occur
9 in a manner designed to maintain the confidentiality of this settlement to the fullest extent possible.

10 Class Counsel will also be permitted to list the case name, number, and claims in declarations
11 to prove their qualifications in other cases. Named Plaintiffs shall not respond to any inquiries
12 directed to them by Class Plaintiffs or any other person or entity. Named Plaintiffs must refer all
13 such inquiries to Class Counsel.

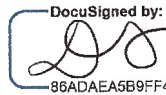
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15 agree to sign this Agreement, and by signing this Agreement, agree that they are bound by the terms
16 herein stated and further agree not to request to be excluded from the Class and agree not to object
17 to any of the terms of this Agreement. Any such request for exclusion or objection shall therefore
18 be void and of no force or effect.

19
20 **IT IS SO STIPULATED, THROUGH ALL PARTIES AND COUNSEL OF RECORD.**

21
22 DATED: April ²²____, 2022

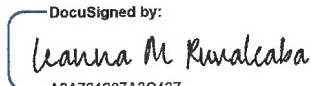
DARLENE TORRES

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25 By:

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1 DATED: April ²²____, 2022

LEANNA RUVALCABA

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6 DATED: April ²²____, 2022

MARCELLA BERNAL

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10 DATED: April _____, 2022

MONETARY MANAGEMENT OF CALIFORNIA,
INC.

13 By: _____
14 [NAME]
15 [TITLE]

16
17 **Approved as to Form:**

18 DATED: April _____, 2022

BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation

20 By: _____
21 An Nguyen Ruda
22 Attorneys for Defendant
23 MONETARY MANAGEMENT OF
24 CALIFORNIA, INC.

23 5/10/2022
24 DATED: April _____, 2022

THE KICK LAW FIRM, APC

25 By: 
26 DocuSigned by:
6DE1B9718B584B2...
27 Taras Kick
28 Counsel for Plaintiffs
DARLENE TORRES, LEANNA RUVALCABA,
& MARCELA BERNAL

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DATED: April ____, 2022

MARCELLA BERNAL

By: _____

DATED: April 27, 2022

MONETARY MANAGEMENT OF CALIFORNIA,
INC.

By: 
Eric Przelski
Director & President

Approved as to Form:

DATED: April 27, 2022

BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation

By: 
An Nguyen Ruda
Attorneys for Defendant
MONETARY MANAGEMENT OF
CALIFORNIA, INC.

DATED: April ____, 2022

THE KICK LAW FIRM, APC

By: _____
Taras Kick
Counsel for Plaintiffs
DARLENE TORRES, LEANNA RUVALCABA
& MARCELA BERNAL

Exhibit 4

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DARLENE TORRES, LEANNA
RUVALCABA AND MARCELLA BERNAL,
individuals, on their own behalf and on behalf
of all similarly aggrieved employees,

Plaintiffs,

v.

MONETARY MANAGEMENT OF
CALIFORNIA, INC., a foreign corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 21STCV09917

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

Assigned for All Purposes to:
Hon. Terry Green, Dept. 14

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT

A California court authorized this notice. This is not a solicitation for a lawyer.

- A settlement has been reached that will provide \$1,500,000 to resolve legal claims to non-exempt employees of Monetary Management of California, Inc. (“Money Mart”) in the State of California, employed at any time between March 12, 2017 and [REDACTED] (the “Settlement”).
- The Settlement resolves a putative class action lawsuit regarding whether Money Mart failed to pay all minimum and overtime wages, failed to provide required meal and rest breaks, failed to pay required meal and rest break premiums, failed to reimburse employees for business expenses, failed to maintain and provide accurate wage statements, engaged in unfair and unlawful business practices, failed to timely and fully pay all wages due and undisputed and/or as ordered by the Labor Commissioner, engaged in discrimination, retaliation, or other adverse action for exercising their rights or engaging in protected activity, failed to pay at the place of discharge or in the county where the employee quit, failed to abide by the requirements specified in IWC Wage Order No. 4-2001, refused to perform their obligations to refrain from adopting or enforcing rules designed to prevent disclosure of California and Federal wage and hour violations, and failed to pay all wages in a timely manner during employment and upon separation of employment to all non-exempt employees of Money Mart in California. This Settlement avoids costs and risks to you from continuing the lawsuit, pays money to Money Mart’s non-exempt employees, and releases Money Mart and the other Released Parties from liability from the claims asserted or that could have been asserted in the lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$500,000 for attorneys’ fees and up to \$10,000 as expenses for investigating the facts, litigation of the case, and

negotiating the Settlement. The fees and expenses will be paid from the Settlement amount.

- Money Mart denies liability and that this lawsuit should proceed as a class action. The parties disagree whether Money Mart complied with the applicable law and how much money could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Do Nothing	You do not need to take any action if you wish to receive your portion of the Settlement. If the Settlement is approved by the Court, you will automatically be mailed a Settlement check at the address on file with the Settlement Administrator (identified below). If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Receive no payment. This is the only option that allows you to ever be part of any other lawsuit against Money Mart or other Released Parties about the legal claims that were brought or could have been brought in this lawsuit.
Object	Write to the Court about why you don't like the Settlement.
Go to Hearing	Ask to speak in Court about the fairness of the Settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed Settlement of a class action lawsuit, and informs you of your legal rights under the proposed Settlement. You are receiving this notice because records show that you were employed by Money Mart in California in a non-exempt position at any time from March 12, 2017 to [REDACTED] and you may be a member of the class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On March 12, 2021, Plaintiffs Darlene Torres, Leanna Ruvalcaba, and Marcella Bernal ("Named Plaintiffs") filed a lawsuit (the "Action") in Los Angeles County Superior Court. As amended, the lawsuit alleges violations of the California Labor Code and seeks to certify a class of all persons employed by Money Mart in California in non-exempt positions at any time from March 12, 2017 to [REDACTED] (collectively, the "Class Plaintiffs"). The lawsuit alleges that Money Mart failed to pay all minimum and overtime wages, failed to provide required meal and rest breaks, failed to pay required meal and rest break premiums, failed to reimburse employees for business expenses, failed to maintain and provide accurate wage statements, engaged in unfair and unlawful business practices, failed to timely and fully pay all wages due and undisputed and/or

as ordered by the Labor Commissioner, engaged in discrimination, retaliation, or other adverse action for exercising their rights or engaging in protected activity, failed to pay at the place of discharge or in the county where the employee quit, failed to abide by the requirements specified in IWC Wage Order No. 4-2001, refused to perform their obligations to refrain from adopting or enforcing rules designed to prevent disclosure of California and Federal wage and hour violations, and failed to pay all wages in a timely manner and upon separation of employment to the Class Plaintiffs. The lawsuit seeks recovery of damages, wages, restitution, statutory and civil penalties, and attorneys' fees and costs. Named Plaintiffs also allege that they and similarly aggrieved employees are entitled to civil penalties under the California Private Attorneys General Act of 2004 ("PAGA") for the same Labor Code violations. Money Mart denies all of the material allegations in the lawsuit.

The Action includes other claims under the California Labor Code, which are being released as "Released Claims" that are described in greater detail below. After an exchange of relevant information, the Parties reached the Settlement that is memorialized in the Stipulation for Class Action Settlement that is on file with the Court, and whose terms are generally summarized in this notice.

POSITIONS OF THE PARTIES

Money Mart has denied and continues to deny each of the claims in the Action. Money Mart contends that all Class Plaintiffs were compensated in compliance with the law, and that their conduct was not willful with respect to any alleged failure to pay wages upon termination or otherwise, and/or with respect to any of its compensation and human resources practices. Money Mart has repeatedly asserted and continues to assert defenses to the claims in the Action, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Neither the proposed Settlement nor any action taken to carry out the proposed Settlement is, may be construed as, or may be used as an admission, concession, or indication by or against Money Mart of any fault, wrongdoing, or liability whatsoever, including any concession that certification of a class other than for purposes of this Settlement would be appropriate in this or any other case.

Counsel for Class Plaintiffs ("Class Counsel") has investigated and researched the facts and circumstances underlying the issues raised in the Action and the law applicable thereto. Class Counsel recognizes the expense and length of continued proceedings necessary to continue the Action against Money Mart through trial and through any possible appeals. Class Counsel has also taken into account the uncertainty and the risk of the outcome of further litigation, including the risk that the class might not be certified, as well as the difficulties and delays generally inherent in such litigation.

Class Counsel is also aware of the burdens of proof necessary to establish liability for the claims, Money Mart's defenses thereto, and the difficulties in establishing damages for the Class Plaintiffs. Class Counsel has also taken into account the Settlement negotiations conducted by the Parties. Based on the foregoing, Class Counsel believes the proposed Settlement is fair, adequate and reasonable, and in the best interests of the Class Plaintiffs.

Money Mart has also investigated and researched the facts and circumstances underlying the issues raised in the Action and the law applicable thereto. Although Money Mart believes it has meritorious defenses to the claims asserted in the Action, Money Mart has concluded that the further defense of this Action would be lengthy and expensive for all Parties. Money Mart has, therefore, agreed to settle this Action in the manner and upon the terms set forth in the proposed Settlement to put to rest all claims that are or could have been asserted against it in the Action.

The Court has made no ruling on the merits of the Named Plaintiffs' claims and has determined only that certification of the class for settlement purposes is appropriate under California law.

PRELIMINARY APPROVAL OF THE SETTLEMENT

On [date of preliminary approval], 2022, for purposes of the Settlement, the Court held a Preliminary Approval Hearing during which it preliminarily approved the Settlement as being within the range of possible final approval. The Court determined that the Settlement was negotiated at arm's-length and preliminarily determined it to be fair, reasonable and adequate, pending final hearing and approval. Solely for purposes of the proposed Settlement, a class action was provisionally certified pursuant to section 382 of the California Code of Civil Procedure, which includes all persons employed by Money Mart in California in non-exempt positions at any time from March 12, 2017 to [redacted] ("Settlement Class").

The lawyers for the parties are:

Plaintiffs' Attorneys (Class Counsel)

Taras Kick
Karen L. Wallace
Sam Vahedi
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049
Tel: (310) 395-2988
Fax: (310) 395-2088

Money Mart's Attorneys

An Nguyen Ruda
Elizabeth Ferguson
Bartko Zankel Bunzel & Miller, PLC
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Tel: (415) 956-1900
Fax: (415) 956-1152

SUMMARY OF THE SETTLEMENT

1. Who is the Settlement Class?

The Settlement Class encompasses a class composed of all persons employed by Money Mart in the State of California in a non-exempt position at any time between March 12, 2017 to [redacted].

2. What does the Settlement provide?

A. *Settlement Fund*

Money Mart will pay \$1,500,000 (the “Settlement Fund”) to settle the Action. The following sums will be paid from the Settlement Fund: (1) \$37,500 to the California Labor and Workforce Development Agency; (2) an amount not to exceed \$500,000 to Class Counsel for their fees; (3) an amount not to exceed \$10,000 to Class Counsel for their incurred costs; (4) an amount not to exceed \$7,500 to each Named Plaintiff for their service in the lawsuit; (5) an amount not to exceed \$11,000 to the Settlement Administrator for administering the Settlement; and (6) \$12,500 for distribution to the PAGA Employees. The amount of the Settlement Fund remaining after these payments is the “Net Settlement Amount.”

B. *Individual Payment Amount*

Your share of the Net Settlement Amount will be determined by the formula detailed in Section 4 below.

3. What are you giving up to get a payment or stay in the class?

If the proposed Settlement is approved by the Court, a judgment will be entered such that each Class Plaintiff who has not submitted a timely and valid Request for Exclusion Form will release and discharge Money Mart, DFC Global Corp., their respective affiliates, and each of their past or present officers, directors, members, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, joint ventures, owners, parent companies and attorneys and each of their respective company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents (the “Released Parties”) from the “Released Claims” arising during March 12, 2017 through [REDACTED]. Each participating potential Class Plaintiff (meaning, those who do not opt out of the Settlement) is called a “Class Member.”

The “Released Claims” are defined as all claims alleged in the operative Complaint filed on April [REDACTED], 2022, whether known or unknown, whether for violation of any local, state or federal statute, rule, regulation, including the California Labor Code and the California Wage Orders, whether for economic damages, restitution, penalties (including penalties under the Private Attorney General Act), liquidated damages, or interest, including but not limited to claims that the Released Parties: (1) did not pay the Class Members all amounts owed, including for regularly hourly pay, overtime premium, sick pay, Covid-19 sick pay, holiday pay, bonuses, incentive pay and all other premiums required under the law; (2) failed to provide meal periods and rest breaks to the Class Members and provide meal or rest period penalties; (3) failed to pay or timely pay the Class Members for all hours worked; (4) did not provide legally compliant accurate itemized wage statements; (5) did not properly pay all wages to the Class Members upon the Class Members’ separation from employment; (6) did not properly reimburse Class Members for business expenses, including the cost of using their cell phones and for mileage; (7) did not timely pay wages owed to Class Members; (8) did not maintain accurate and required records; (9) engaged in discrimination, retaliation, and/or took adverse action against Class Members for exercising their rights or engaging in protected activity; (10) did not provide Class Members with timely and full payment of all wages due and undisputed and/or as ordered by the Labor Commissioner; (11) failed to lawfully pay at the place of discharge or in the county where the Class Member quit; (12) refused to perform its obligations to refrain from adopting or enforcing rules designed to prevent disclosure

of California and Federal wage and hour violations and/or retaliating against Class Members who made such disclosures or for exercising their rights or engaging in protected activity; (13) subjected Class Members to work for longer hours than those fixed by IWC Wage Order No. 4-2001 or under conditions of labor prohibited by IWC Wage Order No. 4-2001, paying less than the various minimums fixed by IWC Wage Order No. 4-2001, and knowingly and willfully refusing and neglecting to comply with the provisions of IWC Wage Order No. 4-2001; and (14) unlawful, unfair and/or fraudulent business practices under California Business & Professions Code §§ 17200, et seq for the wage and hour violations.

Class Plaintiffs who have not submitted a timely and valid Request for Exclusion Form will not be excluded from this release. Class Plaintiffs who do not exclude themselves from the Settlement: (1) agree not to, and shall not, file any action or proceeding asserting any of the Released Claims, and (2) shall not participate as a Named Plaintiff or an unnamed class member in any action or proceeding in any state or federal court or administrative tribunal regarding the Released Claims.

The Released Claims do not include a release of *all* of the rights you have as an employee or former employee of Money Mart. The Released Claims are specifically limited to the claims set forth above.

4. How is my share of the Settlement calculated?

Each Class Member shall receive a payment which is a share of the Net Settlement Amount (the “Settlement Payment”). Based on Money Mart’s records, the Settlement Administrator will credit each Class Member with a number of Workweeks. The Settlement Administrator will then determine the Workweek Dollar Value by dividing the Net Settlement Amount by the number of Workweeks credited to all Class Members. The Settlement Administrator will then determine the Settlement Payment due to each Class Member by multiplying the number of Workweeks credited to the individual Class Member by the Workweek Dollar Value.

For tax purposes, 20% of each Settlement Payment shall be attributed to wages, for which an IRS Form W-2 shall be issued and all traditional and legally required withholdings shall be made, and 80% of each Settlement Payment shall be attributed to penalties for which an IRS form 1099 shall be issued and no withholdings shall be made.

According to the records of Money Mart, you worked the following number of Workweeks in a non-exempt position with Money Mart in California between March 12, 2017 and [REDACTED]: [REDACTED]. Based on this number, your estimated Settlement Payment is: [REDACTED]. This amount may change based on the final ruling of the Court.

Please be advised that the number of Workweeks listed above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the number of Workweeks listed above, please submit an explanation and evidence of the number of Workweeks you worked to the Settlement Administrator, Simpluris, Inc., P.O. Box 26170, Santa Ana, CA 92799, postmarked no later than 45 days after the mailing of this notice. Your written statement must include your name (and former names, if any), current address, and telephone number along with any evidence you possess that supports your dispute. In the event there is a dispute about the

correct number of Workweeks you worked, the Settlement Administrator will resolve the matter with input from the Defendants and will make a final and binding determination without hearing or right of appeal by you.

Class Plaintiffs will also qualify as “PAGA Employees” if they were employed by Money Mart in a non-exempt position from January 6, 2020 to [REDACTED] (“PAGA Period”), and thus will also receive a “PAGA Payment. If you qualify, your PAGA Payment will be based on your pro rata share of the total PAGA Payment to all PAGA Employees (i.e., your pro rata share of \$12,500). To determine each PAGA Employee’s pro rata share, the Settlement Administrator shall assign each PAGA Employee with a credit based on the number of biweekly pay periods worked during the PAGA Period (“PAGA Pay Periods”). The Settlement Administrator will then determine a PAGA Pay Period Dollar Value by dividing the \$12,500 by the number of PAGA Pay Periods credited to all PAGA Employees. The Settlement Administrator will determine the PAGA Payment due to each PAGA Employee by multiplying the number of PAGA Pay Periods credited to the individual PAGA Employee by the PAGA Pay Period Dollar Value.

According to the records of Defendants, you worked the following number of PAGA Pay Periods in a non-exempt position with Money Mart between January 6, 2020 and [REDACTED]: [REDACTED]. Based on this number, your estimated PAGA Payment is: [REDACTED]. This amount may change based on the final ruling of the Court. Please note that Class Plaintiffs that qualify as PAGA Employees cannot opt out of a settlement of the PAGA claim and will receive their PAGA Payments.

The check cashing deadline is 180 days from mailing to you and any uncashed checks will be remitted to the California State Controller’s Office in the name of the Class Member to whom the uncashed Settlement Payment check was addressed, and in the name of the PAGA Employee to whom the uncashed PAGA Payment check was addressed.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed Settlement (the “Final Approval Hearing”) on [REDACTED], 2022, at [REDACTED], in Department 14 of the Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, CA 90012. The Court will determine: (1) whether the lawsuit should finally be certified as a class action for purposes of the Settlement only; (2) whether the Settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Class Members; (3) whether the Class Members should be bound by the terms of the Settlement; (4) the amount of attorneys’ fees and costs to be awarded to Plaintiffs’ attorneys; and (5) the amount that should be awarded to Plaintiffs as service payment. At the Final Approval Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself. Plaintiffs’ application for attorneys’ fees, reimbursement of litigation costs, and a service payment will be filed and available online at www.lacourt.org, and by written or telephonic request from the Settlement Administrator.

WHAT ARE YOUR OPTIONS?

• OPTION 1: DO NOTHING AND PARTICIPATE IN THE SETTLEMENT

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY BE DISTRIBUTED YOUR SHARE OF THE NET SETTLEMENT AMOUNT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO THE COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move after receiving this notice, if it was misaddressed, or if for any reason you want your payment or future correspondence concerning this Action and Settlement to be sent to a different address, you must send your current preferred address to the Settlement Administrator. The notice of change of address must be postmarked by [Opt Out Deadline]. If you disagree with the number of Workweeks or PAGA Pay Periods you worked as set forth in Section 4 above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked by [Opt Out Deadline]. The Settlement Administrator's address is Simpluris, Inc., P.O. Box 26170, Santa Ana, CA 92799.

• OPTION 2: OBJECT TO THE SETTLEMENT

If you wish to remain a Class Member, but you object to the proposed Settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed Settlement in writing. Your written objection must include your name (and former names, if any), current address, last four digits of your social security number or tax identification number, and telephone number, along with any evidence you possess that supports your dispute, and must be postmarked by [Objection Deadline]. Whether you object in writing or not, you may also appear at the Final Approval Hearing by audio or video at the hearing scheduled for [] a.m./p.m. on [], 2022 in Department 14 of the Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, CA 90012, either in person or through an attorney at your own expense, to object to the proposed Settlement. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at Simpluris, Inc., P.O. Box 26170, Santa Ana, CA 92799, and postmarked by [Objection Deadline].

If you choose to appear at the Final Approval Hearing to object, please refer to the most up-to-date Covid-19 protocols, located at <https://www.lacourt.org/>. As of the mailing of this notice, the Court requires all persons entering the courthouse to wear a face mask regardless of vaccination status, unless they have obtained an exemption from the Court's ADA liaison prior to their appearance. If you object to the Settlement, then you will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object, unless you have opted out of the Settlement in the manner described in Option 3, below. Please check the Court's website prior to your in-person appearance to determine if there is a change in the Final Approval Hearing date or time.

• OPTION 3: EXCLUDE YOURSELF FROM THE SETTLEMENT

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed Settlement other than your

PAGA Payment if you qualify. You will not be bound by a judgment in this lawsuit and you will have the right to file your own lawsuit and pursue claims against Money Mart and the Released Parties. You can opt out of the Settlement by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at Simpluris, Inc., P.O. Box 26170, Santa Ana, CA 92799, such that it is postmarked by **[Opt Out Deadline]**

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should review the detailed Stipulation for Class Action Settlement, which is on file with the Clerk of the Court. For a more detailed statement of the matters involved in the Action and the Settlement, you may refer to the pleadings and other papers filed in the Action online at: <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>, or inspect them at the Office of the Clerk of the Superior Court of California, County of Los Angeles County Superior Court, located at 111 N. Hill Street, Los Angeles, CA 90012, by appointment only, during regular business hours of each court day.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at (888) 369-3780. Please refer to the Money Mart Class Action Settlement. All inquiries by Class Plaintiffs regarding this notice and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

PLEASE DO NOT TELEPHONE THE COURT OR MONEY MART'S COUNSEL FOR INFORMATION ABOUT THIS SETTLEMENT.

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *DARLENE TORRES, ET AL. V. MONETARY MANAGEMENT OF CALIFORNIA, INC., ET AL.*, CASE NO 21STCV09917, SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT**

I confirm that I worked for Monetary Management of California, Inc. in the State of California in a non-exempt position for some portion or all of the period beginning on March 12, 2017 and ending on [REDACTED].

I do not wish to receive any payment under the terms of the proposed class action Settlement or to otherwise participate in the proposed Settlement.

Date: _____

Signature: _____

Print Name: _____

Last Four Digits of Social Security Number or Tax ID Number: _____

Residence Street Address: _____

City, State, and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, AND MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [REDACTED]. Send this signed Request for Exclusion Form to the Settlement Administrator at:

Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799
Telephone: (888) 369-3780
Fax: (714) 824-8591

Exhibit 5



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	14161V2	Prepared By:	Michael Sutherland
Estimate Date:	11/23/2021	Direct Dial #	321.223.5067
		Email:	Msutherland@simpluris.com

Plaintiff Attorney
Attorney/Client: **Jeffrey Bils**
Firm: Kick Law Firm
Email: [Jeffrey Bils <jeff@kicklawfirm.com>](mailto:Jeffrey.Bils@kicklawfirm.com)

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: Confidential: Claims Settlement

Anticipated Total Cost	\$11,261
Capped Fee*	\$11,000

Terms:

- 1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate
- .2) Included is a 2021 Federal 1120 tax return to account for banking activity in 2021.

Total Possible Class Size:	733	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	5%
Mailing Document Language:	English/Spanish	Fund Distribution:	Simpluris
Reminder Postcard:	Yes	Redistribution:	One
Unclaimed Funds:	TBD	State(s):	CA
		Tax Reporting Years	One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup, Online Posting	\$125.00	6	\$750.00
Spanish Translation	\$0.25	3000	\$750.00
Database Manager - Initial Data Analysis	\$140.00	6	\$840.00
Total			\$2,340.00

Notification

Notice Packet: 9 pg Notice - Double Sided

Check Cashing Deadline Reminder.

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.00	733	\$733.00
Postage	\$0.58	733	\$425.14
NCOA/CASS/LACS	\$50.00	1	\$50.00
Undeliverable Processing	\$0.25	73	\$18.33
Skip Trace RUM	\$1.50	73	\$109.95
Remail Notice Packet	\$1.75	62	\$109.03
Remail Postage	\$0.58	62	\$36.14
Reminder Post Card Check Cashing Deadline	\$0.40	367	\$146.60
Postage	\$0.36	367	\$131.94
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$1,810.13

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	3	\$225.00



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Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	1	\$125.00
Resolving Mismatched TINs	\$75.00	2	\$150.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	1	\$1.83
Claim Processing	\$2.00	7	\$14.66
Data Entry	\$50.00	2	\$100.00
Project Manager	\$125.00	2	\$250.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$641.49

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members: W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	3	\$420.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$3.00	733	\$2,199.00
Postage	\$0.53	733	\$388.49
Process Returned Checks	\$0.50	7	\$3.67
Skip Trace Search Undeliverable Checks	\$3.00	7	\$21.99
Remail Checks (Includes Postage)	\$3.00	7	\$21.99
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee, 2021	\$1,000.00	1	\$1,000.00
Reissuing Checks/Mailing	\$3.00	11	\$32.99
Postage	\$0.58	11	\$6.38
Responding to IRS, State, Agency Inquiries	\$75.00	1	\$75.00
Disbursement Manager	\$125.00	3	\$375.00
Total			\$5,819.50



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Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc	\$50.00	3	\$150.00
Project Manager-Wrap-up Final Issues	\$125.00	2	\$250.00
Total			\$650.00

Postage \$849.77

Total Case Costs

\$11,261.12

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

Exhibit 6

Kristen Boling

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Friday, December 18, 2020 9:35 AM
To: Jeffrey Bils
Subject: Thank you for submission of your PAGA Case.

12/18/2020

LWDA Case No. LWDA-CM-815829-20
Law Firm : THE KICK LAW FIRM, APC
Plaintiff Name : Darlene Torres, Leanna Ruvalcaba, Marcella Bernal
Employer: MONETARY MANAGEMENT OF CALIFORNIA, INC.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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5 Telephone: (415) 956-1900
Facsimile: (415) 956-1152

6 Attorneys for Defendants
7 MONETARY MANAGEMENT OF
CALIFORNIA and DFC GLOBAL CORP.

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Los Angeles, California 90049
13 Telephone: (310) 395-2988
Facsimile: (310) 395-2088

14 Attorneys for Plaintiffs
15 DARLENE TORRES, LEANNA RUVALCABA
and MARCELLA BERNAL, individually, and
16 on behalf of similarly aggrieved

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

19 DARLENE TORRES, LEANNA
RUVALCABA AND MARCELLA BERNAL,
20 individuals, on their own behalf and on behalf
of all similarly aggrieved employees,

21 Plaintiffs,

22 v.

23 MONETARY MANAGEMENT OF
24 CALIFORNIA, INC., a foreign corporation;
and DOES 1 through 50, inclusive,

25 Defendants.
26

Case No. 21STCV09917

**DECLARATION OF MARC FEDER IN
SUPPORT OF JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

ASSIGNED FOR ALL PURPOSES TO
JUDGE TERRY GREEN

Dept.: 14

Action Filed: March 12, 2021
FAC Filed: June 9, 2022
Trial Date: August 8, 2022

1 I, Marc Feder, declare:

2 1. I am an attorney licensed to practice in the State of California, and I served as the
3 mediator who oversaw the settlement discussions between the parties in this action. I have
4 personal knowledge of the facts set forth herein, except as to those stated on information and
5 belief and, as to those, I am informed and believe them to be true. If called as a witness, I could
6 and would competently testify to the matters stated herein. I make this declaration in support of
7 the Joint Motion for Preliminary Approval of Class Action Settlement.
8

9 2. I am the co-founder of Frank & Feder, a mediation services firm located in Carlsbad,
10 California that I have operated for eleven years with my partner Lynn Frank. Prior to co-founding
11 Frank & Feder, I served as a mediator for sixteen years at Gregorio, Haldeman, Piazza, Rotman,
12 Frank & Feder. I specialize in mediating employment disputes and wage and hour class actions that
13 include claims made under the Private Attorneys General Act (PAGA). I frequently teach and
14 lecture to students and fellow mediators and lawyers throughout California regarding the mediation
15 process. I am an author and co-author of articles regarding the mediation process published in State
16 Bar presentation materials, the American Bar Association Book: How ADR Works, and Bender's
17 California Labor & Employment Bulletin. In my twenty-seven years as a mediator, I have mediated
18 thousands of wage and hour class actions that include PAGA claims.

19 3. On October 21, 2021, I held a mediation between the parties in this action, Plaintiffs
20 Darlene Torres, Leanna Ruvalcaba and Marcella Bernal and Defendant Monetary Management of
21 California, Inc. Like many of the complex wage and hour matters that I mediate, the mediation in
22 this case lasted the entire day and involved rigorous negotiations by the parties' respective counsel
23 who are both well-versed in wage and hour law. From these negotiations and my pre-mediation
24 discussions with the parties, it was clear that the dispute involved claims under the PAGA and class
25 action wage and hour claims and that both parties had engaged in an extensive analysis of class data,
26 workdays, workweeks, pay periods and electronic time, payroll records, and employer policies and
27 practices. The settlement negotiations were at arm's-length and the parties were adverse to each
28 other and forcefully advocated for their respective positions.

1 4. Because the parties were unable to reach a settlement during the mediation, I made
2 a mediator's proposal where I recommended that the parties settle both the class action wage and
3 hour claims and PAGA claims for \$1.5 million, which would also require that Plaintiffs file an
4 amended complaint to add the class claims. The practice of amending a complaint to include both
5 class action and PAGA wage and hour claims is extremely common in the wage and hour actions
6 that I have mediated. Moreover, the \$50,000 allocation of the \$1.5 million gross settlement amount
7 to PAGA claims is well-within the range that I typically see in these wage and hour class actions.
8 and I believe that it is a fair and reasonable PAGA allocation for these claims.

9 5. In sum, in my experience as a mediator who has mediated over a thousand PAGA
10 cases that also include wage and hour class action allegations as this case does, there is nothing
11 unusual about this case in terms of the proposed PAGA allocation from the gross settlement, and
12 the proposed allocation to PAGA from the total settlement is well within the range I see in cases
13 such as this one.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Executed on this 24th day of June, 2022, at Danville, California.

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19 Marc Feder
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8 Attorneys for Plaintiffs
DARLENE TORRES, LEANNA RUVALCABA,
9 AND MARCELLA BERNAL, individually, and
on behalf of similarly aggrieved

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

13 DARLENE TORRES, LEANNA RUVALCABA,
14 and MARCELLA BERNAL, individuals, on their
own behalf and on behalf of all similarly
15 aggrieved employees,

16 Plaintiffs,

17 v.

18 MONETARY MANAGEMENT OF
CALIFORNIA, INC., a foreign corporation; DFC
19 GLOBAL CORP., a foreign corporation; and
DOES 1 through 50, inclusive,

20 Defendants.
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Case No.: 21STCV09917

[Assigned for all purposes to the Hon. Terry Green, Dept. 14]

**DECLARATION OF GREG TAYLOR IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 25, 2022
Time: 8:45 a.m.
Dept.: 14

Complaint filed: March 12, 2021
Trial date: None set

DECLARATION OF GREG TAYLOR

I, Greg Taylor, hereby declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and an associate with The Kick Law Firm, APC. The following is based on my personal knowledge, and if called as a witness, I could and would testify competently thereto.

2. The Kick Law Firm, APC, represents Plaintiffs Darlene Torres, Leanna Ruvalcaba, and Marcella Bernal and the proposed putative class ("Plaintiffs"), and this declaration is in support of the concurrently filed motion seeking preliminary approval of a proposed settlement with Defendant Monetary Management of California, Inc. ("Defendant").

3. Attached as **Exhibit A** to this declaration are 33 true and correct examples of Orders issued by the Los Angeles Superior Court, granting Final Approval of settlements in mixed PAGA/class action cases. In each of the attached 33 Orders, approximately 5% or less of the total settlement amount is allocated to the PAGA portion of the settlement. This list is not meant to be exhaustive. Rather, these are the Orders I found from a search through Westlaw on or about June 14, 2022:

- 1) In *Allen v. Caine & Wnner Co., Inc.*, 2014 WL 1869232 (2014), the Hon. Rolf M. Treu of Los Angeles Superior Court ("LASC") approved a mixed PAGA/class action settlement in which approximately \$2,667 was allocated to PAGA in a total settlement of \$150,000. The Order granting Final Approval states that \$2,000 in penalties are payable to the LWDA. Since 75% of the total PAGA allocation is payable to the LWDA, this indicates that the total PAGA allocation is approximately \$2,667, or 1.77%, of the total settlement.
- 2) In *Barnwell v. Pacific Ocean Transp Inc*, 2017 WL 4419141 (2017), the Hon. Kenneth R. Freeman of LASC approved a mixed PAGA/class action settlement in which 3.3% of the total settlement was allocated to PAGA ($\$2,000 / \$60,833 = .033$).
- 3) In *Boom v. Gold Star Foods, Inc.*, 2010 WL 6620252 (2010), the Hon. Maureen Duffy-Lewis of LASC approved a mixed PAGA/class action settlement in which 2% of the total settlement was allocated to PAGA ($\$20,000 / \$1,000,000 = .02$).

- 1 4) In *Branch v. PM Realty Group LP*, 2017 WL 9477977 (2017), the Hon. Maren E.
2 Nelson of LASC approved a mixed PAGA/class action settlement in which 1% of the
3 total settlement was allocated to PAGA ($\$10,000 / \$1,000,000 = .01$).
- 4 5) In *Bautista v. Worldwide Flight Services, Inc.*, 2018 WL 3057766 (2018), the Hon.
5 Carolyn B. Kuhl of LASC approved a mixed PAGA/class action settlement in which
6 2.08% of the total settlement was allocated to PAGA ($\$50,000 / \$2,400,000 = 0.0208$).
7 The attached Judgment granting Final Approval states that \$37,500 in penalties are
8 payable to the LWDA, which indicates the total PAGA allocation is \$50,000, or 2.08%,
9 of the total settlement.
- 10 6) In *Chatam v. RMI Intern., Inc.*, 2017 WL 9967452 (2017), the Hon. Maren E. Nelson of
11 LASC approved a mixed PAGA/class action settlement in which 0.57% of the total
12 settlement was allocated to PAGA ($\$5,000 / \$875,000 = .0057$).
- 13 7) In *Diaz v. Absolute West LLC*, 2018 WL 3911128 (2018), the Hon. Maren E. Nelson of
14 LASC approved a mixed PAGA/class action settlement in which 6% of the total
15 settlement was allocated to PAGA ($\$2,500 / \$358,125 = .006$).
- 16 8) In *Garcia v. Best Overnight Exp., Inc.*, 2017 WL 9990656 (2017), the Hon. Ann I. Jones
17 of LASC approved a mixed PAGA/class action settlement in which 2.4% of the total
18 settlement was allocated to PAGA ($\$7,300 / \$300,000 = .024$).
- 19 9) In *Garrido v. American Air Liquide, Inc.*, 2018 WL 2267367 (2018), the Hon. Maren E.
20 Nelson of LASC approved a mixed PAGA/class action settlement in which 0.25% of the
21 total settlement was allocated to PAGA ($\$10,000 / \$4,000,000 = .0025$).
- 22 10) In *Gorman v. Idexx Laboratories, Inc.*, 2010 WL 6620248 (2010), the Hon. Ruth Ann
23 Kwan of LASC approved a mixed PAGA/class action settlement in which 0.89% of the
24 total settlement was allocated to PAGA ($\$2,667 / \$300,000 = .0089$). The Order granting
25 Final Approval states that \$2,000 in penalties are payable to the LWDA, which indicates
26 the total PAGA allocation is approximately \$2,667, or 0.89%, of the total settlement.
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- 11) In *Green v. Excel Residential Services, Inc.*, 2017 WL 6812900 (2017), the Barbara M. Scheper of LASC approved a mixed PAGA/class action settlement in which 1.25% of the total settlement was allocated to PAGA ($\$10,000 / \$800,000 = .0125$).
- 12) In *Halcomb v. Autism Response Team, Inc.*, 2018 WL 4278937 (2018), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 0.58% of the total settlement was allocated to PAGA ($\$16,000 / \$2,750,000 = .0058$).
- 13) In *Hauwe v. Technicolor Creative Services USA, Inc.*, 2017 WL 9342308 (2017), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 5.3% of the total settlement was allocated to PAGA ($\$200,000 / \$3,750,000 = .053$).
- 14) In *Hernandez v. Gold Point Transp, Inc.*, 2017 WL 9751227 (2017), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 0.7% of the total settlement was allocated to PAGA ($\$20,000 / \$2,800,000 = .007$).
- 15) In *Hernandez v. The Bicycle Casino LP*, 2018 WL 3484814 (2018), the Hon. Carolyn B. Kuhl of LASC approved a mixed PAGA/class action settlement in which 1.9% of the total settlement was allocated to PAGA ($\$33,334 / \$1,750,000 = 0.019$). The attached Order granting Final Approval states that \$25,000.50 in penalties are payable to the LWDA, which indicates the total PAGA allocation is \$33,334, or 1.9%, of the total settlement.
- 16) In *Herrera v. Pharmavite LLC*, 2017 WL 9286742 (2017), the Hon. Carolyn B. Kuhl of LASC approved a mixed PAGA/class action settlement in which 1.6% of the total settlement was allocated to PAGA ($\$30,000 / \$1,925,000 = 0.016$). The attached Judgment granting Final Approval states that \$22,500 in penalties are payable to the LWDA, which indicates the total PAGA allocation is \$30,000, or 1.6%, of the total settlement.
- 17) In *Huerta v. Prime Wheel Corp.*, 2017 WL 8809458 (2017), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 0.45% of the total settlement was allocated to PAGA ($\$5,000 / \$1,100,000 = .0045$).

- 18) In *Jimenez v. PPG Industries, Inc.*, 2017 WL 10242491 (2017), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 1.0% of the total settlement was allocated to PAGA ($\$10,000 / \$975,000 = .010$).
- 19) In *Joon Han Kim v. FNS, Inc.*, 2019 WL 11704236 (2019), the Hon. Richard J. Burdge of LASC approved a mixed PAGA/class action settlement in which 4.1% of the total settlement was allocated to PAGA ($\$100,000 / \$2,400,000 = .041$).
- 20) In *Lee v. Activision Blizzard, Inc.*, 2017 WL 3588448 (2017), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 0.22% of the total settlement was allocated to PAGA ($\$3,333 / \$150,000 = .0022$).
- 21) In *Marine v. Giltner Inc.*, 2017 WL 6888559 (2017), the Hon. Kenneth R. Freeman of LASC approved a mixed PAGA/class action settlement in which 2.85% of the total settlement was allocated to PAGA ($\$10,000 / \$350,000 = .0285$).
- 22) In *Miceli v. Intern. Coffee & Tea, LLC*, 2017 WL 2840618 (2017), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 1.05% of the total settlement was allocated to PAGA ($\$25,000 / \$2,375,000 = .0105$).
- 23) In *Munyan v. Nationwide Medical, Inc.*, 2017 WL 6452647 (2017), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 1.25% of the total settlement was allocated to PAGA ($\$5,000 / \$400,000 = .0125$).
- 24) In *Murray v. Select Media Services, LLC*, 2011 WL 1807946 (2011), the Hon. Michelle R. Rosenblatt of LASC approved a mixed PAGA/class action settlement in which 4.4% of the total settlement was allocated to PAGA ($\$20,000 / \$450,000 = .044$).
- 25) In *Rios v. Laurmark Enterprises Inc.*, 2018 WL 11275564 (2018), the Hon. Maren E. Nelson of LASC approved a mixed PAGA/class action settlement in which 3.2% of the total settlement was allocated to PAGA ($\$20,000 / \$612,000 = .032$).
- 26) In *Robins, Jr. v. Versa Logistics, LLC*, 2018 WL 3222585 (2018), the Hon. Carolyn B. Kuhl of LASC approved a mixed PAGA/class action settlement in which 0.2% of the total settlement was allocated to PAGA ($\$2,500 / \$1,036,307.05 = .002$).

- 1 27) In *Sano v. Southland Management Group, Inc.*, 2013 WL 7231686 (2013), the Hon.
2 William F. Highberger of LASC approved a mixed PAGA/class action settlement in
3 which 0.45% of the total settlement was allocated to PAGA ($\$1,125 / \$250,000 =$
4 .0045).
- 5 28) In *Schrader v. Adidas Promotional Retail Operations, Inc.*, 2010 WL 8032671 (2010),
6 the Hon. Kevin C. Brazile of LASC approved a mixed PAGA/class action settlement in
7 which 1.27% of the total settlement was allocated to PAGA ($\$6,667 / \$525,000 =$
8 .0127). The Order granting Final Approval states that \$5,000 in penalties are payable to
9 the LWDA, which indicates the total PAGA allocation is approximately \$6,667, or
10 1.27%, of the total settlement.
- 11 29) In *Sous v. Rudy's Hollywood, LLC*, 2017 WL 4325952 (2017), the Hon. Mel Red
12 Recana of LASC approved a mixed PAGA/class action settlement in which 3.2% of the
13 total settlement was allocated to PAGA ($\$10,000 / \$310,000 = .032$). The Order granting
14 Final Approval states that \$7,500 in penalties are payable to the LWDA, which indicates
15 the total PAGA allocation is \$10,000, or 3.2%, of the total settlement.
- 16 30) In *Tespan v. Preferred Freezer Services of Los Angeles*, 2017 WL 3951949 (2017), the
17 Hon. Kenneth R. Freeman of LASC approved a mixed PAGA/class action settlement in
18 which 3.3% of the total settlement was allocated to PAGA ($\$15,000 / \$450,000 = .033$).
19 The Order granting Final Approval states that \$11,250 in penalties are payable to the
20 LWDA, which indicates the total PAGA allocation is \$15,000, or 3.3%, of the total
21 settlement.
- 22 31) In *Tharpe v. Sprint Corp.*, 2018 WL 3656550 (2018), the Hon. Carolyn B. Kuhl of
23 LASC approved a mixed PAGA/class action settlement in which 2.4% of the total
24 settlement was allocated to PAGA ($\$10,000 / \$409,411 = 0.024$).
- 25 32) In *Thomas v. Universal Home Care, Inc.*, 2018 WL 1751693 (2018), the Hon. Maren E.
26 Nelson of LASC approved a mixed PAGA/class action settlement in which 2.0% of the
27 total settlement was allocated to PAGA ($\$1,000 / \$500,000 = .002$).
28

EXHIBIT A

Exhibit A

2014 WL 1869232 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Joel ALLEN,
v.
CAINE & WNNER COMPANY, INC., ET AL.

No. BC465806.
April 23, 2014.

Order & Ruling

Rolf M. Treu, Judge.

***1** Grant final approval of the settlement as fair, reasonable and adequate; and award the following: (1) \$45,000 to Class Counsel for attorneys' fees and costs; (2) \$2,500 to Plaintiff Joel Allen for an enhancement award; (3) \$5,000 to ILYM Group, Inc. for claims administration costs; and (4) \$2,000 to the Labor and Workforce Development Agency.

SUMMARY

On 7/19/11, Plaintiff Joel Allen filed this proposed class action against Defendant Caine & Wiener Company, Inc. arising out of the alleged failure to pay overtime to Plaintiff and a class of non-exempt employees. The Complaint alleges the following claims: (1) Failure to Pay Overtime; (2) Failure to Pay Wages; (3) Unfair Business Practices; (4) Failure to Provide Accurate Itemized Wage Statements; and (5) Private Attorney General Act ("PAGA") Penalties. On 8/26/11, Defendant filed an answer to the Complaint. On 11/7/12, Plaintiff's counsel represented that this action was settled at mediation.

This action was assigned to this Court on 3/15/13. On 4/15/13, this Court transferred this action to Dept. 323/CCW for further proceedings including the setting of a motion for preliminary approval of class action settlement. On 5/6/13, Dept. 323/CCW transferred this action back to this Court stating that no motion for preliminary approval had been filed.

On 6/18/13, Plaintiff filed a motion for preliminary approval of class action settlement: the Court granted preliminary approval on 9/27/13. The instant motion for final approval was filed on 4/8/14,

SETTLEMENT CLASS DEFINITION

All persons employed by Defendant in a non-exempt position in California (e.g., Collectors), during the Class Period (7/19/07 to 11/6/12), who worked more than eight (8) hours on at least one workday during the Class Period, but were not paid wages calculated at the overtime rate, excluding those persons who timely request exclusion from the Class, or who previously settled and released their employment-related claims against Defendant.

The class is further divided into a sub-class of Former Employee Settlement Subclass who were not employed by Defendant on 11/6/12.

TERMS OF SETTLEMENT AGREEMENT

A copy of the executed Stipulation and Settlement Agreement of Class Action Claims is attached as Exhibit 1 to the declaration of Stephen Harris. Its essential terms are as follows:

- Defendant will pay an aggregate settlement amount not to exceed \$150,000 (“Settlement Fund”) which will compensate the class members on a claims-made basis, provide an incentive award, pay Class Counsel's attorneys' fees and costs, pay administrative costs, and pay the California Labor and Workforce Development Agency in settlement of the PAGA claim. ¶¶ 33, 50.

- Class Counsel will seek an award of attorneys' fees and costs not to exceed 30% of the Settlement Fund (\$45,000). ¶ 69.

- \$2,500 will be paid to Plaintiff as the Class Representative ¶ 71) and Plaintiff will execute a general release and waive the provisions of Civil Code § 1542 ¶¶ 73-74).

- \$2,000 will be paid to the California Labor and Workforce Development Agency, ¶ 75.

- *2 • The Settlement Administrator will seek an award of administrative costs not to exceed \$5,000. ¶¶ 2, 87.

- After deducting the administrative costs, Class Counsel's fee and expenses, the PAGA payment, and the incentive award from the Settlement Fund, the Net Settlement Fund is to compensate the class members. ¶ 21.

- 2/3 of the Net Settlement Fund is to be allocated to the entire class to be calculated by the ratio of the claimed individual workweeks by each class member during the class period over the total workweeks worked by all class members during the class period. ¶ 59.

- 1/3 of the Net Settlement Fund is to be allocated to the Former Employee Settlement Sub-Class as an additional payment to be calculated by the ratio of the claimed individual workweeks by each sub-class member during the class period over the total workweeks worked by all sub-class members during the class period. ¶ 60.

- There is a guaranteed payout of 50% of the Net Settlement Fund to the class members; if less than 50% of the Net Settlement Fund is claimed, the settlement awards to each class member will be increased on a pro-rata share basis until the total settlement awards payable is equal to 50% of the Net Settlement Fund. ¶ 61. Any remaining unclaimed portions subject to the guaranteed minimum payout shall be retained by and revert to Defendant. ¶ 56.

- Upon final approval of the settlement, all class members (except those who validly excluded themselves) shall be deemed to release and discharge Defendant (and any of their former and present parents, subsidiaries, and affiliates, and their officers, directors, members, managers, heirs, employees, partners, shareholders and agent, and any other successors, assigns, or legal representatives) from any and all claims of every nature and description, whether known or unknown, arising from or related to the claims asserted in this action during the class period. ¶¶ 28-29, 33, 45-46.

ANALYSIS OF SETTLEMENT AGREEMENT

A. 9/27/13 Preliminary Approval

On 9/27/13, the Court noted an ambiguity as to the calculation of the guaranteed minimum payout amount. The Court granted preliminary approval on the understanding that the total minimum payout to the class members would be \$47,750 as calculated based on 50% of the difference between the maximum amount of the Settlement Fund (\$150,000) less the total maximum

payments as to the incentive award, Class Counsel's attorneys' fees and costs, administrative costs, and PAGA payment (a maximum of \$54,500 which could be less).

B. Standards for Final Fairness Determination

In evaluating the fairness of the settlement, the Court should not “reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue.’” (Citation omitted.)”  *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.

*3 Importantly, though, in  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, the Second District recently held that the trial court erred in granting final approval of a settlement where “the trial court lacked sufficient information to make an informed evaluation of the fairness of the settlement,”  *Id.* at 790. The *Clark* court reiterated at length the principles applicable to a court's final approval of a class settlement as follows:

The trial court must determine whether a class action settlement is fair and reasonable, and has broad discretion to do so. That discretion is to be exercised through the application of several well-recognized factors. The list, which “is not exhaustive and should be tailored to each case,” includes “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”¹ (Citations omitted.) “‘The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.’” (Citation omitted.) While the court “‘must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,’” it “‘must eschew any rubber stamp approval in favor of an independent evaluation.’” (Ibid.)

In  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794], the court observed that “a presumption of fairness exists 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.” (Citation omitted.) But *Kullar*  *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116] makes clear that this is only an initial presumption. The point is cogently made in *Kullar*, where the trial court's approval of a class action settlement was vacated because the court “[was] not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise” (Citation omitted.) (Emphasis added.)

In *Kullar*, the court pointed out that “neither *Dunk*... nor any other case suggests that the court may determine the adequacy of a class action settlement without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (Citation omitted.) *Kullar* continues: “The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, *in the final analysis it is the court that bears the responsibility*

to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.” (Citation omitted.) (Italics in original.)

*4 *Kullar* further explains that, while there is usually an initial presumption of fairness when a proposed class action settlement was negotiated at arm's length by counsel for the class, “to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (Citation omitted.) To make that determination, “the factual record before the ... court must be sufficiently developed,” and the initial presumption to which *Dunk* refers “must then withstand the test of the plaintiffs' likelihood of success.” (Ibid.) Again,” “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”” (Ibid.) In *Kullar*, because the trial court was not presented with data permitting it to review class counsel's evaluation of the sufficiency of the settlement, the order approving the settlement was vacated. (Citation omitted.) As we shall see, the same result is required here.

n8 *Kullar* points out that, while *Dunk* asserts there is a presumption of fairness where the four factors it identifies are established, in fact *Dunk* is fully consistent with “this recognition of the court's responsibility”; there was a “voluminous record” before the *Dunk* trial court, which “was made aware of the maximum damages that each class member had sustained and the value of the coupons that each class member would receive under the settlement, as well as of the particular issues that the plaintiffs needed to overcome in order to prevail in the litigation.” (Citation omitted.)

n9 “Whatever information may have been exchanged during the mediation, there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see. The record fails to establish in any meaningful way what investigation counsel conducted or what information they reviewed on which they based their assessment of the strength of the class members' claims, much less does the record contain information sufficient for the court to intelligently evaluate the adequacy of the settlement. Assuming that there is a 'presumption' such as *Dunk* asserts, its invocation is not justified by the present record.” (Citation omitted.)

 *Clark*, 175 Cal.App.4th at 799-800. In finding that the trial court abused its discretion in approving the settlement before it, the *Clark* court emphasized that “an informed evaluation of a proposed settlement cannot be made without an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. (Citation omitted.)”  *Id.* at 801. The court also emphasized that “it is the trial court's duty, whether or not there are objectors, to employ those [*Dunk* presumption of fairness] factors to evaluate independently the fairness of a proposed settlement.” *Id.* The Court must have data before it to make such an independent assessment. *Id.*

C. Clark / Kullar Factors To Consider In Evaluating the Fairness, Adequacy and Reasonableness of the Settlement Agreement

a. Strengths and Weaknesses of Class Claim; Amount in controversy.

This case was filed on behalf of persons who worked for Defendant as non-exempt employees and who were not paid overtime wages and were not provided accurate itemized wage statements.

There were several potential defenses raised by Defendant as to whether employees properly submitted makeup time requests, whether employees were engaged in personal activities when clocking in early or clocking out late, whether employees forgot to clock out when leaving for the day, whether any violation by Defendant was willful, and whether any injury was suffered concerning wage statement violations. Additionally, Defendant continues to assert that its employees have been properly compensated and denies any wrongdoing. Lastly, there may be individualized issues that may have made class certification difficult to obtain.

*5 From Plaintiff's investigation, Plaintiff estimated the maximum value of the claims as \$725,000:

Overtime owed:	\$25,000
Prejudgment interest:	\$2,500
Waiting time penalties:	\$360,000
PAGA penalties:	\$225,000
Wage statement violations:	\$112,500

These estimates were based on assuming maximum violation rates, but the risks of non-certification required Plaintiff to significantly discount these values.

b. Risks, Expense, Complexity and Likely Duration of Further Litigation

Continued litigation of this case would involve risks of succeeding at trial on the merits, as well as Defendant's appealing an unfavorable judgment, in addition to obtaining and maintaining certification of a class.

c. Amount offered in settlement.

The settlement provides for a maximum payment of \$150,000. When reducing this amount by the attorneys' fees and costs (including administration costs), the incentive award, and payment to the California Labor and Workforce Development Agency, there will be a maximum net settlement available to the class of approximately \$95,500.

d. Responses and Objections To Notice Of Class Settlement

The class members' responses are set forth in the declaration of Stephanie Molinai:

Number of settlement class members:	178
Number of undeliverable notices:	21
Number of objections:	0
Number of opt-outs:	1
1 Number of participating class members:	76 (42.7% and includes one deficient claim for which additional information was requested)

The total amount claimed is \$52,624.75, which meets the guaranteed minimum payout; the estimated average payment is \$692.43 with a high of \$2,167.16 and a low of \$16.48. The class members' response indicates that the class members' support for the settlement agreement is good. The claims rate is good for a claims-made settlement, and the lack of any objections is positive. The class members' response, therefore, supports a finding that the settlement is fair, adequate and reasonable.

e. Conclusion:

The settlement is deemed finally fair, adequate and reasonable. Considering the strengths and weaknesses of the class claims, the risks, expense, complexity and likely duration of further litigation, and the amount in controversy; the settlement provides the class members with a reasonable portion of the total possible damages. The class members support the settlement terms.

D. Attorneys' Fees and Costs

Class Counsel requests attorneys' fees and costs of \$45,000 (30% of the total settlement amount). Although this is a reasonable contingency fee, the Court is still obliged to ensure that the attorneys' fee award is anchored in the time actually spent by Class Counsel. Whether an attorney fee is fair, the primary factor for determination is whether the fee bears a reasonable relationship to the value of the attorney's work.  *Robbins v. Alibrandi* (2005) 127 Cal. App. 4th 438, 451. In fee-shifting cases, the primary method is the lodestar method; and in common fund cases, the primary method is the percentage of the fee method.  *Apple Computer, Inc. v. Superior Court (Cagney)* (2005) 126 Cal. App. 4th 1253, 1270;  *Thayer v. Wells Fargo Bank, NA.* (2001) 92 Cal. App. 4th 819, 833. Courts have adopted a practice of cross-checking the lodestar against the value of the class recovery because the award is then anchored in the time spent by counsel.  *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 45, fn. 12.

*6 Class Counsel billed a total of 182 hours in this matter. Harris Decl. ¶ 19; Starr Deck ¶¶ 11-12. This is a reasonable number of hours to have billed on a wage and hour class action matter. They billed at a blended hourly rate of \$580. This is reasonable hourly rate considering the experience of Class Counsel. Class Counsel submits that they have incurred costs of \$5,302.46. Harris Decl. ¶ 19. Therefore, requested attorney fees and costs are both reasonable and warranted.

E. Incentive Award / Enhancement Fee to Named Plaintiff

[A]n incentive award is appropriate “if it is necessary to induce an individual to participate in the suit,” and have noted 'relevant factors' to consider in deciding whether such an award is warranted.  *Cook v. Niedert* (7th Cir.1998) 142 F.3d 1004, 1016 (Cook.) Those factors include “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.”

The trial court is not bound to, and should not accept conclusory statements about “potential stigma” and “potential risk,” in the absence of supporting evidence or reasoned argument explaining why, under the particular circumstances, an actual-not a negligible-risk existed, or why it might be difficult to get plaintiffs to come forward to prosecute a particular case.

 *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804, 807. Plaintiff Cabrera applies for a service award of \$2,500. Enhancement awards typically range from 0.01-1.67 percent of the total settlement amount, therefore the proposed award falls within this range (.01%). This is a very modest service award which is justified by Plaintiffs assistance by conferring with Class Counsel about the case and providing records and Plaintiff's knowledge of his work experience. Allen Decl. ¶¶ 4-6. Based on these efforts, Plaintiff is awarded the requested enhancement award.

F. Costs of Claims Administration

The settlement provides that the claims administrator may recover its reasonable costs of administration. ILYM Group, Inc. requests costs of \$5,000. Molina Decl. ¶ 17. As the claims administrator, ILYM processed and mailed the notice packets and will process and mail settlement checks and prepare applicable tax reports. Molina Decl. ¶¶ 3, 5-10. Therefore, ILYM is awarded \$5,000.

End of Document

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2017 WL 4419141 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Larobert BARNWELL,
v.
PACIFIC OCEAN TRANSPORTATION INC.

No. BC622164.
September 7, 2017.

Trial Order

Kenneth R. Freeman, Judge.

NATURE OF PROCEEDINGS:

***1 MOTION OF PLAINTIFF FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEYS' FEES AND COSTS**

The Courts tentative ruling was issued via posting on the Los Angeles Superior Court's website under Civil "Tentative Rulings" on September 6, 2017.

The matter is not called for hearing.

The parties submitted to the Court's tentative ruling on September 6, 2017.

No Objectors appear this date in Court.

The Court now adopts its tentative ruling as the final order of the court. Said ruling is filed this date and is incorporated into the case file.

The above entitled motion is GRANTED.

The Order Granting Final Approval of Class Action Settlement and Attorneys' Fees and Costs and the Final Judgment are signed and filed this date.

The Court sets a Non-Appearance (Case Review) Re: Distribution on June 7, 2018 in Department 310.

The parties are ordered to file a Declaration Re: Distribution Report by NOON on June 5, 2018, in Department 310.

If Declaration is NOT filed by said date an Order to Show Cause hearing will be set.

Counsel for Plaintiff is to give notice.

CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6

I, the below named Executive Officer/Clerk of the above entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of this Minute Order entered herein, on September 7, 2017, upon each party or counsel of record in the above entitled action, by electronically serving the document on Counsel for Plaintiff, Craig Ackermann at cja@ackermanntilajef.com

on September 7, 2017 from my place of business, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los Angeles, California 90005 in accordance with standard court practices.

Dated: September 7, 2017

Sherri R. Carter, Executive Officer/Clerk

<<signature>>

BY: R. ARRAIGA, Deputy Clerk

**MOTION FOR FINAL APPROVAL OF CUSS ACTION SETTLEMENT
AND MOTION FOR FEES, COSTS, AND INCENTIVE PAYMENT**

Grant final approval, finding that the settlement is fair, reasonable, and adequate. Award \$36,666.67 for fees and \$3,000 for costs to class counsel, \$3,000 for a service award to the class representative, and \$5,000 for administrative costs to the claims administrator. Approve payment of \$1,500 in PAGA penalties to the LWDA.

DISCUSSION

I. Background

Defendant is a trucking company that offers transportation and logistics services to industrial customers by transporting freight to and from the ports of Los Angeles and San Diego Counties.

On May 31, 2016, Plaintiff filed his Complaint in Los Angeles County Superior Court. Plaintiff alleged, on behalf of himself and a class of similarly situated truck drivers, that Defendant violated California's minimum wage law by not separately paying its truck drivers at hourly rates for certain work-related tasks that were not specified in Defendant's compensation plan and for their time spent on their statutory rest breaks. Specifically, Plaintiff alleged: (a) Defendant failed to pay drivers their hourly rate, or alternatively minimum wage, for time spent on pre-trip and post-trip vehicle inspections, related paperwork, and statutory rest breaks in violation of  Labor Code sections 1194, 1194.2 and 226.2; (b) because Defendant did not separately pay for time spent on statutory rest breaks, Defendant owed rest period premiums under  Labor Code section 226.7; (c) Defendant furnished inaccurate wage statements in violation of  Labor Code section 226 and 226.2; (d) waiting time penalties pursuant to  Labor Code Sections 201- 203; (e) Private Attorney General Act ("PAGA") penalties pursuant to Labor Code Sections 2698- 2699 et seq. based on the foregoing; and (f) unfair business practices based on the foregoing under  Business and Professions Code section 17200 et seq.

*2 On August 25, 2016, Plaintiff filed his First Amended Class Action Complaint adding a meal break claim.

Following arms-length negotiations and informal discovery, Plaintiff and Defendant entered into a written settlement agreement. The Court granted preliminary approval on April 25, 2017. Now before the Court is Plaintiff's motion for final approval.

Notice and Claims Process

In California, the notice must have “a reasonable chance of reaching a substantial percentage of the class members.”  Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 251 (emphasis added). Importantly, however, the plaintiff need not demonstrate that each member of the class has received notice. As long as the notice had a “reasonable chance” of reaching a substantial percentage of class members, it should be found effective.

CPT Group, Inc. (“CPT”) is providing settlement administration services for this settlement. (Declaration of Jackie Hitomi, ¶3.) On April 17, 2017, CPT received the class list from defense counsel; it contained 80 class members. (Id. at ¶5.) CPT conducted a search of the NCOA to update the addresses and mailed notice packets to all class members on May 23, 2017. (Id. at ¶6.)

8 notice packets were returned, none of which contained a forwarding address. (Id. at ¶8.) CPT performed a skip trace and as of July 27, 2017 CPT remailed 4 notices as a result of finding an updated address. (Ibid.) 4 notices were ultimately undeliverable.

The deadline for responding was July 22, 2017. (Id. at Exhibit A – the Class Notice.) As of July 22, 2017:

0 objections were received;

0 requests for exclusion were received;

0 disputes.

(Id. at ¶¶10-12)

II. Terms of Settlement

The proposed settlement class is defined as, “all California residents who are or have been employed as truck drivers by Pacific Ocean Transportation, Inc. in California and who were paid on the basis of a piece-rate that consisted of a certain amount paid per load at any time from May 31, 2012 through September 1, 2016.” (§I ¶4)

Class Period is May 31, 2012 through September 1, 2016. (§I ¶11)

The Gross Settlement Amount is \$110,000, non-reversionary. (§I ¶35)

The Net Settlement Amount (\$60,833.33) is the Gross minus:

- Up to \$36,666.67 (1/3) for attorney fees (§IV ¶1);
- Up to \$3,000 for attorney costs (Ibid.);
- Up to \$3,000 for a service award (Ibid.);
- Up to \$5,000 for claims administration costs (Ibid.); and • **\$1,500 (75% of \$2,000) to the LWDA (Ibid.).**

Common fund – each participating class member is eligible to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on the number of weeks worked by the class members during the class period as a proportion of all weeks worked by all class members. (§IV ¶3)

Employer's share of taxes will be paid separately by Defendant and will not be paid from the Gross Settlement Amount of Net Settlement Amount. (§I ¶19)

Funds from checks uncashed within 180 days of distribution will escheat. (§VII ¶6, as amended)

III. *Dunk* Factors

It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors; strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to the proposed class settlement.  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case.  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

*3 The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable.  7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1165-1166;  *Wershba*, supra, 91 Cal.App.4th at 245. There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *Manual for Complex Litigation* (Third) §30.42.

The gross W-2 wages paid out to the class during the cure period was \$1,860,900. (First Amended Declaration of Craig Ackerman ISO Preliminary Approval, ¶27.) After a series of discussions between Plaintiff and his counsel, and after Class Counsel and Plaintiff thoroughly reviewed the materials produced by Defendant, and during negotiations, the parties agreed that the statutory cure of at least 4% provided for both a fair and reasonable settlement value. (Ibid.) 4% of \$1,860,900 is \$74,436. (Ibid.) After weeks of negotiations the parties decided to settle the matter for \$110,000, which amounts to the Labor Code § 226.2 statutory safe harbor amount at the 4% level, plus a reasonable amount for attorneys' fees and costs. (Ibid.)

The risk, expense, complexity and likely duration of further litigation.

Had this case not settled, there would have been additional risks and expenses associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

The risk of maintaining class action status through trial.

There is always a risk of decertification.  *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).]

The amount offered in settlement

As part of the Court's analysis of this factor, the Court should take into consideration the admonition in  Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133. In Kullar, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an Informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

The \$110,000 amounts to the Labor Code § 226.2 statutory safe harbor amount at the 4% level, plus an amount for attorneys' fees and costs. (Ackerman First Amended Decl., ¶27.) After taking the requested deductions, \$60,833.33 will remain to be distributed to participating class members.

The extent of discovery completed and the stage of the proceedings

*4 In response to Plaintiff's expansive informal discovery requests, Defendant produced class-wide electronic data for the entire statutory period. The payroll data included, inter alia, the class size, Defendant's relevant policies and the gross W-2 wages paid out to the class during the statutory cure period. Defendant also provided detailed descriptions of the different fields within the payroll data, provided the class size and related information, and information in connection with Defendant's new compensation policies (which took effect on January 1, 2016). (Ackerman First Amended Decl. ISO Preliminary Approval, ¶26.)

Experience and views of counsel

Class Counsel is very experienced with wage and hour class action litigation (Id. at ¶¶5-14), and calls this settlement fair and reasonable (Id. at ¶29).

Presence of a governmental participant

Not applicable.

Reaction of the class members to the proposed class settlement

The class reacted positively in that no class member objected and no class member opted out. (Hitomi Decl., ¶¶10-12.) The 80 participating class members represent 100% of the 80 settlement class members. (Id. at 1113.)

Conclusion on Dunk factors

On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final approval is warranted.

IV. Attorney's Fees, Costs, and Incentive Payments

Attorneys' Fees

Class counsel requests attorney fees of \$36,666.67.

The Court employs the lodestar method in awarding fees, as opposed to a “percentage of the common fund” method. This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's efforts. In true common fund cases, the Court may utilize the percentage method, as cross-checked by the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.)

Here, fees are sought pursuant to the percentage method.

The \$36,666.67 fee request constitutes 1/3 of the potential recovery of \$110,000, which is within the average range. The determination of what constitutes an appropriate percentage “is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award.” (In re Ikon Office Solutions, Inc., Securities Litigation (E.D. Pa. 2000) 194 F.R.D. 166, 193.)

These factors favor the \$36,666.67 award. As for the first factor, private contingency fee agreements are routinely 30% to 40% of the recovery. (Id. at 194.) As for the second factor, although the median percentage of attorney fees in class actions is 25%, “most fees appear to fall in the range of nineteen to forty-five percent.” [Id.] As for the third factor, Class Counsel has experience in class actions, including wage and hour related actions. Most importantly, Class Counsel achieved good results for the class as evidenced by the class members' reaction to the settlement. As for the fourth factor, Class Counsel negotiated a settlement agreement in which Settlement Agreement provides for a financial benefit in which approximately \$60,833.33 is distributed to 80 class members, with an average payout of approximately \$760.42. (Kratz Decl., ¶11.)

The lodestar cross-check supports the fee request as well. Class Counsel has presented evidence from which the lodestar may be calculated. (Declaration of Craig Ackermann ISO Final Approval, ¶13)

<i>Timekeeper</i>	Hours	Hourly Rate	Total Lodestar
Craig Ackemann, Esq.	8.9	\$685	\$6,095.85
Sam Vehedi, Esq.	25	\$420	*5 \$10,500
Rhonda Patton	1	\$250	\$250
Jaclyn Blackwell	1.9	\$175	\$332.50
Ryan Ritz	0.2	\$100	\$20
Jonathan Melmed, Esq.	22.6	\$400	\$9,040
Lorie Gutierrez	25.7	\$175	\$4,497.50
Minsoo C. Lee	9.9	\$150	\$1,485
Cristy Sipaque	0.2	\$125	\$25
TOTAL	95.4		\$32,246.85

hourly rate for class counsel and the hours spent appear to be reasonable. Accordingly, the total lodestar calculation is \$32,246.85. Class Counsel's fee request of \$33,666.67 requires a multiplier of 1.1. It appears that Class Counsel utilized skill

in litigating this case, and by all accounts, have good reputations in the legal community; at the very least, there is no evidence before the Court to indicate that the attorneys have negative reputations in the legal community. It also appears that Class Counsel spent appreciable time on the case, which time could have been spent on other meritorious fee-generating cases.

For the foregoing reasons, the fee request of \$36,666.67 is granted. The Court notes that the notice advised class members of the maximum fee request of \$36,666.67 and not a single class member objected to it.

Costs

Class Counsel requests costs in the amount of \$3,000, which matches the settlement cap. As of August 15, 2017, Class Counsel has incurred costs in the amount of \$2,759.99, with \$460.65 expended by Ackermann & Tilajef, P.C. and \$2,299.34 expended by Melmed Law Group, P.C. (Ackermann Decl. ISO Final Approval, ¶16.) Class Counsel anticipates that approximately \$500 in additional costs will be incurred in the filing and serving of the final approval motion, and in connection with shepherding the settlement through funding and disbursement. (Ibid.) Class Counsel's actual costs consist of filing fees (\$2,372.41), research (\$118.40), copying (\$33.95), and postage (\$9.95). (Ibid.)

These costs appear reasonable and necessary to the conduct of the litigation. Further, as with the fee requests, the maximum cost request was disclosed to class members and deemed unobjectionable. For these reasons, the cost request is granted in the amount of \$3,000.

Cost of Administration

Claims administrator Dahl requests administration costs of \$5,000. (Hitomi Decl., ¶16.) The Settlement Agreement capped claims administration costs at \$5,000. (§IV ¶1.) Based upon the work performed and yet to be performed, this amount appears to be reasonable. The Court therefore awards the requested amount in full.

Incentive Payment

Finally, Class Counsel seeks an incentive payment of \$3,000 to the class representative.

The Court considers the following factors, among others, in determining whether to pay an incentive or enhancement award to a class representative:

Whether an incentive was necessary to induce the class representative to participate in the case;

- Actions, if any, taken by the class representative to protect the interests of the class;
- The degree to which the class benefited from those actions;
- The amount of time and effort the class representative expended in pursuing the litigation;
- The risk to the class representative in commencing suit, both financial and otherwise;
- *6 • The notoriety and personal difficulties encountered by the class representative;
- The duration of the litigation; and

• The personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012) (citing  Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804;  Bell v. Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726; In re Cellphone Fee Termination Cases (2010) 186 Cal.App.4th 1380, 1394; Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412).

Plaintiff LaRobert Barnwell has been employed by Defendant since October 1, 2015 as a truck driver. He provided factual background for the mediation and the Class Complaint, reviewed relevant documents and the Complaint; provided documents about Defendant's compensation plan (including paystubs); maintained contact and communication with his lawyers, and reviewed the settlement documents. (Declaration of LaRobert Barnwell ISO Preliminary Approval, ¶3-9.)

The Court grants a \$3,000 incentive for the following reasons:

Plaintiff took action in protection of the class and devoted a significant amount of time to this litigation;

The class benefitted from this action;

Plaintiff appears to have taken his duties as a class representative seriously and willingly undertook all associated risks.

The general release he signed

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2018 WL 3057766 (Cal.Super.) (Trial Order)
Superior Court of California.
Central Civil West
Los Angeles County

Guillermo BAUTISTA and Johanna Murillo, individually and on behalf of all
other similarly situated current and former employees of Defendants, Plaintiffs,

v.

WORLDWIDE FLIGHT SERVICES, INC., a Delaware Corporation; and Does 1 through 50, inclusive, Defendants.

No. BC622372.

April 17, 2018.

***1 CLASS ACTION**

Judgment

Joseph Lavi, Esq. (SBN 209776), Vincent C. Granberry, Esq. (SBN 276483), Lavi & Ebrahimian, LLP, 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211, Telephone: (310) 432-0000, Facsimile: (310) 432-0001, Email: vgranberry@lelawfirm.com; Farzad Rastegar (SBN 155555), Candace Kwon (SBN 220788), Rastegar Law Group, A.P.C., 22760 Hawthorne Boulevard, Suite 200, Torrance, California 90505, Tel. (310) 961-9600, Fax. (310) 961-9094, farzad@rastegarlawgroup.com, candace@rastegarlawgroup.com; Sahag Majarian (SBN 146621), Law Offices of Sahag Majarian II, 18250 Ventura Boulevard, Tarzana, California 91356, Tel. (818) 609-0807, Fax. (818) 609-0892, for plaintiffs, Guillermo Bautista and Johanna Murillo, individually and on behalf of all other similarly situated current and former employees of Defendants.

Carolyn B. Kuhl, Judge.

Pursuant to the Court's Order Granting Motion for Final Approval of Class Action Settlement, a copy of which is attached as **Exhibit 1**, JUDGMENT IS HEREBY ENTERED as follows:

1. The settlement class is defined as:

“All current and former non-exempt, hourly employees who were employed by Defendant in California at any time from May 6, 2012 through April 1, 2017.”

2. Gloria Maldonado, Elizabeth Herrera, and Eunices Argueta is are excluded from the settlement class due to timely and properly excluding themselves.

3. The settlement Class Members' payments shall be made from the Net Fund Value according to the terms of the Settlement Agreement approved by the Court. The Net Fund Value is. equal to the Gross Settlement Amount of \$2,400,000.00, minus the following payments, which shall also be made pursuant to the terms of the Settlement Agreement:

a. \$9,000.00 for each Class Representative as an incentive award, in addition to any recovery that they may receive under the Settlement, shall be paid to the Class Representatives;

b. \$800,000.00 in attorneys'fees shall be paid to Class Counsel;

c. \$ 17,000.00 in costs shall be paid to Lavi & Ebrahimi, LLP;

d. \$12,000.00 in administrative fees and costs shall be paid to the Settlement Administrator Simplus, Inc.; and

e. \$37,500.00 as 75% of the payment allocated toward PAGA penalties shall be paid to the Labor Workforce and Development Agency.

4. Upon the Effective Date, Plaintiffs and all members of the Settlement Class, excluding Gloria Maldonado, Elizabeth Herrera, and Eunices Argueta, have by operation of the final approval order and this Judgment, fully, finally and forever released, relinquished, and discharged Defendant and any Released Party from all claims as defined by the terms of the approved Settlement Agreement.

5. The Class Members are barred and enjoined from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are Released Claims pursuant to the terms of the Settlement Agreement.

6. This Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the settlement, and any and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the settlement and the determination of all controversies relating thereto.

7. This document shall constitute a judgment for purposes of  California Rules of Court, rule 3.769(h).

8. Except as otherwise provided by the Order Granting Final Approval and the Settlement Agreement, the parties shall bear their own costs and attorneys' fees.

*2 9. Notice of this Judgment as required by California Rules of Court, rule 3.771 (b) shall be given to the settlement class.

IT IS SO ORDERED.

Dated: Apr. 17, 2018

<<signature>>

Hon. Carolyn B. Kuhl

Los Angeles County Superior Court Judge

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2010 WL 6620252 (Cal.Superior) (Trial Order)
Superior Court of California,
Central District.
Los Angeles County

Leslie BOOM and Brenda Villanueva, on behalf of themselves and all others similarly situated, Plaintiffs,
v.
GOLD STAR FOODS, INC., a California Corporation; and Does 1 through 100, inclusive, Defendants.

No. BC419368.
November 29, 2010.

Order Granting Final Approval of Class Settlement and Approving Attorneys' Fees and Incentive Payments

Bononi Law Group, LLP, William S. Waldo (State Bar No. 073973), Michael J. Bononi (State Bar No. 130663), 915 Wilshire Boulevard, Suite 1950, Los Angeles, California 90017, Telephone: (213) 553-9200, Facsimile: (213) 553-9215, Attorneys for Plaintiffs.

Hon. Maureen Duffy-Lewis.

DATE: November 29, 2010

TIME: 9:30 a.m.

DEPT.: 38

[Filed concurrently with Joint Notice of Motion and Motion for Final Approval of Class Settlement; Declaration of William S. Waldo ISO Final Approval; Declaration of Laura Staples ISO Final Approval; Appendix of Non-California Authorities ISO Final Approval; Plaintiffs Notice of Motion and Motion for Award of Attorneys' Fees and Class Representative Payments; Declaration of William S. Waldo ISO Attorneys' Fees and Class Representative Payments; Declaration of Anne Richardson ISO Attorneys' Fees and Class Representative Payments; Declaration of Michael J. Bononi ISO Attorneys' Fees and Class Representative Payments; Appendix of Non-California Authorities ISO Attorneys' Fees and Class Representative Payments; Request to Take Judicial Notice]

This matter having come on for Final Approval Hearing on November 29, 2010, in Department 38 of the above-entitled court located at in Department 38 of the Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, for the purpose of hearing the parties' Joint Motion for Final Approval and class counsels' Motion for Attorneys' Fees, and Class Representative Payments, the Court having considered the Joint Motion and class counsels' Motion for Attorneys' Fees, all other submissions, evidentiary materials filed in support, the arguments of counsel, all other pleadings, records, and papers on file in this action, and the fact that no objections or opposition has been filed against, the Court Orders as follows:

I.

BACKGROUND

A. The Litigation

On August 7, 2009, Plaintiffs commenced the Action against Gold Star. On September 9, 2009, Plaintiffs filed a First Amended Complaint and on January 29, 2010, Plaintiffs filed a Second Amended Complaint. In the Action, Plaintiffs allege that Gold Star failed to comply with the Labor Code's pay day notice requirements, failed to properly calculate regular and overtime wages due to time shaving, failed to pay wages for labor performed, failed to include annual attendance bonuses in regular rate of pay, failed to include "Bonus Hours" in regular rate of pay, failed to provide accurate wage statements, failed to pay wages on quitting or termination, and violated California's Unfair Competition Law. Plaintiffs seek penalties under the California Private Attorneys General Act.

In February and March 2010, Gold Star requested individual current and former employees and potential class members to sign a settlement agreement and general release (hereinafter the "First Release") in exchange for a \$50 payment. Those who signed the First Release were also paid their unpaid back wages at issue in this Action.

On February 26, 2010, Gold Star answered Plaintiffs' Second Amended Complaint. Gold Star denied and continues to deny all of Plaintiffs' material allegations. Specifically, Gold Star Contended (and continues to contend) that it did not fail to comply with the Labor Code's pay day notice requirements, that it did not fail to properly calculate regular and overtime wages due to time shaving, that it did not fail to pay wages for labor performed, that it did not fail to include annual attendance bonuses in regular rate of pay, that it did not fail to include "Bonus Hours" in regular rate of pay, that it did not fail to provide accurate wage statements, that it did not fail to pay wages on quitting or termination, and that it did not violate California's Unfair Competition Law. Gold Star denies that Plaintiffs are entitled to penalties under the California Private Attorneys General Act.

The Plaintiffs report conducting significant investigation into the facts and substantial research into the law on which their claims are based. The Plaintiffs report that they: conducted the depositions of four Gold Star employees, propounded interrogatories, requests for admission and document demands; thoroughly investigated the wages and working conditions of the named II plaintiffs; and, performed extensive legal research of the law as applied to the facts discovered regarding Plaintiffs' claims, damages and the potential defenses thereto.

After good-faith negotiations on June 2, 2010, presided over by Mediator Eugene Moscovich of ADR Services, Inc., during which each side, represented by its respective counsel, recognizing the substantial risk of an adverse result in the Action, the Parties agreed to settle the Action.

Further, following the mediation the parties report that the following occurred: Defendant provided Plaintiffs with an analysis of the wages owed to each potential class member and data detailing employee time punch records, lunch records, sick hours and attendance reports. Defendants produced approximately 27,000 records, representing time punch records from 2005 through 2009. Plaintiffs' counsel inspected the entire production and Plaintiff's counsel verified the accuracy of Gold Star's conclusion by sampling the records of 52 employees, or approximately 10% of the employee records and comparing results to the conclusions reached by Gold Star.

B. The Settlement Terms

The full terms and conditions of the settlement are set forth in the Settlement Agreement, submitted by declaration of William S. Waldo filed with the Joint Application for Preliminary Approval, on file with the Court, but, can be summarized as follows:

- Defendant will pay one million dollars (\$1,000,000), referred to herein as the Gross Settlement Value ("GSV");
- Defendant will pay the employer's share of any employment taxes, including FICA and FUTA, on the Wage Portion of the GSV;
- Payments to class members will be calculated after the GSV has been adjusted by credit for the amount paid by Gold Star in conjunction with the First Release, a reduction for attorneys' fees and costs,

administration costs, Plaintiffs' service payments and payment to the Labor and Workforce Development Agency ("LWDA"), as described below, resulting in the Net Settlement Balance ("NSB");

- Gold Star will pay a Settlement Share from the NSB to each Participating Class Member as follows:

- First, actual wages owed will be paid to any Class Member who did not sign the First Release and receive back wages. Second, \$50 will be paid to any Class Member who did not sign the First Release and receive a \$50 payment. The remaining Net Settlement Amount will be allocated to Class Members as follows: Each Class Member who is a former employee will receive two shares and each Class Members who is a current employee will receive one share.

- Any remainder of the NSB will be re-distributed equally among all class members who cashed checks, without regard their status as current or former employees. There will be no reversion to Defendant.¹

- Defendant will pay twenty thousand dollars (\$20,000) from the GSV to the LWDA as its share of the settlement attributable to civil penalties under the California Labor Code recoverable under the Private Attorney General Act ("PAGA");

- The Settlement Administrator's fees and costs will be paid out of the GSV;

- Class Counsel attorneys' fees and costs will be paid out of the GSV and Class Counsel will apply for, and Defendant will not oppose, attorneys' fees in the amount of three hundred thirty thousand dollars and zero cents (\$330,000), which is thirty percent (33%) of the GSV and their costs will be covered by that amount;

- Class Counsel will apply for a service payment of five thousand dollars (\$5,000) to each of the two named plaintiffs; and

- Class Members, except those who validly opt out, including the named Plaintiffs, shall release claims raised in the action, or otherwise based on the allegations that, from August 7, 2005 to the date the settlement becomes final, they were not properly compensated for all hours worked and/or denied meal periods and/or rest breaks, including claims for unpaid wages, unpaid overtime compensation, unpaid hourly premiums, penalties, and interest.²

C. Preliminary Approval and Subsequent Notice to Class

On July 23, 2010, this Court granted preliminary approval of the Settlement, conditionally certified the Class, ordered that the Class be sent notice of the Settlement and approved the form of notice proposed by the parties and the form of election not to participate, and set the hearing for final approval.

The procedures for giving notice to the class members, as set forth in the Settlement Agreement and ordered in the Court's Preliminary Approval Order, have been fully and properly carried out.

As required, August 9, 2010, Gold Star's counsel provided the Settlement Administrator with a list of the names, last known mailing addresses, and relevant employment history regarding each of the 498 members of the conditionally certified class. The Settlement Administrator then processed the names and addresses through the United States Postal Service's (USPS) National Change of Address Database to update any addresses.

On August 23, 2010, the Settlement Administrator printed and mailed the Notice to the Class ("Notice Packets.")

Since the initial mailing of the Notice Packets, the Settlement Administrator received nineteen packets returned by the USPS. It was subsequently able to find updated addresses for thirteen of those nineteen class members. Ultimately, only four packets were undeliverable.

Simpluris received a total of four Elections not to Participate. One individual who submitted an Election not Participate contacted Simpluris and asked that if he could withdraw it because he said he submitted it in error. Counsel for both parties agreed to accept the withdrawal of the Election not to Participate. These remaining three (3) individuals represent 0.6% of all Class Members.

D. Class Members' Response to Settlement

Three Class Members submitted elections not to participate, amounting to less than 1% of the Class. To date, no Class Member has submitted an objection to the settlement.

E. Incentive Payments

Class counsel sets forth that both named plaintiffs here devoted time and effort assisting counsel in the case, regularly met with Class Counsel and otherwise communicated with them and made themselves available by telephone during the mediation. Accordingly Class Counsel seeks five thousand dollars (\$5,000) for each named plaintiff in this litigation.

F. Attorneys' Fees and Costs

Attorneys for Plaintiffs and the Class seek \$330,000 in fees (33% of the total settlement amount). Counsel sets forth that this figure represents a reasonable amount of fees and costs considering the complexity of the issues and the risk associated with the litigation as well as the outcome obtained.

II.

FINDINGS

California Civil Code Section 1781 (f) provides: “A class action shall not be dismissed, settled, or compromised without the approval of the Court, and notice of the proposed dismissal, settlement or compromise shall be given in such manner as the Court directs ...”. California Rule of Court 3.769 provides the same. Courts act within their discretion in approving class action settlements that are fair, not collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” *In re Beef Industry Antitrust Litigation*, 607 F.2d 167, 179 (5th Cir. 1979) *cert. den. sub nom, Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n*, 452 U.S. 905 (1981).

An examination of the terms of the proposed settlement here demonstrates that, particularly in light of the risk, expense, and complexity of continued litigation, it is fair, reasonable, adequate and in the best interests of the Class, and therefore well within the range of final approval.

The Court finds as follows:

1. Throughout the litigation Class Counsel conducted significant investigation into the facts and substantial research into the law on which their claims are based;

2. This Settlement was reached through arms-length and protracted negotiations;
3. Class counsel are experienced in class action litigation and, after considering the claims and defenses asserted and all applicable factors, have concluded that the settlement is fair, reasonable, and confers a substantial benefit to Class members;
4. All the aspects and requirements of the notification and claims process were carried out as required by this Court's Order regarding preliminary approval, and provided due and adequate notice of these proceedings and the matters set forth within the Notice to all persons entitled to such notice;
5. The settlement fund of \$1,000,000 will provide meaningful monetary relief to Class Members. The parties have agreed to a common method of allocating the fund among claimants, based on each Class Member's status as a current or former employee of Gold Star during the covered time period, that is a reasonable and objective means of approximating the relative value of each claim and, thus, ensures a fair distribution of the fund. In addition, Gold Star sees no reversion of unclaimed settlement shares. Rather, all such amounts revert to participant Class Members.
6. The settlement has also met with overwhelming approval by the class: only 3 class members, or less than 1% of the class, validly elected not to participate, and no class member has objected to the settlement.
7. Named plaintiffs are commonly awarded reasonable incentive payments as part of class action settlements.  *Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir. 2003). The Court determines that the service payment requested for each named plaintiff is reasonable in light of the services they provided to the Class.
8. The Court, having reviewed class counsels' Motion for Fees and Costs, is satisfied that class counsel have capably represented the class in a manner which has resulted in a settlement which was well received by the class and which has been approved by this Court. Further, the Court is satisfied that the amount of fees sought is reasonable based on the work performed on the case, the complexity of the issues and the results obtained.

Now, therefore, good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

This Court hereby approves the settlement and finds that the terms set forth in the Settlement Agreement are fair, reasonable and adequate and conferred substantial benefit to and are in the best interest of the Class;

No later than five days from the date of this Order, Defendant shall pay one million dollars (\$1,000,000), referred to herein as the Gross Settlement Value ("GSV");

Defendant shall pay the employer's share of any employment taxes, including FICA and FUTA, on the Wage Portion of the GSV:

1. Payments to class members will be calculated after the GSV has been adjusted by a reduction for attorneys' fees, administration costs, Plaintiffs' service payments and payment to the Labor and Workforce Development Agency ("LWDA"), as described below, resulting in the NSB;
2. Gold Star will pay a Settlement Share from the NSA to each Participating Class Member who submits a timely and proper Claim as follows:

First, actual wages owed will be paid to any Class Member who did not sign the First Release and receive back wages; second, \$50 will be paid to any Class Member who did not sign the First Release and receive a \$50 payment; then the remaining NSB will be allocated to Class Members in shares with each Class Member who is a former employee receiving two shares and each Class Member who is a current employee receiving one share. Any remainder of the NSB will be re-distributed equally

among all class members who cashed checks, without regard their status as current or former employees. There will be no reversion to Defendant;³

3. Defendant shall pay twenty thousand dollars (\$20,000) from the GSV to the LWDA as its share of the settlement attributable to civil penalties under the California Labor Code recovered under the Private Attorney General Act (“PAGA”);

4. The Settlement Administrator's fees and costs of \$15,000 shall be paid out of the GSV within ten (10) business days of the date this Court signs the Order, class Counsel attorneys' fees and costs shall be paid out of the GSV as follows: \$330,000 to class counsel in payment of attorneys' fees to the Bononi Law Group within ten (10) business days of the date this Court signs the Order; and

5. Within ten (10) business days of the date this Court signs this Order, class representatives are awarded and shall be paid a service payment of five thousand dollars (\$5,000) each.

As of the date the Settlement becomes Final⁴, Plaintiffs and the Class hereby fully and finally release Gold Star, and its parents, subsidiaries, affiliates, and trusts, and all of its employees, officers, agents, attorneys, stockholders, fiduciaries, other service providers, successors, and assigns, from any and all claims raised in the Action or otherwise based on the allegations that, from August 7, 2005 to the date the Settlement becomes Final, they were not properly compensated for all hours worked and/or denied meal periods and/or rest breaks, including claims for unpaid wages, unpaid overtime compensation, unpaid hourly premiums, penalties, and interest, whether founded on state or federal law, including but not limited to claims under California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194 and the Business and Professions Code sections 17200-17208, and waive the protection of California Civil Code section 1542 (“Plaintiffs' Released Claims”).

IT IS SO ORDERED.

Dated NOV 29 2010

<<signature>>

Hon. Maureen Duffy-Lewis

Footnotes

- 1 In the event that the uncashed checks from the Second Distribution, along with undeliverable or returned money totals \$5,000 or less, the funds shall be given to a charity named in the Settlement Agreement.
- 2 Specifically, the release provides: As of the date the Settlement becomes Final, Plaintiffs hereby fully and finally release Gold Star, and its parents, subsidiaries, affiliates, and trusts, and all of its employees, officers, agents, attorneys, stockholders, fiduciaries, other service providers, successors, and assigns, from any and all claims raised in the Action or otherwise based on the allegations that, from August 7, 2005 to the date the Settlement becomes Final, they were not properly compensated for all hours worked and/or denied meal periods and/or rest breaks, including claims for unpaid wages, unpaid overtime compensation, unpaid hourly premiums, penalties, and interest, whether founded on state or

federal law, including but not limited to claims under California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194 and the Business and Professions Code sections 17200-17208, and waive the protection of California Civil Code section 1542 (“Plaintiffs’ Released Claims”).

- 3 In the event that the uncashed checks from the Second Distribution, along with undeliverable or returned money totals \$5,000 or less, the funds shall be given to the charity named in the Settlement Agreement.
- 4 The Settlement will become final and effective as of the date of the Order on this motion. The Parties have waived their right to appeal in Section 1.7 of the Settlement Agreement. (Waldo Decl. ISO Fin. App. ¶ 14, Exh. E.) The Class Notice provided that, “To comment or object, you must send a written comment or objection or a written notice of your intent to appear and comment or object at the final approval hearing to the Court and to counsel at the addresses shown below.” (Staples Decl., ¶13, Ex. A) No objections were received by Simpluris or the Bononi Law Group. (Staples Decl., ¶9; Waldo Decl. ISO Fin. App., 20.)

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2017 WL 9477977 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Daniel BRANCH and William Barsamian as individuals and on behalf of all similarly situated employees, Plaintiffs,

v.

PM REALTY GROUP, LP and Does 1 through 10, inclusive, Defendants.

No. BC575759.
November 21, 2017.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Date: November 21, 2017

Time: 1:00 p.m.

Dept.: 307

I. BACKGROUND

On or about March 17, 2015, Plaintiffs filed a class action lawsuit against Defendant i Los Angeles County Superior Court on behalf of all non-exempt employees employed by or formerly employed by Defendant.

The Parties engaged in discovery prior to the filing of Plaintiff's Motion for Class Certification. Defendant provided responses to written discovery and produced over seven hundred pages of documents. Plaintiffs took the deposition of Defendant's person most knowledgeable regarding all major aspects of the case and Defendant took Plaintiff Daniel Branch's deposition. Defendant removed the case to federal court on or about May 4, 2015.

Plaintiffs filed a Motion to Remand on or about July 28, 2015, asserting that the amount in controversy under the Class Action Fairness Act ("CAFA") was not met and filed a Motion for Class Certification on July 31, 2015. While those motions were pending, the Parties engaged in mediation with Mariam Zadeh, Esq. on September 3, 2015. Prior to the mediation, Defendant produced over sixteen hundred additional pages of pay stubs and time records of a sample of putative class members. The Parties were unable to reach a settlement at mediation.

On September 8, 2015, Judge Manuel L. Real granted Plaintiff's Motion to Remand and remanded the action back to the Los Angeles Superior Court. On September 18, 2015, Defendant filed its petition for permission to appeal the order granting Plaintiff's Motion to Remand with the United States Court of Appeals for the Ninth Circuit.

On February 8, 2016, the Ninth Circuit granted Defendant's petition for permission to appeal. On April 4, 2016, the Ninth Circuit issued a memorandum reversing Judge Real's order and remanding for further proceedings to determine whether the amount in controversy under CAFA was satisfied. On April 27, 2016, the Ninth Circuit issued a mandate stating that the judgment entered on April 4, 2016 took effect on that date.

After the mandate was issued, the Parties continued to dispute whether CAFA jurisdiction existed. Plaintiff continued to challenge Defendant's assertion of federal court jurisdiction under CAFA and Defendant continued to contend CAFA jurisdiction existed. The Parties also resumed arms-length settlement discussions following the Ninth Circuit's mandate. On June 20, 2016, the Parties reached a settlement in principle and to avoid unnecessary motion practice regarding jurisdiction in light of the settlement, stipulated to remand the action to Los Angeles Superior Court. On June 5, 2017, Plaintiffs filed their First Amended Complaint adding William Barsamian as a class representative. On June 16, 2017, the parties filed the *Amended Joint Stipulation of Class Action Settlement and Release* ("Settlement Agreement").

The Court granted preliminary approval on July 5, 2017. Now before the Court is the motion for final approval of the settlement agreement.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

*2 Settlement Class is defined as, "the individuals in one or more of the Non-Exempt Wage and Hour Claims Subclass, the Non-Exempt California WARN Act Subclass, or the Exempt California WARN Act Subclass defined as follows:

- a. "Non-Exempt Wage and Hour Claims Subclass" means all non-exempt, hourly employees who were employed by Defendant in California at any time from March 17, 2011 through June 17, 2016.
- b. "Non-Exempt California WARN Act Subclass" means all non-exempt employees of Defendant who worked on the JPMorgan Chase Bank, National Association account in California and whose employment was terminated within 30 days of April 1, 2014.
- c. "Exempt California WARN Act Subclass" means all exempt employees of Defendant who worked on the JPMorgan Chase Bank, National Association account in California and whose employment was terminated within 30 days of April 1, 2014. The Parties have agreed that this class consists of not more than 9 individuals." (Settlement Agreement, ¶5)

Class Period is from March 17, 2011 to June 17, 2016. (¶6)

There are 202 Class Members. (Declaration of Jarrod Salinas, ¶5.)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Class Settlement Amount is \$1,000,000, non-reversionary. (¶9)
- The Net Settlement Amount (\$611,666.67) is the Class Settlement Amount less:
 - Up to \$333,333.33 (1/3) for attorney fees (¶2);
 - Up to \$17,000 for attorney costs (*Ibid.*);
 - Up to \$15,000 for service awards to the two class representatives (\$10,000 to Daniel Branch and \$5,000 to William Barsamian) (¶8);
 - Estimated \$15,500 for claims administration costs (¶31);

Any increase in this cost will come out of the Class Settlement Amount (§48) o \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA (§16).

- There is no claims process.
- Except for the nine class members in the Exempt California WARN Act Subclass, Individual Settlement Payments for non-exempt class members will be calculated and apportioned from the Net Settlement Amount based on the number of Individual Workweek Points attributable to each Class Member. Specific calculations of Individual Settlement Payments will be made as follows: (§51)
 - The Settlement Administrator will calculate the total number of Individual Workweek Points and the total number of Individual Workweek Points among all Class Members (“Class Workweek Points”).
 - Members of the Non-Exempt Wage and Hour Claims Subclass will receive one Individual Workweek Point for each workweek worked during the Class Period. This shall be calculated by dividing the total numbers of days each member of the Non-Exempt Wage and Hour Claims Subclass was employed during the class period by seven and rounding up to the nearest whole number.
 - Each member of the Non-Exempt Wage and Hour Claims Subclass who is a former employee no longer working for Defendant as of June 17, 2016 will be assigned an additional three Individual Workweek Points.
 - Each member of the Non-Exempt California WARN Act Subclass will be assigned an additional fifteen (Individual Workweek Points.
 - To determine each Class Member's Individual Settlement Payment, the Settlement Administrator will use the following formula: Individual Settlement Payment = (Individual Workweek Points — Class Workweek Points) x (Net Settlement Amount minus Total Amount Paid to Exempt California WARN Act Subclass).
- *3 • Each of the nine members of the Exempt California WARN Act Subclass will receive \$500.00. (§51.a-f)
- The Class Settlement Amount will be paid by Defendant in three separate installments. (TO)
 - The first installment of \$200,000 will be paid within two business days of the Effective Date. (§41, as amended)
 - The second installment of \$250,000 will be paid on or before 90 days after the first installment payment is paid. (*Ibid.*)
 - The third installment of \$550,000 will be paid on or before April 1, 2018. (*Ibid.*)
 - Interest shall accrue at the rate of 3.5% on the second and third installment payments from the date of entry of Final Approval and shall be paid along with the second and third installment payments. (*Ibid.*)

- Defendant agrees to reimburse Plaintiffs for the reasonable cost up to \$5,000.00 for a financial expert to validate and submit a declaration in support of the need for Defendant to pay the Class Settlement Amount in installments. (§42)
- If Defendant fails to timely pay any of the installment payments set forth above, Defendant will be given notice of the default through their counsel of record and shall have 15 days to cure such default and make the installment payment. If Defendant does not timely cure the default, then any remaining payments owed by Defendant will be accelerated and Defendant, through their counsel of record, shall execute a confession of judgment in the amount of the remainder. Class Counsel may recover any attorneys' fees expended to secure payment of the remainder in the event of a default by Defendant that is not timely cured. (143)
- Within 14 calendar days of each installment payment into the Qualified Settlement Account, the Settlement Administrator will issue payments to: (a) Participating Class Members; (b) the Labor and Workforce Development Agency; (c) Plaintiffs; (d) Plaintiffs' Counsel; and (e) the Settlement Administrator for its Court-approved services performed in connection with the settlement. (§44)
- The objection/exclusion deadline is 60 calendar days of the date of the initial mailing of the notice packets. (§29)
- Class members who receive re-mailed notice packets will have between the later of (a) an additional 15 calendar days or (b) the Response Deadline to postmark a Request for Exclusion, or an objection to the Settlement. (§58)
- If 10% or more of class members opt-out, Defendant may rescind the settlement agreement. (§63)
- For tax purposes, payments will be 35% as wages and 65% penalties and interest. (§68)
- Employer's share of payroll taxes will be paid in addition to the Class Settlement Amount by Defendant. (§9)
- Checks must be cashed within 180 days of issuance; thereafter, funds will be paid to the California State Controller's Office. (§53, as amended)
- The settlement administrator is Simpluris, Inc. (§30)
- Upon the Final Approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, the Participating Class Members shall fully release and discharge the Released Parties from any and all Released Claims for the entire Released Claims Period (same as the Class Period). (§73)
- *4 • Released Claims means all claims, rights, demands, liabilities, and causes of action, that were or could have been pleaded based on, arising from, or related to, the factual allegations set forth in the operative complaint in the Action, including: (i) all claims for violation of the California WARN Act (Cal. Labor Code §§ 1400, *et seq.*); (ii) all claims for failure to provide meal periods including violations of California Labor Code sections 226.7 and 512; (iii) all claims for failure to provide rest periods including violations of California Labor Code sections 226.7 and 512; (iv) all claims for unpaid wages, such as minimum

wages, overtime, and double time wages including but not limited to violations of California Labor Code sections 510 and 1194; (v) all claims for wage statement violations and failure to keep accurate payroll records including violations of California Labor Code sections 226, 1174, and 1174.5; (vi) all claims for the failure to timely pay wages upon termination including violations of California Labor Code sections 201-203; and (vii) all claims asserted through California Business & Professions Code §§ 17200, *et seq.* and/or PAGA based on the preceding claims. Released Claims also means any claims, rights, demands, liabilities, damages, wages, benefits, expenses, penalties, debts, obligations, attorneys' fees, costs, any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown, suspected or unsuspected, and causes of action, that could potentially arise from the receipt of any monies as a result of this settlement by any member of the Settlement Class. (¶25)

- Plaintiffs will provide a general release as well as a CC§1542 waiver. (¶¶74-75.)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” (Cal. Rules of Court, rule 3.769(h).)

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”) [Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”] [internal quotation marks omitted].)

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” (See *Wershba, supra*, 91 Cal.App.4th at pg. 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. (“*Dunk*”)].) Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and

the reaction of the class members to the proposed settlement.” (Id. at 128.) “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (Wershba supra, 91 Cal.App.4th at pg. 245.)

*5 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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, supra, 91 Cal.App.4th at pg. 250.)

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. The parties attended mediation with mediator Mariam Zadeh on September 3, 2015. (Declaration of Kevin Mahoney ISO Preliminary Approval, ¶19.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. Class Counsel conducted extensive investigation into the claims asserted. That investigation included formal written discovery, deposition of Plaintiff and Defendant's PMQ, filing of Plaintiffs Motion for Class Certification, Motion for Remand, Appellate Motion Practice, as well as review, analysis and sampling of numerous records and other documents, and research and evaluation of claims and defenses. (Id. at ¶17.)

c. *Is counsel experienced in similar litigation?* Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶38-39.)

d. *What percentage of the class has objected?* Zero. (Salinas Decl., ¶10.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

2. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiff's case.* “The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement.” (Kullar, supra, 168 Cal.App.4th at pg. 130.)

Minimum and Overtime Wage Claim: The maximum value of this claims is approximately \$1,100,000 based on the sample of time keeping records produced during discovery. Due to the difficulty of proving “off-the-clock” claims, a reasonable value of the overtime claim is estimated to be \$444,000 or 40% of the maximum exposure. (Mahoney Decl. ISO Preliminary Approval, ¶25.)

WARN Act Claim: Based on the sample of time keeping records and employment records, Plaintiffs contend the maximum value of this claim is approximately \$956,000.00 based on layoffs. However, due to the fact that a number of the class members were hired and transferred to Defendant's predecessor, this claim is tenuous at best and therefore a reasonable value of the WARN Act claim is estimated to be \$478,000.00 or 50% of the maximum exposure. (Id. at ¶26.)

Meal Period Claim Value: The total exposure for violation per shift is approximately \$384,000. Due to *Brinker* and the difficulty in proving “meal period” claims, a reasonable value of the overtime claim is estimated to be \$76,800 or 20% of the maximum exposure. (Id. at ¶27.)

 **Labor Code § 203 Claim:** As to the waiting time claim, maximum exposure was approximately \$430,000. Class Counsel discounted this maximum value based on risk and the fact that waiting time penalties are not awarded if a good faith dispute exists as the class is unable to prove “willful” withholding of wages. Furthermore, this was a purely derivative claim. A reasonable evaluation of this claim would be \$107,000 or 25% of the maximum exposure. (*Id.* at ¶28.)

Failure to Provide/Maintain Accurate Payroll Records: As to the paystub penalty, maximum exposure was valued at approximately \$18,000, assuming each paystub provided to each class member each pay period was in violation of  Labor Code §226. (*Id.* at ¶29.)

***6 Conclusion:** Accordingly, the full exposure at trial based on the reasonable valuation and discounting for risk factors for the class members would have been approximately \$1,119,800. Thus, the settlement of \$1,000,000 represents approximately 89% of the reasonable value of the case which is within the ballpark of reasonableness. (*Id.* at ¶30.)

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

a. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification.

( *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

b. *Amount offered in settlement.* As indicated above, Defendants have agreed to settle for the non-reversionary sum of \$1,000,000, paid in three installments. Assuming the Court approves all of the maximum requested deductions, approximately \$611,666.67 will be available for automatic distribution to participating class members. The average settlement share will be approximately **\$3,028.05**. [$\$611,666.67 \text{ net} \div 202 \text{ class member} = \$3,028.05$]. The highest Settlement Share to be paid is approximately \$7,258.02. (Salinas Decl., ¶11)

c. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

d. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

e. *Presence of a governmental participant.* This factor is not applicable here.

f. *Reaction of the class members to the proposed settlement.*

Number of class members:	202
Number of notices mailed:	202
Number of undeliverable notices:	2
Number of opt-outs:	0
Number of objections:	0

Number of participating class members:

(Salinas Decl., ¶¶5-11.)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.” The Court finds that the notice was adequate and conforms to due process requirements.

D. ATTORNEY FEES AND COSTS

Class Counsel requests \$333,333.33 for attorney fees and \$17,000 for costs. (Declaration of Kevin Mahoney ISO Final Approval, ¶¶26-27.)

In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

In the instant case, fees are sought pursuant to the percentage method. (Mahoney Decl. ISO Final Approval, ¶26.) The \$333,333.33 fee request is 1/3 of the \$1,000,000 gross settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

*7 Here, the \$333,333.33 fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request, and no one objected. (See Salinas Decl., Exhibit A.) Accordingly, the Court awards fees in the amount of **\$333,333.33**.

As for costs, Class Counsel requests \$17,000. (Mahoney Decl. ISO Final Approval, ¶27.) This equal to the \$17,000 maximum provided for in the Settlement Agreement. (¶2.) To date, Class Counsel has incurred actual costs in the amount of \$17,042.45. (Mahoney Decl. ISO Final Approval, Exhibit A.) The costs to date include court fees (\$4,048), arbitrator/mediator (\$5,800), copy/print/postage (\$1,301.77), and expert/other professional services (\$5,170.30). (*Ibid.*)

The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, costs of **\$17,000** are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (See Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807; see also Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (Citations.)”].)

Here, Class Representative Daniel Branch requests an incentive award of \$10,000 and Class Representative William Barsamian requests an award of \$5,000. (Mahoney Decl. ISO Final Approval, ¶25.)

Mr. Branch worked for Defendant as a non-exempt hourly route technician, from approximately October 2011 to April 1, 2014. (Declaration of Daniel Branch, ¶3.) His contributions to this matter include discussing the ongoing status of the case with Class Counsel, providing information and documents, and meeting with Class Counsel “constantly” in advance of the class certification motion filed in federal court. (*Id.* at ¶9.) Mr. Branch also assisted with document review, prepared for his deposition, was deposed, and attended the full day mediation. (*Ibid.*).

Mr. Barsamian worked for Defendant as a non-exempt hourly route technician for over four years, ending in March, 2014. (Declaration of William Barsamian, ¶3.) His contributions to this matter include discussing the ongoing status of the case with Class Counsel, assisting with document review, and providing Counsel with a declaration in support of Plaintiff’s Motion for Class Certification. (*Id.* at ¶9.)

In light of the above, as well as the benefits obtained on behalf of the class, **\$10,000** appears to be a reasonable inducement for Mr. Branch’s participation in the case and **\$5,000** appears to be a reasonable inducement for Mr. Barsamian’s participation in the case. Incentive awards in the requested amounts are approved.

F. CLAIMS ADMINISTRATION COSTS

*8 Claims administrator, Simpluris Inc., requests \$15,500 in compensation for its work in administrating this case. (Salinas Decl., ¶12.) At the time of preliminary approval, costs for settlement administration were estimated to be \$15,500. (Settlement Agreement, ¶31.) This amount was also disclosed to class members and deemed unobjectionable. (See Salinas Decl. at Exhibit A.)

Accordingly, claims administration costs are approved in the amount of **\$15,500**.

III. CONCLUSION AND ORDER

A. RULING

The Court hereby:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards \$333,333.33 in attorney fees to Mahoney Law Group, APC;
- (4) Awards \$17,000 in litigation costs to Mahoney Law Group;
- (5) Awards \$15,000 as Class Representative Service Awards to Daniel Branch (\$10,000) and William Barsamian (\$5,000);
- (6) Awards \$15,500 in claims administration costs to Simpluris, Inc.;
- (7) Approves payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA;

(8) Finds good cause is shown for payment of residual funds to the Unclaimed Wage Fund as it provides the best opportunity for class members to recover the wages alleged to be due to them;

(9) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition and release language, by 4/22, 2017;

(10) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(11) A Non-Appearence Case Review re: Final Report re: Distribution of Settlement Funds is set for 11/13/18, at 8:30 am Final Report is to be filed by 11/5/18.

Dated: 11/21/17

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2017 WL 9967452 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Jonetta CHATMAN, as an individual and on behalf of all others similarly situated, Plaintiff,

v.

RMI INTERNATIONAL, INC., a California corporation; Rodbat Security
Services, an unknown entity; and Does 1 through 50, inclusive, Defendants.

Nos. BC 495766, BC 597695.

September 5, 2017.

**Amended and Corrected Order Granting Motion for Final
Approval of Class Action Settlement and Determining Good Faith**

Larry W. Lee (State Bar No. 228175), Diversity Law Group, P.C., 515 S. Figueroa St., Suite 1250, Los Angeles, California 90071, (213) 488-6555, (213) 488-6554 facsimile; Dennis S. Hyun (State Bar No. 224240), Hyun Legal, APC, 515 S. Figueroa St., Suite 1250, Los Angeles, California 90071, (213) 488-6555, (213) 488-6554 facsimile, for plaintiff and the class.

Kyle Nordrehaug, Blumenthal, Nordrehaug & Bhowmik, for plaintiff Melissa Lara.

Stephen E. Ronk, Jennifer L. Ghosland, Linh T. Hua, Erika L. Shao, Gordon & Rees LLP, for defendant, RMI International Inc dba Rodbat Security Service.

Honorable Maren E. Nelson, Judge of the Superior Court.

*1 Complaint Filed: November 15, 2012

Trial Date: Not Set

I. BACKGROUND

Plaintiff Jonetta Chatman filed this class action lawsuit against Defendants RMI International, Inc. and Rodbat Security (companies that provide security services) on November 15, 2012. On October 14, 2015, Plaintiff Melissa Lara (represented by Blumenthal, Nordrehaug & Bhowmik) filed a similar class action lawsuit against Defendant. In October, 2016, the cases were ordered related. Plaintiffs allege wage and hour claims for violations such as wage statements, minimum and overtime, and meal and rest periods. The plaintiffs in both actions mediated jointly with Defendants and were able to reach a global resolution. On February 15, 2017, the Court granted preliminary approval of the settlement. Now before the Court is Plaintiffs' motion for final approval.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

"Settlement Class Members" is defined as, "all non-exempt current and former security guard employees of Defendant in California during the Class Period." (§ 26) The parties stipulate to certification of this class for settlement purposes only. (§ 28)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms of the Settlement Agreement are as follows:

- The Maximum Settlement Fund is \$875,000, non-reversionary. (¶ 12)
 - The settlement fund will be funded in three installments: 30 calendar days after the Effective Date Defendant will provide \$300,000 to the claims administrator; 30 days later another \$300,000; 30 days later the last \$275,000 will be provided to the claims administrator. (¶ 37.a)
- All payments will issue within 10 days of the last installment. (¶ 37.b)
- The Net Settlement Amount (\$514,583.33) is the Maximum less:
 - Up to \$291,666.67 (1/3) for attorney fees (¶ 37.d);
 - Up to \$40,000 for attorney costs (¶ 37. d);
 - Up to \$ 10,000 for two \$5,000 service awards (¶ 37.c);
 - Estimated \$15,000 for claims administration costs (¶ 37.f; and
 - \$3,750 (75% of \$5,000 PAGA penalty) to the LWDA (¶ 37.e, as amended).
- Defendant's share of payroll taxes will be paid separately from the Maximum. (¶ 37.b.i)
- Any part of the requested attorney fees not awarded will be added to the Net. (¶ 37.d)
- There is no claims process. (¶ 36.e) All Settlement Class Members who do not opt out will receive a payment. (¶ 37.b.i)
- The response deadline is 45 days. (¶ 22)
 - For class members who receive re-mailed notice, the Response Deadline will be extended 15 days, (¶ 36.a.i)
- If more than 5% opt out, Defendant may rescind. (¶ 38)
 - Settlement payments will be calculated dividing the total shifts worked by each class member by the total shifts worked by all class members and multiplying that fraction by the Net.(¶ 37.b.i)
 - For tax purposes, payments will be allocated 1/3 wages, 1/3 penalties and 1/3 interest. (¶ 37.b)
- Checks must be cashed within 180 days of issuance; thereafter, funds escheat, (¶ 37.b)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.”  CRC 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.”  CRC 3.769(h).

*2 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See  *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” See *Wershba* at 245 (citing  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1 794, 1 802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 1 16, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba* at 245.

Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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.’” *Id.* at 250.

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm’s-length bargaining?* Yes. Settlement is the result of negotiations and one full day of mediation with Gig Kyriacou, Esq., which was unsuccessful, and one full day with Mark Rudy, which resulted in the settlement. (Declaration of Dennis Hyun, ¶ 6.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. Class Counsel conducted an investigation that included depositions of Defendant’s persons most knowledgeable, interviews with class members following a *Belaire-West* procedure, and an exchange of written discovery that included data for over 1,800 class members. (*Id.* at ¶ 8.)

*3 c. *Is counsel experienced in similar litigation?* Yes. (*Id.* at ¶¶ 2-5; Declaration of Larry W. Lee at ¶¶ 12, 13; Declaration of Kyle Nordrehaug at ¶ 2.)

d. *What percentage of the class has objected?* Zero. (Declaration of Elizabeth Kruckenberg at ¶ 8.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiffs' case.* The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. One of the major claim in these class action lawsuits, the legality of on—duty meal periods, was undecided at the time this litigation settled. (Hyun Declaration ISO Preliminary Approval ¶¶ 11.) The regular rate and expense reimbursement claims made up only a small portion of the total damages, which were estimated to be approximately \$4,000,000. (*Ibid.*) The \$875,000 non-reversionary settlement recovers about 22% of the maximum damage estimate, which is well within the ballpark of reasonableness.

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. See  *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).

d. *Amount offered in settlement.* As indicated above, Defendants have agreed to settle for \$875,000. The settlement administrator estimates that the average settlement payment will be \$242.92. The highest is approximately \$1,781.41. (Kruckenberg Declaration, ¶ 10.)

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members: 2,059

Number of notices mailed: 2,059

Number of undeliverable notices: 68

Number of opt-outs: 4

Number of objections: 0

Number of participating class members: 2,055

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel request \$291,666.67 for attorney fees and \$24,656.53 for costs. In determining the appropriate amount of a fee award courts use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096.) A percentage calculation with lodestar cross-check is permitted in common fund cases. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.) Here, fees are sought pursuant to the percentage method. (Motion at 23-25.) The \$291,666.67 fee request is 1/3 of the \$875,000 settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, FN 13: “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”)

*4 The notice expressly advised class members of the fee request, and not a single class member objected to it. Accordingly, the Court awards fees in the amount requested.

The Settlement Agreement provides that fees will be allocated 80% to Diversity Law Group and 20% to Blumenthal, Nordrehaug & Bhowmik. (Settlement Agreement, ¶ 37.d.)

As for costs, Class Counsel request \$24,656.53. The settlement agreement provides for, and the class was provided notice of, costs up to \$40,000. Costs to date include the cost for two days of mediation plus travel and lodging, a Belaire-West notice, filing fees, case anywhere, depositions, copies, attorney service, and other miscellaneous items. (Hyun Declaration, ¶ 14; Lee Declaration, ¶ 11 and Exhibit B thereto; Nordrehaug Declaration, ¶ 8 and Exhibit 2 thereto.)

The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class. As Attorney Hyun has submitted a more detailed accounting of the \$11,406.18 in costs, the request for costs for all Plaintiffs' counsel is approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807; see also Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”)

Here, the named Plaintiffs each request incentive awards of \$5,000. Plaintiff Jonetta Chatman devoted approximately 50 hours to this litigation. She assisted her attorneys by providing information and documents and preparing for and attending her deposition. Chatman also accepted the risks associated with acting as a class representative. (Declaration of Jonetta Chatman, ¶¶ 3-9.) Plaintiff Melissa Lara estimates that she spent approximately 40 hours assisting her attorneys. (Declaration of Melissa Lara ISO Motion for Preliminary Approval, ¶ 3) In addition to the time she has devoted, this litigation has been stressful to Lara. (Lara Declaration ISO Final Approval, ¶ 3.) Both plaintiffs were required to sign broad releases.

In light of the above as well as the benefits obtained on behalf of the class, \$5,000 appears to be a reasonable inducement for Plaintiffs' participation in this case. The requested incentive awards are approved.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator Phoenix Settlement Administrators requests \$15,000. (Kruckenberg Declaration, ¶ 11.) This is the amount estimated at the time of preliminary approval. Given the tasks performed (and still to be performed), this amount appears to be reasonable. This amount was also disclosed to class members and deemed unobjectionable.

III. CONCLUSION AND ORDER

A. RULING

***5** The Court hereby:

(1) Grants class certification for purposes of settlement;

(2) Grants final approval of the settlement as fair, adequate, and reasonable;

(3) Awards \$291,666.67 in attorney fees and \$ 24,656.53 in costs to Diversity Law Group, Hyun Legal and Blumenthal, Nordrehaug & Bhowmik;

(4) Awards \$5,000 each as incentive award to Jonetta Chatman and Melissa Lara;

(5) Awards \$15,000 in claims administration costs to Phoenix Settlement Administrators;

(6) Approves \$3,750 PAGA penalty payment to the LWDA;

(7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, release language, and the names of all class members who opted out, by August 11, 2017;

(8) Orders class counsel to submit notice of judgment to the LWDA in compliance with Labor Code §2699(1)(3);

(9) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(10) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds is set for March 16, 2018, at 8:30 am. Final Report is to be filed by March 9, 2018.

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: 9/5/17

<<signature>>

Honorable Maren E. Nelson

Judge of the Superior Court

APPROVED AS TO FORM AND CONTENT BY:

Dated: 8/14, 2017

DIVERSITY LAW GROUP, P.C.

By: <<signature>>

Larry W. Lee

Attorney for Plaintiff JONETTA CHATMAN

Dated: 8/14, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: <<signature>>

Kyle Nordrehaug

Attorney for Plaintiff MELISSA LARA

Dated: 08/14, 2017

GORDON & REES LLP

By: <<signature>>

Stephen E. Ronk

Jennifer L. Ghosland

Linh T. Hua

Erika L. Shao

Attorneys for Defendant

RMI INTERNATIONAL INC dba RODBAT SECURITY SERVICE

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2018 WL 3911128 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Rogelio DIAZ, Carlos A. Diaz Castellanos, David Cruz, Roland Jackson, Juan Hernandez Zuniga,
Ramon Barragan Hernandez, individually and on behalf of all others similarly situated, Plaintiffs,

v.

ABSOLUTE WEST LLC dba Harbor Division, LLC, a California Limited Liability Company, and Does 1-10, Defendants.

Nos. BC647126, BC651769, BC653376.

April 19, 2018.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Dept.: 17

Date: April 19, 2018

Time: 9:00 a.m.

I. BACKGROUND

In this wage and hour class action lawsuit, Plaintiffs Rogelio Diaz, Carlos A. Diaz Castellanos, David Cruz, Roland Jackson, Juan Hernandez Zuniga, and Ramon Barragan Hernandez sue their former employer, Defendant Absolute West, LLC dba Harbor Division, LLC, a trucking and logistics company with its principal place of business in Long Beach, California.

On January 13, 2017, Plaintiffs Diaz, Castellanos, and Cruz gave notice to the LWDA and Defendant of their claims and intent to file their PAGA representative action. On January 17, 2017, Plaintiffs Diaz, Castellanos, and Cruz filed their class action and representative action Complaint in the County of Los Angeles, Case No. BC647126. On April 25, 2017, Defendant notified Plaintiffs' Counsel of two related cases: Ramon Barragan Hernandez, et al. v. Harbor Division, Inc. et al. (LASC Case No. BC653376) and Roland Jackson, et al. v. Absolute West LLC (LASC Case No. BC651769) both of which involve the same parties and are based on the same or similar claims. Given the overlap of the class definitions and claims at issue, Plaintiffs' counsel in the three cases entered into a global co-counsel Agreement on June 26, 2017 to jointly prosecute the matter.

The operative consolidated complaint in this action alleges the following causes of action: (1) PAGA penalties for willful misclassification of drivers (Cal. Labor Code Section 226.8 and 2698, et seq.); (2) failure to pay separately and hourly for time spent by drivers on non-driving time (Cal. Labor Code § 1194, 1194.2); (3) failure to provide paid rest periods to drivers and pay missed rest break premiums (Cal. Labor Code §§ 226.7, IWC Wage Order No. 9); (4) failure to provide meal periods and pay missed meal period premiums (Cal. Labor Code §§ 226.7, 512, IWC Wage Order No. 9); (5) failure to provide complete wage statements (Cal. Labor Code §§ 226, 226.2); (6) failure to reimburse business expenses (Cal. Labor Code § 2802); (7) waiting time penalties (Cal. Labor Code § 201, 203); (8) derivative UCL violations (Bus. & Prof. Code § 17200-17204) based on the foregoing; and (9) PAGA and other penalties (Labor Code §§ 2698-2699.5) based on the foregoing.

It is represented that at a pre-mediation face-to-face half-day negotiation between Counsel and Defendant, Defendant provided financial documents indicating its severe financial difficulties. At the formal mediation before the Hon. Mitchel R. Goldberg, (Ret.), the parties reached an agreement regarding the terms of settlement. These terms were subsequently memorialized in the parties' *Joint Stipulation of Settlement and Release of Class Action* ("Settlement Agreement"). On November 3, 2017, the Court issued an order concerning Plaintiff's Motion for Preliminary Approval and ordered further briefing from the Parties. Plaintiffs responded to the issues raised by the Court in the Supplemental Declaration of Jonathan Melmed. A fully executed copy of the Amended Settlement Agreement is attached to the Melmed Declaration as Exhibit B.

*2 The Court granted preliminary approval of the settlement on December 21, 2017. Now before the Court is Plaintiffs' Motion for Final Approval.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

Under the terms of the settlement agreement the "Settlement Class" means Plaintiffs and all other California residents who worked as truck drivers and who are or have been classified as independent contractors by Defendant in California from January 17, 2013 through the date of an order preliminarily certifying the class. (§I.32)

The Parties agree to stipulate to class action certification only for purposes of the Settlement. (§III.1)

Class Period is from January 17, 2013 through the date of preliminary approval. (§I.6)

The Class is estimated to consist of approximately 231 class members, of which 65 are current drivers and 166 are former drivers. (§I.32, as amended)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Value ("GSV") is \$600,000, non-reversionary. (§IV.1)
 - Defendant will pay the GSV in three installments of \$200,000 each ("Payment Plan"). The first payment shall be due within 30 days of final approval, the second payment shall be made by October 15, 2018, and the third and final payment shall be made by October 1, 2019. (§I.24, as amended)
 - In the event that the class list contains more than 237 Settlement Class Members, the Gross Settlement Value shall increase on a pro-rata basis for each Class Member above 237. (§VIII.2)
- The Net Settlement Amount (\$358,125) is the GSV minus:
 - Up to \$180,000 (30%) for attorney fees (§IV.5);
 - Up to \$20,000 for attorney costs (*Ibid.*);
 - Up to \$30,000 for service awards to the 6 class representatives (\$5,000 x 6) (§IV.2);

- Up to \$10,000 for claims administration costs (§5); and
- \$1,875 (75% of \$2,500 PAGA penalty) to the LWDA (§IV.7).
- There is no claims process. Class members will receive a settlement payment unless they opt-out.
- The Response Deadline is 60 days from the initial mailing of the Notice Packets. (§I.29, as amended)
Class Members who receive re-mailed Notice Packets will have 120 days from initial mailing of the Notice Packets to respond. (§VI.4, as amended)
 - Defendant has the right to rescind if five (5) or more of the Settlement Class Members timely opt out. (§VIII.1)
- Individual Settlement Payments will be calculated and apportioned as follows: The Settlement Administrator shall divide the Net Settlement Amount by the total number of workweeks Settlement Class Members worked for Defendant during the Class Period, in order to determine the amount each Settlement Class Member is entitled to for each workweek s/he worked for Defendant (the “Weekly Amount”). The Settlement Administrator will multiply the Weekly Amount by the total number of workweeks that each Settlement Class Member worked for Defendant to arrive at the Individual Settlement Amount for that Class Member. In the event that a Class Member opts out of the Settlement, then the amount originally allocated to that Class Member will be redistributed to the Settlement Class Members. (§VII.2, as amended)
- For tax purposes, payments to class members will be allocated 100% to interest, penalties, premiums, and other non-wage payments (and each Settlement Class Member will be issued an IRS Form 1099 for such payment to him or her). (§IV.3)
- *3 • Any checks issued by the Claims Administrator to Participating Class Members will be negotiable for at 180 days. (§VII.7)
 - After 180 days, checks remaining uncashed shall be paid in the name of class members who did not cash their checks as follows: 25 percent to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund, 25 percent to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch, and 50 percent to St. Christopher Truckers Relief Fund, a nonprofit organization that supports projects that will benefit the class. (*Ibid.*)
- The settlement administrator is CPT Group, Inc. (§I.31)
- A copy of the proposed settlement was provided to the LWDA. (Supplemental Declaration of Jonathan Melmed ISO Motion for Preliminary Approval, Exhibit D.)
- All class members who do not opt out will release certain claims against Defendant as follows:
 - Upon the Effective Date, each Settlement Class Member who has not submitted a timely Opt-Out request, and Plaintiff, each releases the Released Parties, and each of them, of and from any and all Released Claims through date of preliminary approval. It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released Claims. Each Settlement Class Member, except those who timely

Opt-Out, will be bound to the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment. Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Settlement payments. (§X.1)

- “Released Claims” shall mean all claims that were alleged or reasonably could have been alleged against the Released Parties based on the facts, legal theories, or claims contained in the Consolidated Class Action Complaint, including all of the following: (1) PAGA Penalties for Defendant's Willful Misclassification of Drivers in Violation of Labor Code Section 226.8 and 2698; (2) Failure to Pay Separately and Hourly for Time Spent by Drivers on Non-Driving Time (Labor Code §§ 1194, 1194.2); (3) Failure to Provide Paid Rest Periods to Drivers and Pay Missed Rest Break Premiums (Labor Code §§ 226.7, IWC Wage Order No. 9); (4) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums (Labor Code §§ 226.7, 512, IWC Wage Order No. 9); (5) Failure to Reimburse Business Expenses (Labor Code § 2802); (6) Failure to Provide Complete Wage Statements (Labor Code § 226 and 226.2); (7) Waiting Time Penalties (Labor Code § 201-203); (8) UCL Violations (Bus. & Prof Code §§ 17200-17204); and (9) PAGA and Other Penalties (Labor Code § 2698-2699.5); (10) Any other claims or penalties under the wage and hour laws pleaded in the Consolidated Class Action Complaint; and (11) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the federal Fair Labor Standards Act as to the facts alleged in the Consolidated Class Action Complaint from January 17, 2013 through the date of Preliminary Approval (the “Release Period”). (§I.27, as amended)

*4 • “Released Parties” shall mean Absolute West Corporation, successor in [illegible text] to Absolute West LLC dba Harbor Division, Inc., and all of its affiliated entities, and all of their shareholders, owners, officers, directors, agents, managing agents, employees, insurers, and attorneys, including but not limited to, Benjamin Satterlee, Gary Steven Satterlee, and Karen Ann Satterlee. (§I.28)

- Class Representatives will also provide a general release and §1542 waiver. (§X.2)
- Plaintiffs Roland Jackson, Ramon Hernandez and David Cruz additionally provide an ADEA waiver. (§X.3)

The releases appear to be proper. The class release is appropriately tethered to the pleading and limited to the relevant time period. Plaintiffs' broader release is acceptable as they were represented by counsel when these terms were negotiated.

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.”  CRC 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.”  CRC 3.769(h).

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See  *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” See *Wershba* at 245 (citing  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”  *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba* at 245.

*5 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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.’” *Id.* at 250.

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm’s-length bargaining?* Yes. On August 9, 2017, the parties and their counsel attended an all-day mediation with the Honorable Mitchel R. Goldberg, Ret., a mediator with class action and employment litigation experience and, and relevant to this case, a former bankruptcy judge capable of evaluating the company’s ability to pay based on its financial condition. Negotiations continued throughout the day and were intensive and conducted at arms’ length. (Declaration of Craig J. Ackermann ISO Preliminary Approval, ¶11)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. The parties exchanged informal discovery requests, documents, and data. Prior to the mediation, Defendant’s counsel provided Plaintiffs’ counsel with an initial set of responsive documents containing, *inter alia*, Owner Operator Sublease Agreements for each Plaintiff driver logs, personnel files, company financial documents, trip sheets and route manifests. (*Id.* at ¶9.) Defendant also provided numerous

financial documents (including tax returns, P & L statements and other financial reports), which evidenced Defendant's severe financial difficulties. (*Id.* at ¶10.)

c. *Is counsel experienced in similar litigation?* Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (*Id.* at ¶¶ 65-71.)

d. *What percentage of the class has objected?* Zero. (Declaration of Tin Nguyen, ¶11.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiffs' case.* “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

Plaintiffs' counsel calculated Defendant's maximum exposure of **\$7,700,000** as follows:

- *PAGA penalties for misclassification:* 65 employees x \$25,000/employee = \$325,000
- *Reimbursement claims:* 10,059 workweeks x \$200/week = \$2,011,800
- *Unpaid rest periods:* 10,059 workweeks x 20 hours/week * \$14.81/hour = \$2,979,475.80
- *Rest period premiums:* 10,059 workweeks x 5 days/week x \$14.81/hour = \$744,868.95
- *Meal period premiums:* 10,059 workweeks x 5 days/week x \$14.81/hour = \$744,868.95
- *Inaccurate wage statements:* 65 employees x \$4,000 = \$169,000
- *Waiting time penalties:* 136 former employees x \$150/day x 30 days = \$612,000

However, these figures do not take into account Defendants' legal and factual defenses which are significant risk factors. Specifically, Plaintiffs took a 50% discount from Defendant's maximum exposure (minus the PAGA penalties for willful misclassification) for the risk of the Court compelling this case to arbitration. This 50% deduction brings Defendant's maximum exposure down to \$1,423,606.45. Plaintiffs also took another discount for the risk of class certification and another risk for Defendant's preemption arguments and finally a discount for the risk of losing on the merits. Finally, Plaintiffs view Defendant's financial condition as the biggest hurdle to settlement in this matter. (Ackermann Decl., ¶57.)

*6 Class Counsel obtained a gross settlement valued at \$600,000. This is approximately 8% of Defendant's maximum potential exposure, which is within the “ballpark of reasonableness,” particularly given Defendant's financial condition.

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

a. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. See  *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).

b. *Amount offered in settlement.* As indicated above, the Gross Settlement Amount is \$600,000. Assuming that the Court approves all of the maximum requested deductions, approximately \$358,125 will be available for automatic distribution to participating class members.

c. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	238
Number of notices mailed:	238
Number of undeliverable notices:	4
Number of opt-outs:	2
Number of objections:	0
Number of participating class members:	236
Estimated average payment:	\$1,517.48

(Nguyen Decl., ¶¶5-14)

Based on the above, the Court finds that notice was adequate and conforms to due process requirements.

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel requests \$180,000 for attorney fees and \$20,000 for costs.

In determining the appropriate amount of a fee award, the lodestar method may be used, applying a multiplier where appropriate.

 *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96. A percentage calculation is permitted in common fund cases.  *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. Despite any agreement by the parties to the contrary,

courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable.

 *Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.

In the instant case, fees are sought pursuant to the percentage method. The \$180,000 fee request is approximately 30% of the \$600,000 gross settlement amount, which is average. *In re*  *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, FN13: “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”

*7 Here, the \$180,000 fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request. No class member objected. Accordingly, the Court awards fees in the amount requested.

As for costs, Class Counsel requests \$20,000. The Settlement Agreement provided that Class Counsel could seek reimbursement of costs up to \$20,000. (Settlement Agreement, ¶IV.5.) To date, Class Counsel has incurred actual costs in the amount of \$25,294.23 but is only asking for \$20,000. (Declaration of Craig J. Ackermann ISO Final Approval, ¶15; Declaration of Jonathan Melmed ISO Final Approval, ¶15; Declaration of Alvin Gomez ISO Final Approval, ¶15; Declaration of David Markham ISO Final Approval, ¶13.) The costs to date include filing fees (at least \$3,752.75), mediation (\$3,645), and Expert Witness fees (\$13,500). (Ibid.) The costs appear to be reasonably necessary to the litigation, reasonable in amount, and were not objected to by the class. Costs of \$20,000 are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”).

Here, each of the six named Plaintiffs requests a \$5,000 service award.

Each of the six named Plaintiffs submitted similar declarations describing their efforts acting as a class representative in this matter. Each of them described providing assistance to their counsel in the form of telephonic meetings, in-person meetings, providing relevant documents, and reviewing documents. Plaintiffs Carlos A. Diaz, Rogelio Diaz, David Cruz, and Ramon Barragan declared that they attended the full day mediation. (Declaration of Carlos A. Diaz, ¶¶1-8; Declaration of Rogelio Diaz, ¶¶1-8, Declaration of Ramon Barragan Hernandez, ¶¶1-8; Declaration of David Cruz, ¶¶1-8; Declaration of Juan Hernandez Zuniga, ¶¶1-10; and Declaration of Roland Jackson, ¶¶1-10)

In light of the above, as well as the benefits obtained on behalf of the class, \$5,000 appears to be a reasonable inducement for Plaintiffs Carlos A. Diaz, Rogelio Diaz, David Cruz, and Ramon Barragan's participation in this case, and \$3,000 appear to be a reasonable inducement for Plaintiffs Roland Jackson and Juan Hernandez Zuniga's participation in this case. The requested incentive awards are approved.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator, CPT Group, Inc., requests \$10,000 in compensation for their work in administering this case. (Nguyen Decl., ¶16.) At the time of preliminary approval, costs for settlement administration were estimated to be \$10,000. (Settlement Agreement, ¶5.) This amount was also disclosed to class members and deemed unobjectionable.

*8 Accordingly, claims administration costs are approved in the amount of \$10,000.

III. CONCLUSION AND ORDER

The Court hereby:

(1) Grants class certification for purposes of settlement;

(1) Grants final approval of the settlement as fair, adequate, and reasonable;

(2) Awards \$180,000 in attorney fees and \$20,000 in costs to Ackermann & Tilajef, PC; Melmed Law Group, PC; Gomez Law Group, and the Markham Law Firm;

(3) Awards \$5,000 as Class Representative Service Awards to Carlos A. Diaz, Rogelio Diaz, David Cruz, and Ramon Barragen and \$3,000 as Class Representative Service Awards to Juan Hernandez Zuniga and Roland Jackson;

(4) Awards \$10,000 in claims administration costs to CPT Group, Inc.;

(5) Approves a \$1,875 PAGA penalty payment to the LWDA;

(6) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, release language, and the names of all class members who opted out, by 4/20, 2018;

(7) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(8) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds is for 2/20/20, at 8:30. Final Report is to be filed by 2/13/20.

Dated: 4/19/18

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

2017 WL 9990656 (Cal.Super.) (Trial Order)
Superior Court of California.
Central Civil West
Los Angeles County

Carlos GARCIA, on behalf of himself and others similarly situated, Plaintiffs,

v.

BEST OVERNITE EXPRESS, INC., a California Corporation; and Does 1 to 100, inclusive, Defendants.

No. BC604543.

October 2, 2017.

**Order Granting Plaintiff's Motion for Final Approval of Class
Action Settlement and Award of Attorneys' Fees and Costs**

Joseph Lavi, Esq. (State Bar No. 209776), Vincent C. Granberry, Esq. (State Bar No. 276483), Lavi & Ebrahimian, LLP, 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211, Telephone (310) 432-0000, Facsimile (310) 432-0001, for plaintiff, Carlos Garcia, on behalf of himself and others similarly situated.

Ann I. Jones, Judge.

***1 CLASS ACTION**

Hearing Information:

Date: October 2, 2017

Time: 10:00 a.m.

Dept.: 308

This matter came on for hearing on October 2, 2017, at 10:00 a.m., in Department 308 of the Los Angeles County Superior Court located at 600 South Commonwealth Avenue, Los Angeles, California 90005, on Plaintiff's unopposed Motion for Order Granting Final Approval of Class Action Settlement pursuant to  California Rule of Court 3.769 and Award of Attorneys' Fees and Costs, this Court's Order-Granting Preliminary Approval on June 12, 2017, and *Amended* Joint Stipulation and Settlement Agreement ("Stipulation") between Plaintiff and Best Overnite Express, Inc. ("Defendant"), a copy of which was attached as *Exhibit 1* to the *Supplemental Declaration* of Vincent C. Granberry in Support of Plaintiffs Motion for Preliminary Approval of Class Action Settlement upon which this Court's preliminary approval-was-based-

Having received and considered the Settlement Agreement, the supporting papers filed by the Parties, the declaration of Carole Thompson on behalf of CPT Group, Inc., and the evidence and argument received by the Court in conjunction with the Motion for Preliminary Approval of Class Action Settlement granted. June 12, 2017, and the Motion for Final Approval, **the Court grants final approval of the Settlement and HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATION:**

1. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, a Class. Notice and Allocation Form (collectively "Notice Packet") were mailed together to all members of the Class by first-class U.S. mail. The Notice informed the Class of the nature of the lawsuit, the terms of the settlement, of their right to receive their proportional share of the Net

Settlement Amount, the manner and timing of doing so, of their right to dispute the amount of wages being credited to them pursuant to the Settlement Agreement, or exclude themselves from the lawsuit, and the manner and timing for doing so, and of their right to appear in person or by counsel at the final approval hearing and be heard regarding approval of the class settlement, and were informed of the date set for the Final Approval hearing. Adequate periods of time were provided, by each of these procedures.

2. The Court finds and determines that this notice procedure afforded adequate protections to the Settlement Class and provides the basis for the Court to make an informed decision regarding approval of the settlement based on the very few requests to be excluded from the settlement. The Court finds and determines that the Class Notice provided in the matter was the best notice practicable, which satisfied the requirements of law and due process.

3. The Court further finds and determines that the terms of the class settlement are fair, reasonable, and adequate to the Class and to each member of the Settlement Class and that the settlement is ordered finally approved, and that all terms and provisions of the Settlement Agreement should be and hereby are ordered to be enforced and consummated.

*2 4. The Court has certified a class for settlement purposes (the “Settlement Class”), and the Court deems this definition sufficient for purposes of California Rule of Court 3.765(a). For purposes of this settlement, this Order, and the Settlement Agreement, the “Settlement Class” is defined as follows:

Any current or former hourly non-exempt drivers employed by Best Overnite Express, Inc. in California from December 17, 2011, up to and including February 17, 2017.

5. The Court hereby approves the terms set forth in the Settlement Agreement and finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties to effectuate the Settlement Agreement according to its terms. The Court has reviewed the monetary recovery provided as part of the Settlement Agreement and recognizes the significant Value accorded to Class Members.

6. The settlement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the settlement, shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of the Defendant.

7. The Court finds and determines that the Net Settlement Payments to be paid to participating Settlement Class Members, as provided, for by the Settlement Agreement are fair and reasonable. The Court hereby gives final approval to and orders the payment of those amounts be made to the participating Settlement Class Members, in accordance with the terms of the Settlement Agreement.

8. The Court finds and determines that Class Counsel having conferred a benefit on the absent individuals comprising the Settlement Class, and the participating Settlement Class Members, and having reviewed Declaration of counsel, the Class Members' response and existence of no objections and only two requests for exclusion, the Court finds and approves the application of Class Counsel, Joseph Lavi of Lavi & Ebrahimian, LLP for attorneys' fees in the amount of \$200,000 and litigation costs in-the-amount of \$8,500.53. The Court finds that the hourly rate requested by Class Counsel are reasonable and appropriate given their experience, skill, reputation and qualifications and the prevailing market rates for work of similar complexity, and having expended efforts to secure a benefit to the Settlement Class and the participating Settlement Class Members, is entitled to the requested fees and costs.

9. That Class Representative's request for a Class Representative Service Payment of \$6,900 for the initiation of this action, work performed, risks undertaken, and requested amount for execution of a general release of all claims it may have against

Defendant, and its affiliates, parents, related entities, and subsidiaries, and stigma as set forth in the moving papers and Settlement Agreement, is also hereby approved.

10. That \$7,300 of the Gross Settlement amount shall be allocated as PAGA penalties, with 75% of this amount, \$5,625, to be paid to the Labor and Workforce Development Agency ("LWDA") and the remaining 25% of this amount, \$1,875, will be distributed to Class Members.

11. That CPT Group, Inc., the appointed Settlement Administrator's fees and costs in the sum of \$22,500 for services rendered and to be rendered in connection with the completion of its duties pursuant to the Settlement and as set forth in the Declaration of Carole Thompson on behalf of CPT Group, Inc., in support of the Motion for Final Approval of Class Action Settlement is hereby approved.

*3 12. Neither Defendant nor- its subsidiary, parent, affiliated, or related entities shall have any further liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability released under the terms of the Settlement Agreement, except as provided in the settlement.

13. Without affecting the finality of this Order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this order and the Settlement

14. Nothing in this Order shall preclude any action to enforce the Parties' obligations pursuant to the Settlement Agreement or pursuant to this Order, including the requirement that Defendant make payments to participating Class Members in accordance with the Settlement Agreement.

15. The Court hereby enters final judgment in this case in accordance *with* the terms of the Settlement Agreement, release and retention of claims contained therein, the Order Granting Preliminary Approval, and this Order.

16. The Parties shall bear their own costs and attorneys' fees except as otherwise provided by this order.

17. That any separate appeal from the portion of the Judgment regarding the attorney's fees and litigation costs awards, the Class Representative Service Payment awards or the Settlement Administration. Costs award shall not operate to terminate or cancel the Settlement Agreement.

18. Pursuant to the terms of the Settlement Agreement, within ten (10) calendar days of the Effective Date as that term is defined in the Settlement Agreement, Defendant shall pay Three Hundred Thousand Dollars (\$300,000). Thereafter, Defendant shall make two (2) equal annual installment payments of One Hundred Fifty Thousand Dollars (\$150,000.00) with the first instalment payment being due 12 months after the initial Three Hundred Thousand (\$300,000.00) payment was made, the second payment of One Hundred Fifty Thousand Dollars (\$150,000.00) being due 24 months after the initial Three Hundred Thousand Dollar (\$300,000.00) payment was made. As such, the distribution shall be as follows:

- a. 20 days after the initial payment of Three Hundred Thousand Dollars (\$300,000), by the Defendants, the Claims Administrator shall distribute to each Authorized Claimant 50% of the total of their claim, shall distribute 50% of the approved attorneys' fees and cost, shall distribute 50% of the approved enhancement, shall distribute 50% of the approved administrative costs, and shall distribute 50% of the approved LWDA payment;
- b. 20 days after the initial payment of One Hundred Fifty Thousand Dollars (\$150,000.00), by the Defendants, the Claims Administrator shall distribute to each Authorized. Claimant 25% of the total of their claim, shall distribute 25% of the approved attorneys' fees and cost, shall distribute 25% of the approved enhancement, shall distribute 25% of the approved administrative costs, and shall distribute 25% of the approved LWDA payment;

- c. 20 days after the second payment of One Hundred. Fifty Thousand Dollars (\$150,000.00), by the Defendants, the Claims Administrator shall distribute to each Authorized Claimant 25% of the total of their claim, shall distribute 25% of the approved attorneys' fees and cost, shall distribute 25% of the approved enhancement, shall distribute 25% of the approved administrative costs, and shall distribute 25% of the approved LWDA payment.

*4 19. The one (1) Class Member who has submitted a valid and timely request to be excluded from the Settlement shall no longer be a member of the Class, shall not be bound by the terms of the Settlement, shall be barred, from participating in this Settlement, shall have no right to object to this Settlement, and shall receive no benefit from this Settlement. All Class Members who have not excluded themselves from the Settlement, and irrespective of whether a. Class Member(s) actually received notice of the Settlement and/or claim to have not received notice of the Settlement, have released their claims against Defendant as set forth in the Settlement Agreement All Class Members who have not objected to the Settlement, and irrespective of whether a Class Member(s) actually received notice of the Settlement and/or claim to have not received notice of the Settlement, are barred from prosecuting or pursuing any appeal of the Court's Order granting final approval to the Settlement.

20. The Court retains jurisdiction over the administration and effectuation of the Settlement including, but not limited to, the Ultimate disbursement to the participating Class Members, payment of attorneys' fees and costs, the Class Representative enhancement payment, and the claims administration expenses and other issues related to this settlement.

21. If the Settlement does not become final and effective in accordance with the terms of the Settlement Agreement, any and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

IT IS SO ORDERED.

Dated: 10-10-17

<<signature>>

Honorable Hon. Ann I. Jones

Los Angeles County Superior Court Judge

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2018 WL 2267367 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Mario GARRIDO, in his individual capacity, and on behalf of all others similarly situated, Plaintiff,
v.

AMERICAN AIR LIQUIDE, INC., a Texas Corporation; and Does 1-100, inclusive, Defendants.

Nos. BC485942, BC614586.
February 20, 2018.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Date: February 14, 2018

Time: 8:30 a.m.

Dept.: 307

I. BACKGROUND

This is a wage and hour class action lawsuit. On June 5, 2013, Plaintiff Mario Garrido filed this action on behalf of himself and all truck drivers employed by Defendant Air Liquide, Inc. Drivers are responsible for driving, operating pumps, and picking up and delivering cryogenics and other hazardous chemicals. (Complaint, ¶10.) Plaintiff contends that because of the rigorous schedule, drivers were not permitted to take their first 30 minute meal break on or before their fifth hour of work. (*Id.* at ¶12.) The complaint alleges failure to provide timely meal periods, failure to provide accurate itemized wage statements, failure to pay compensation upon separation of employment, and unfair business practices.

This litigation has a lengthy history, including an appeal of the trial court's decision denying Defendant's motion to compel arbitration, an order that was ultimately upheld in a published decision: *Garrido v. Air Liquide Industrial U.S. LP* (2015) 241 Cal.App.4th 833.

On March 22, 2016, Plaintiff Jesus Alvarez separately sued Defendant (*Alvarez v. Air Liquide Industrial U.S. Limited Partnership*, Case No. BC614586), alleging claims for failure to provide rest and meal breaks, failure to pay minimum wages, failure to provide itemized wage statements, failure to pay upon termination of employment, and unfair business practices. The two actions have been ordered related. In connection with this settlement, all parties have agreed to the filing of a consolidated complaint.

The proposed Consolidated Complaint sets forth the following causes of action: (1) Failure to Provide Mandated Timely Off-Duty Meal Breaks; (2) Failure to Provide Mandated Timely Off-Duty Rest Breaks; (3) Failure to Pay Minimum Wages; (4) Failure to Provide Accurate Itemized Wage Statements; (5) Failure to Pay Compensation Due Upon Separation of Employment; (6) Unfair/Unlawful/Fraudulent Business Practices; and (7) Claim for Recovery of Civil Penalty (PAGA). The only plaintiff in the proposed consolidated action is Mario Garrido.

Following mediation and continued negotiations thereafter, the parties entered into a Settlement Agreement. The Court granted Preliminary Approval of the Parties' *Joint Stipulation of Class Action Settlement* ("Settlement Agreement"), as modified by the *Addendum to Joint Stipulation of Class Action Settlement and Release*, on October 16, 2017. Now before the Court is the motion for final approval of the settlement agreement.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

The proposed settlement class is defined as, "all current and former employees of Defendant who worked as truck drivers from June 5, 2008 through the date of preliminary approval [October 16, 2017]." (Settlement Agreement, ¶7)

- The Parties stipulate to class certification for purposes of settlement only. (¶38)
- There are 231 putative settlement class members. (Declaration of Zachary Cooley, ¶2.)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- *2 • The Class Settlement Amount is \$4,000,000, non-reversionary. (¶13)
 - The Net Settlement Amount (\$2,605,573) is the above minus:
 - Up to \$1,333,333.33 (1/3) for attorney fees (¶17);
 - Up to \$25,000 for attorney costs (¶9);
 - Up to \$15,000 for a service award to the class representative (¶12);
 - Estimated \$13,594 for claims administration costs (¶4);
 - \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA (¶20); and
 - Defendant's share of payroll taxes (¶13).
- There is no claims process.
 - The response deadline is 45 days. Class members who receive re-mailed notice packets have 10 extra days to respond. (¶33)
 - Settlement payments will be calculated pursuant to ¶49 (as amended in the Addendum to Joint Stipulation of Class Action Settlement and Release and described in §II of the Supplemental Brief in Support of Preliminary Approval of Class Action Settlement): ([Individual Workweeks/Class Workweeks of Participating Class Members] x Net Settlement Amount.)
 - For tax purposes, payments will be allocated 1/3 wages, 1/3 penalties and 1/3 interest. (¶49.c)
 - Checks must be cashed within 180 days of issuance; thereafter, funds shall be distributed as follows: 25% to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund; and

75% to the State Treasury for deposit in the Equal Access Fund of the Judicial Branch. (¶59, as amended)

- The settlement administrator is Kurtzman Carson Consultants, LLC (“KCC”)- (¶3)
- Compliance with  Labor Code §2699(1)(2) is noted in the Supplemental Declaration of Jordan S. Esentein Re Supplemental Brief in Support of Preliminary Approval of Class Action Settlement.
- Upon the Effective Date, Plaintiff and all Participating Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to all of the Released Parties any and all Released Claims, whether known, unknown and/or suspected to exist. (¶65)
 - “Released Claims” means all claims, rights, demands, liabilities, and causes of action which were pled or could have been pled arising from, or related to, the same set of operative facts as set forth in the operative Complaints in the Actions and the Consolidated Complaint to be filed, including but not limited to: failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay compensation due at termination, unfair/fraudulent business practices, failure to pay minimum wages, and penalties under the Private Attorneys General Act. (¶29)
 - “Released Claims Period” is from June 5, 2008 to the date of Preliminary Approval [October 16, 2017]. (¶30)
 - “Released Parties” means Defendant and any of its former and present parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors (including but not limited to Air Liquide Industrial U.S. LP), successors (including but not limited to Airgas USA LLC), and assigns, as well as all of their past and present officers, directors, employees, partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal representatives, if any. (¶31)

*3 • Plaintiff will provide a general release and CC§ 1542 waiver. (¶66)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” ( Cal. Rules of Court, rule 3.769(g).) “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” ( Cal. Rules of Court, rule 3.769(h).)

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the

negotiating parties.” (See  *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”) [Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”] [internal quotation marks omitted].)

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” (See  *Wershba, supra*, 91 Cal.App.4th at pg. 245 [citing  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. (“*Dunk*”)].) Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” (See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” ( *Id.* at 128.) “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” ( *Wershba supra*, 91 Cal.App.4th at pg. 245.)

*4 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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, supra*, 91 Cal.App.4th at pg. 250.)

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. On March 6, 2017, the parties attended a full day of mediation before the Honorable Judge Edward Infante in San Francisco, California. Although the parties were unable to resolve the matter at mediation, they continued settlement efforts. Both parties ultimately accepted the mediator's proposal, which resulted in the instant settlement. (Esensten Declaration ISO Preliminary Approval, ¶¶ 16, 17.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. Counsel has undertaken extensive discovery efforts over the more than 5.5 years this litigation has been pending. (Esensten Decl. ISO Preliminary Approval, ¶8.) Counsel interviewed multiple drivers and obtained documents about Defendant's policies. (*Ibid.*) Counsel propounded formal discovery (*Id.* at ¶15), and the parties engaged in informal discovery as well (*Id.* at ¶18.) Defendant produced thousands of pages of documents, which Class Counsel spent time reviewing and analyzing. (*Ibid.*)

c. *Is counsel experienced in similar litigation?* Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Esensten Declaration ISO Preliminary Approval, ¶¶3-7; Declaration of Michael A. Gould ISO Preliminary Approval, ¶¶ 16-18.)

d. *What percentage of the class has objected?* Zero. (Cooley Decl., ¶7.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

2. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiff's case.* “The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement.” (Kullar, supra, 168 Cal.App.4th at pg. 130.)

The main claim in this litigation is that Defendant assigned routes that left no time for drivers to take meal or rest breaks. Based on data provided in discovery, Defendant's full exposure on these claims was calculated at \$15,052,862.20. However, this amount was greatly discounted to account for the risks of continued litigation. One such risk concerns a bill currently pending before the House Transportation and Infrastructure Committee, which would prevent states from requiring employers of truck drivers to comply with state meal and rest break laws. Accordingly, the settlement value of these claims was considered to be \$5,017,620.73.

The minimum wage claim was valued at a maximum of \$866,767.50. This value was discounted to \$216,691.87 to account for risks and potential defenses. Damage exposure on the wage statement claim was estimated to have a maximum of \$1,295,200 and a realistic value of \$459,040. Waiting time penalties were assessed a maximum value of \$1,140,990 and a settlement value of \$570,495. Counsel's best estimate of realistic exposure on PAGA was that the claim had minimal value at best. (Gould Declaration ISO Preliminary Approval, ¶14.A.)

The \$4,000,000 non-reversionary settlement represents recovery of approximately 66% of the realistic value of the class claims, which is well within the ballpark of reasonableness, b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. a. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. (Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213,1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

*5 b. *Amount offered in settlement.* As indicated above, Defendants have agreed to settle for the non-reversionary sum of \$4,000,000. Assuming the Court approves all of the maximum requested deductions, approximately \$2,606,306.40 will be available for automatic distribution to participating class members. The average settlement share will be approximately **\$11,381.25**. [\$2,606,306.40 net ÷ 229 participating class members = \$11,381.25]. The highest Settlement Share to be paid is approximately \$29,997.95. (Cooley Decl., ¶8)

c. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

d. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases. Class Counsel believes that the settlement is fair, reasonable and adequate for each participating Class Member. (Declaration of Michael Gould ISO Preliminary Approval, ¶10.)

e. *Presence of a governmental participant.* This factor is not applicable here.

f. *Reaction of the class members to the proposed settlement.*

Number of class members:	231
Number of notices mailed:	231
Number of undeliverable notices:	3
Number of opt-outs:	2
Number of objections:	0
Number of participating class members:	229

(Cooley Decl., ¶¶2-7.)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.” The Court finds that the notice was adequate and conforms to due process requirements.

D. ATTORNEY FEES AND COSTS

Class Counsel requests \$1,333,333.33 for attorney fees and \$24,266.27 for costs. (Memorandum of Points and Authorities ISO Motion for Incentive Award, Attorneys' Fees, and Costs (“Motion ISO Fees”) at 7:4 and 12:23-26.)

In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084,1095-96.) A percentage calculation is permitted in common fund cases. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

In the instant case, fees are sought pursuant to the percentage method. (Declaration of Jordan Esensten ISO Final Approval, ¶34.) The \$1,333,333.33 fee request is 1/3 of the \$4,000,000 gross settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

Here, the \$1,333,333.33 fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request, and no one objected. (See Cooley Decl., ¶7 and Exhibit A thereto.) Accordingly, the Court awards fees in the amount of **\$1,333,333.33**.

Class Counsel have agreed to split the attorney's fees in this case as follows: 80% to Esensten Law and 20% to Gould & Associates. Class Representative Garrido signed a written fee split agreement authorizing this fee arrangement. (Gould Decl. ISO Preliminary Approval, ¶22.) A copy was filed December 14, 2018.

As for costs, Class Counsel requests \$24,266.67. (Motion ISO Fees at 12:23-28.) This is slightly less than the \$25,000 cap provided in the settlement agreement. (¶9.) To date, Class Counsel have incurred actual costs in the amount of \$24,266.67. (Esensten Decl. ISO Final Approval, ¶32 [\$15,916.27]; Declaration of Michael Gould ISO Final Approval, ¶22 [\$8,350] The

costs to date include mediation fees (\$3,725), legal research (\$2,962.80), photocopies (\$2,745.78), and filing fees (\$2,215.00). (Esensten Decl. ISO Final Approval, ¶32.)

*6 The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, costs of \$24,266.67 are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785,806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380,1394-1395 [“Criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (Citations.)”].)

Here, Class Representative Mario Garrido requests an incentive award of **\$15,000**. (Declaration of Mario Garrido, ¶7.)

Mr. Garrido was employed by Defendant Airgas, as a driver, from approximately June 15, 2009 to January 31, 2011, at Defendant's Santa Fe Springs facility. (*Id.* at ¶2.) He initially contacted Class Counsel, Esensten Law, to discuss a potential lawsuit in February of 2011. (*Id.* at ¶4.) Since 2011, Mr. Garrido estimates he has devoted approximately 110 hours to his duties as class representative in this action. (*Ibid.*) These hours include, but are not limited to, the following: approximately 25 hours on the phone with Class Counsel, and many more hours communicating with Class Counsel via email; providing documents to Class Counsel, which helped them defeat Defendant's motion to compel arbitration; reviewing and providing input as to his declaration filed in opposition to the motion to compel arbitration (the declaration was heavily cited by both the trial court and the court of appeal in their decisions to deny arbitration); providing information which allowed counsel to effectively formulate their discovery requests; reviewing and analyzing documents provided by Defendant; identifying and communicating with potential witnesses and class members; and reviewing the terms of the settlement agreement. (*Ibid.*)

Plaintiff Garrido further asserts that serving as Named Plaintiff in this action has caused him financial harm. (*Id.* at ¶5.) After the filing of this lawsuit in 2012, Mr. Garrido went in search of new employment as a truck driver. During at least three interviews, he was specifically questioned about his involvement in this case. After at least 20 interviews, over a period of 6 months, Mr. Garrido was forced to accept a job at a temporary agency. (*Ibid.*)

In light of the above, as well as the significant benefits obtained on behalf of the class, **\$15,000** appears to be a reasonable inducement for Mr. Garrido's participation in the case. Accordingly, an Incentive Award in the amount requested is approved.

F. CLAIMS ADMINISTRATION COSTS

*7 Claims administrator, KCC Class Action Services requests **\$13,594** in compensation for its work in administrating this case. (Cooley Decl., ¶9.) At the time of preliminary approval, costs for settlement administration were estimated to be \$13,594. (Settlement Agreement, ¶4.) This amount was also disclosed to class members and deemed unobjectionable. (See Cooley Decl., ¶7 Exhibit A thereto.)

Accordingly, claims administration costs are approved in the amount of **\$13,594**.

III. CONCLUSION AND ORDER

A. RULING

The Court hereby:

(1) Grants class certification for purposes of settlement;

(2) Grants final approval of the settlement as fair, adequate, and reasonable;

(3) Awards \$1,333,333.33 in attorney fees to Class Counsel, Esensten Law and Gould & Associates;

(4) Awards \$24,266.27 in litigation costs to Class Counsel;

(5) Awards \$15,000 as a Class Representative Service Award to Mario Garrido;

(6) Awards \$13,594 in claims administration costs to KCC Class Action Services, LLC;

(7) Approves payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA;

(8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, release language, and names of the two Settlement Class Members who opted out by February 23, 2018;

(9) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(10) A Non-Appeal Case Review re: Final Report re: Distribution of Settlement Funds is set for December 3, 2018 at 8:30 a.m. Final Report is to be filed by November 26, 2018.

Dated: 2/20/18

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2010 WL 6620248 (Cal.Superior) (Trial Order)
Superior Court of California,
Central District.
Los Angeles County

Michael R. GORMAN, individually, and on behalf of other members of the general public similarly situated, Plaintiff,

v.

IDEXX LABORATORIES, INC., a Delaware corporation, and Does 1 through 100, inclusive, Defendants.

No. BC413933.
September 14, 2010.

**Order Granting Final Approval of Class Action Settlement and Dismissing Class
Action with Prejudice; Judgment (“Order of Final Approval and Judgment”)**

Ronald H. Bae, Esq. SBN 186826, Joseph Cho, Esq. SBN 198844, Aequitas Law Group, 2029 Century Park East, 14th Floor, Los Angeles, CA 90067, Telephone: (310) 867-2744, Facsimile: (310) 988-2745, Attorneys for Plaintiff Michael R. Gorman.

James P. Carter, Esq. SBN 150052, Paul, Hastings, Janofsky & Walker LLP, 695 Town Center Drive, 17th Floor, Costa Mesa, CA 92626-1924, Telephone: (714) 668-6200, Facsimile: (714) 979-1921, Attorneys for Defendant, Idexx Laboratories, Inc.

Hon. Ruth Ann Kwan.

Dept. 72

CLASS ACTION

Complaint Filed: June 24, 2009

Trial Date: None Set

Date: September 14, 2010

Time: 8:30 A.M.

On December 29, 2009, Plaintiff MICHAEL GORMAN (“Plaintiff”), individually and on behalf of the Settlement Class, and Defendant IDEXX LABORATORIES, INC. (“Defendant”) (collectively, the “Parties”) entered into a class action settlement (the “Settlement”), the terms and conditions of which are set forth in the parties' Stipulation of Settlement and Release (the “Stipulation”). This matter having come before the Court on September 14, 2010, for the Final Approval Hearing on the Parties' Joint Motion for Final Approval of Class Action Settlement and Plaintiff's Unopposed Application for Award of Attorneys' Fees and Costs, Claims' Administration Fees, and Class Representative's Enhancement, due and adequate notice having been given to Class Members as required by the Court's Preliminary Approval Order dated May 27, 2010, and the Court, having considered all the papers filed and proceedings herein, having received no objections to the Settlement, having determined that the Settlement is fair, adequate and reasonable, and otherwise being fully informed, hereby ORDERS as follows:

1. All terms used herein shall have the same meaning as given them in the Stipulation.

2. The Court has jurisdiction over the subject matter of this proceeding and over all Parties to this proceeding, including all Class Members.
3. The Court hereby unconditionally certifies the Settlement Class, as set forth in the Stipulation, for purposes of this Settlement only.
4. Distribution of the Notice, Claim Form, and Request for Exclusion Form directed to the Class Members as set forth in the May 27, 2010 Order granting preliminary approval has been completed in conformity with the Preliminary Approval Order, including individual notice to all Class Members who could be identified from Defendant's records and reasonable effort, and constituted the best notice practicable under the circumstances. The Notice provided due and adequate notice of the proceedings and of the matters set forth in the Preliminary Approval Order, including the proposed Settlement as set forth in the Stipulation. The Notice provided adequate and appropriate notice to all persons entitled to such notice, and therefore fully satisfied the requirements of due process. All Class Members and all Released Claims are covered by and included within the Settlement and within this Final Approval Order.
5. The Court finds that the Settlement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations and the Settlement was entered into in good faith. The Court further finds that the Settlement is fair, reasonable, and adequate, and that Plaintiff has satisfied the standards and applicable requirements for final approval of this class action Settlement under California law.
6. The Court hereby approves the Settlement as set forth in the Stipulation and directs the parties to effectuate the Settlement according to the terms set forth in the Stipulation. In granting final approval of the Stipulation, the Court considered the nature of the claims, the amounts and kinds of benefits paid in settlement, the allocation of settlement proceeds among the Settlement Class Members, and the fact that a settlement represents a compromise of the parties' respective positions rather than the result of a finding of liability at trial. Additionally, the Court finds that the terms of the Stipulation have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member.
7. Neither the Settlement nor any of the terms set forth in the Stipulation constitute an admission by Defendant, or any of the other Released Parties, of liability to the named Plaintiff or any Class Member, nor does this Final Approval Order constitute a finding by the Court of the validity of any of the claims alleged in the Lawsuit, or of any liability of Defendant or any of the other Released Parties.
8. The Court hereby finds the \$300,000 Maximum Payment provided for in the Stipulation to be fair, reasonable and adequate.
9. The Court hereby confirms Ronald H. Bae and Joseph Cho of Aequitas Law Group as Class Counsel.
10. Pursuant to the terms of the Stipulation, and the authorities, evidence, and argument set forth in Class Counsel's application, an award of attorneys' fees in the amount of \$100,000.00 and for costs and expenses in the amount of \$5,000, as final payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel is hereby granted. The Court finds that Class Counsel's request falls within the range of reasonableness and that the result achieved justifies the award. The payment of fees and costs to Class Counsel shall be made in accordance with the terms of the Stipulation.
11. The Court also hereby approves Plaintiff Michael Gorman as Class Representative and orders payment to Plaintiff for his service as Class Representative the sum of \$2,500.00. The payment shall be made in accordance with the terms of the Stipulation.
12. The Court approves the settlement of the PAGA claims alleged in the Lawsuit and the allocation of \$2,000 to the California Labor and Workforce Development Agency to settle those claims.

13. The Court further approves the payment of \$5,600 to Simpluris for the costs of administering the Settlement as set forth in the Stipulation. The payment to Simpluris shall be made in accordance with the terms of the Stipulation.

14. The Court hereby finds the Net Settlement Proceeds calculation provided in the Stipulation to be fair, reasonable and adequate. The Court hereby authorizes and directs the Settlement Administrator to calculate and pay the Individual Payment Amounts of all Settlement Class Members who submitted accepted claims in accordance with the terms of the Stipulation. The Court further approves the reversion of the unclaimed residual to Defendant as provided in the Stipulation.

15. The Court further orders, adjudges and decrees that the Settlement Class Members (other than those who submitted an accepted request for exclusion) and each of them, fully and finally release and forever discharge the Class Members' Released Parties (as that term is defined in the Stipulation), and each of them, of and from any and all wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, related in any way to unpaid wages, untimely payment of wages, unreimbursed expenses, unauthorized or unlawful deductions from wages, non-compliant meal and rest periods, and inaccurate wage statements arising during the period from May 15, 2005 to May 27, 2010, the date on which the Court gave preliminary approval of the settlement ("Class Members' Released Period"), including, without limitation, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, civil or statutory penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, for the following categories of allegations as set forth in the Complaint: (a) all claims for failure to pay wages and to timely pay wages, including overtime premium pay; (b) all claims for failure to reimburse necessary business expenses, including payments for mileage and tools and equipment; (c) all claims for unauthorized or unlawful deductions from wages; (d) all claims for recordkeeping or pay stub violations; (e) all claims for non-compliant meal and rest periods; and (f) all claims for waiting lime penalties or any other civil or statutory penalties, including those recoverable under the PAG Act ("Class Members' Released Claims"). The Class Members' Released Claims include, without limitation, claims meeting the above definition(s) under any and all applicable statutes, including, without limitation,  California Labor Code Sections 96 through 98.2 *et seq.*, the California Payment of Wages Law, and in particular, California Labor Code §§ 200 *et seq.* , including  California Labor Code §§ 200 through 243, and  §§ 203 and 218 and  218.5 in particular, California Labor Code §§ 300 *et seq.*; California Labor Code §§ 400 *et seq.* ; California Working Hours Law, California Labor Code §§ 500 *et seq.* ,  California Labor Code § 1194; California Labor Code §§ 2802 and 2804; California Labor Code § 2865; the California Unfair Competition Act, and in particular, California Business & Professions Code §§ 17200 *et seq.* ; the PAG Act, codified at California Labor Code §§ 2698 through  2699; California Code of Civil Procedure § 1021.5; and any other provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in all of their iterations.

16. It is further ordered, adjudged and decreed that the Settlement Class Members (other than those who submitted an accepted request for exclusion), and each of them, waive all rights and benefits afforded by Section 1542 of the Civil Code of the State of California. The waiver and release is intended to include and does include in its effect, not only all claims that are known to the Settlement Class Members, and each of them, but also any and all claims that the Settlement Class Members, and each of them, do not know or suspect to exist in their favor at the time of the Final Approval Hearing that are asserted, attempted to be asserted, relate to or arise out of the lawsuit.

17. It is further ordered, adjudged and decreed that the complaint, including all amendments thereto ("Complaint"), is dismissed on the merits and with prejudice, permanently barring all Settlement Class Members (other than those who submitted an accepted request for exclusion) from prosecuting against each of the defendants and their present or former agents, servants, attorneys, subsidiaries, affiliates, stockholders, heirs, executors, representatives, successors, or assigns, any individual or class claims which were asserted in this action, including without limitation any claims arising out of the acts, facts, transactions, occurrences, representations, or omissions set forth in the Complaint.

18. The Court shall have and retain continuing jurisdiction over this action and the parties and Settlement Class Members (other than those who submitted an accepted request for exclusion), including after the entry of this Order, to the fullest extent necessary to interpret, enforce and effectuate the terms and intent of the Stipulation and this Order.

IT IS SO ORDERED.

Dated: 9/14/2010

<<signature>>

JUDGE OF THE SUPERIOR COURT

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2017 WL 6812900 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Grace V. GREEN; individually, and on behalf of other members of the general public similarly situated,
and on behalf of aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"), Plaintiff,

v.

EXCEL RESIDENTIAL SERVICES, INC., a California corporation; and Does 1 through 11, inclusive, Defendants.

No. BC474784.
October 20, 2017.

Order Granting Final Approval

R. Rex Parris (SBN 96567), Kitty K. Szeto (SBN 258136), John M Bickford (SBN 280929), Eric N. Wilson (SBN 291815), Parris Law Firm, 43364 10th Street West, Lancaster, California 93534, Telephone: (661) 949-2595, Facsimile: (661) 949-7524; Edwin Aiwarzian (SBN 232943), Lawyers for Justice, PC, 410 West Arden Avenue, Suite 203, Glendale, California 91203, Telephone: (818) 265-1020, Facsimile: (818) 265-1021, for plaintiff, the Certified Class, and the Aggrieved Employees.

Barbara M. Scheper, Judge.

*1 Date: October 20, 2017

Time: 8:30 a.m.

Dept.: 30

Complaint Filed: December 6, 2011

Trial Date: November 20, 2017

Plaintiff's Motion for Final Approval of Class Action Settlement was filed with the Court on August 21, 2017 and came on hearing on September 20, 2017 at approximately 8:30 a.m. The Court has considered the Parties' Stipulated Class Action Settlement ("the Agreement") and supporting Exhibits, the unopposed Motion for Final Approval of Class Action Settlement, as well as the Memorandum of Points and Authorities, and declarations in support thereof. Having heard and considered the papers and arguments presented, and good cause appearing, the court hereby enters judgment as follows:

1. This Order incorporates by reference the definitions in the Agreement.
2. The Court finds the settlement to be fair, adequate, and reasonable. Specifically, the Court grants final approval over:
 - a. The \$800,000 all-in, non-reversionary class action settlement as set forth in the Parties' Stipulated Class Action Settlement ("Settlement Agreement") attached as Exhibit "1" to the Declaration for John M. Bickford filed concurrently with Plaintiff's Motion for Final Approval of Class Action Settlement;
 - b. Class Counsel's request for attorneys' fees in the amount of \$280,000.00;
 - c. Class Counsel's request for reimbursement of litigation costs and expenses in an amount of \$127,930.05 (\$121,802.55 to the Parris Law Firm and \$6,127.50 to Lawyers for Justice);

- d. Settlement administration costs in the amount of \$6,500.00;
 - e. A \$10,000.00 enhancement award to Plaintiff Grace V. Green; and
 - f. \$10,000.00 to the settlement of Plaintiff's PAGA claim, of which 75% (\$7,500.00) will be allocated to the Labor and Workforce Development Agency and 25% (\$2,500.00) will be allocated to the Class Members.
3. The Court further finds that the settlement has been reached through arm's length, non-collusive bargaining.
4. The Court directs the Parties to effectuate the settlement's terms as set forth in the Agreement.
5. Each Class Member has released the Released Claims.
6. The Class Representative had released the Released Claims of Class Representative.
7. Defendant is ordered to distribute the first installment of \$400,000.00 to the Claims Administrator within 30 days of this Order. Defendant is ordered to distribute the second installment of \$400,000.00 to the Claims Administrator within one year after Defendant distributes the first installment.
8. Each installment will be distributed as follows:
- a. Class Counsel's attorneys' fees in the amount of \$140,000.00.
 - b. Class Counsel's litigation costs and expenses in an amount of \$63,965,025 (\$60,901,275 to the Parris Law Firm and \$3,063.75 to Lawyers *for* Justice).
- c. Settlement administration costs in the amount of \$3,250.00.
- d. Plaintiff's enhancement award in the amount of \$5,000.00.
- e. \$5,000.00 to the settlement of Plaintiff's PAGA claim, of which 75% (\$3,750.00) will be allocated to the Labor and Workforce Development Agency and 25% (\$1,250.00) will be allocated to the Class Members.
 - *2 f. The remainder to the Class Members. Each Class Member will receive half of their pro rata settlement payment as calculated in paragraph 9.
9. Each Qualified Class Member's individual gross payment shall be calculated as follows: the Claims Administrator will calculate pro rata settlement payments to Qualified Class Members based on each Qualified Class Member's pro-rata share of the Net Maximum Amount. Each Qualified Class Member's pro-rata share of the Net Maximum Amount will be based on the number of weeks the Qualified Class Member worked as a Property Manager and did not earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment during the Class Period. After deducting attorneys' fees to Class Counsel, litigation costs to Class Counsel, Claims Administrator costs, the PAGA Payment, the Class Representative's Service Enhancement, and payroll taxes, the remainder of the Maximum Payment Amount will be allocated to Qualified Class Members as the "Net Maximum Amount." Each Qualified Class Member's pro-rata share shall be calculated by dividing the Qualified Class Member's number of weeks worked as a Property Manager and did not earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment during the Class Period by the total weeks worked by

all Property Managers who did not earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment during the Class Period multiplied by the Net Maximum Amount.

10. Following the distribution of each of the two installment payments, the Claims Administrator is ordered to provide counsel for the Settling Parties with a written confirmation of this distribution via e-mail.

11. Upon receipt of the confirmation of the second installment payment, Class Counsel will file a notice of acknowledgment of satisfaction of judgment with the Court on behalf of the Settlement Class.

12. Any amounts associated with settlement checks to Qualified Class Members that remain uncashed for 180 days after issuance, shall escheat to the California State Controller's Office Unclaimed Properly Fund in the name of the Qualified Class Member.

13. The Court hereby retains continuing jurisdiction over the enforcement and administration of this class action settlement pursuant to  California Rules of Court, Rule 3.769(h) and Code of Civil Procedure section 664.6

IT IS SO ORDERED.

Dated: *OCT 20 2017*

<<signature>>

Honorable Barbara M. Scheper

Los Angeles Superior Court

Plaintiffs counsel to give notice.

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2018 WL 4278937 (Cal.Super.) (Trial Order)

Superior Court of California.

Los Angeles County

Marisa Lopez HALCOMB, an individual, Amanda Alvarado, an individual,
KATHRYN HOYLE, an individual, and all others similarly situated, Plaintiffs,

v.

AUTISM RESPONSE TEAM INC., a California corporation, Behavior Respite in Action, Inc., a California corporation;
California Psychare, Inc., a California corporation; Respite Works Inc., and Does 1 through 50, inclusive, Defendants.,

No. BC604363.

July 18, 2018.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Date: July 18, 2018

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiffs Marisa Lopez Halcomb, Amanda Alvarado, and Kathryn Hoyle bring this wage and hour action against their former employers, Defendants, Autism Response Team, Inc., Behavior Respite In Action, Inc., California Psychare, Inc., and Respite Works, Inc., providers of in-home services to individuals with special needs and their families. The crux of the case is their contention that Defendants jointly acted as one employer and in so doing failed to properly pay overtime and other wages due hourly employees. For their part, defendants contend that they are separate employers and that the employees are “personal attendants,” exempt from certain overtime and other requirements under applicable Wage Orders.

Plaintiffs filed the action on December 16, 2015. The operative Second Amended Complaint alleges the following causes of action: (1) Failure to Pay Overtime; (2) Failure to Pay Compensation for All Hours Worked; (3) Failure to Provide Meal Breaks; (4) Failure to Provide Rest Breaks; (5) Failure to Pay Travel Time Wages; (6) Failure to Pay Split Shift Wages; (7) Waiting Time Penalties; (8) Failure to Reimburse Business Expenses; (9) Wage Statement Violations; (10) Unfair Competition; (11) Declaratory Relief; and (12) PAGA.

On August 31, 2017, after exchanging formal and informal discovery, the parties attended mediation with Steven Serratore, Esq. At the conclusion of the mediation, the parties accepted a mediator's proposal. Subsequently, the parties executed a long form agreement, entitled *Joint Stipulation of Class Action Settlement and Release* (“Settlement Agreement”).

Following supplemental briefing and revisions to the Settlement Agreement, the Court granted preliminary approval to the Amended Joint Stipulation of Class Action Settlement (“Amended Settlement Agreement”) on February 26, 2018.

Now before the Court is the motion for final approval of the settlement.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

“Settlement Class Member(s)” or “Settlement Class” means all current and former employees of one or more of the Defendants who provided or will provide in-home services to Defendants' consumers in California, as described in the operative complaint from December 16, 2011 to the Preliminary Approval Date. The Settlement Class will not include any owners, officers, directors, regional managers, office managers, department managers, supervisors, office staff employees, administrative personnel, or support staff employees. The Settlement Class will not include any Class Members for any periods during which such individuals were employed by one or more of the Defendants outside of California. (¶1.32)

The Parties agree to stipulate to class action certification only for purposes of the Settlement. (12.1)

Class Period is from December 16, 2011 through and including the Preliminary Approval Date. (¶1.6)

There are 7,665 Class Members. (Declaration of Alan Garrido (“Garrido Decl.”), ¶10.)

B. TERMS OF SETTLEMENT AGREEMENT

*2 The essential terms are as follows:

- The Maximum Settlement Amount (“MSA”) is **\$2,750,000**, non-reversionary, (¶1.17)
- The Net Settlement Amount (**\$1,721,333.34**) is the MSA minus:
 - Up to **\$916,666.66** (33 and 1/3%) for attorney fees (¶3.14);
 - Up to **\$30,000** for attorney costs (*Ibid.*);
 - Up to **\$30,000** for service awards to the three class representatives (\$10,000 x 3) (¶1.7);
 - Up to **\$40,000** for claims administration costs (¶3.17); and
 - **\$12,000** (75% of **\$16,000** PAGA penalty) to the LWDA (¶3.15).
- Defendants will pay employer taxes in addition to the MSA. (¶3.2)
 - There is no claims process. Class members will receive a settlement payment unless they opt-out. (¶3.11)
 - The Response Deadline to submit opt-outs and objections is 45 days from the initial mailing of the Notice Packets. (11.28, as amended) Class Members who receive re-mailed Notice Packets will have 14 calendar days thereafter, or until the Response Deadline has expired, whichever is later, to submit opt-outs or objections. (¶3.4.4)
 - Defendant has the right to rescind if opt-outs exceed 3% of the settlement class. (13.16)
 - The Settlement Class Members' pro-rata shares will be calculated by dividing each Settlement Class Members' Gross Compensation by the total sum of all participating Settlement Class Members' Gross Compensation, to yield a percentage value for each Settlement Class Members' share of the Settlement

(“Individual Share Percentage”). Each Settlement Class Members' Individual Share Percentage will be multiplied by the Net Settlement Amount to determine the distribution, prior to legal deductions, for each Settlement Class Member (“Individual Settlement Payment”). (§3.11)

- For tax purposes, payments to class members will be allocated: 50% wages and 50% non wage claims. (§3.10)

- A Settlement Class Member's act of tendering the Individual Settlement Payment for payment shall operate as, and be deemed to express, the Settlement Class Member's intent to opt in, join, settle, and fully release and discharge all of the Released Claims, including any claims the Settlement Class Member may have under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. Settlement checks will contain an advisement that cashing of the checks signifies the class members' intent to opt-in to the release of federal claims. (§3.10, as amended.)

- Any checks issued by the Claims Administrator to Participating Class Members will be negotiable for 180 calendar days from issuance. (§3.10)

- The Settlement Agreement provides that any unclaimed funds resulting from the failure to timely cash settlement checks, plus any accrued interest not otherwise distributed, shall be transmitted as follows: 25% to the Trial Court Improvement and Modernization Fund; 25% to the Equal Access Fund of the Judicial Branch; and 50% to the Employment Rights Project of Bet Tzedek. (§§3.10.1-3.10.4, as amended.). This provision fails to comply with Cal. Code of Civ. Pro. § 384, as amended effective June 27, 2018. Accordingly, and as discussed at the final approval hearing the settlement is approved conditioned upon 100% of any unclaimed funds being paid to the Employment Rights Project of Bet Tzedek.

***3** • The settlement administrator is CPT Group, Inc. (§1.31)

- *Scope of Release:* As of the Effective Date, all Settlement Class Members who do not opt out, will release the Released Parties from the Released Claims for the period from the beginning of the Class Period to the date of the Court's Order of Preliminary Approval of the Settlement. (§3.1)

- “Released Claims” means any and all federal and California state law wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising during the period from or related to any and all claims that were asserted or could have been asserted with regard to the Class Period and based on the facts alleged in the Lawsuit, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, reimbursements, damages, unpaid costs, penalties (including penalties under the PAGA), remedies (including any available under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. (§1.25)

- “Released Parties” means Autism Response Team, Inc., Behavior Respite In Action, Inc., California Psychcare, Inc. and Respite Works, Inc., and all of their respective parent companies, subsidiaries, affiliates, shareholders, members, employees, officers, directors, agents (including, without limitation, any insurers, reinsurers, attorneys and past, present or future officers, directors and employees), predecessors, successors, and assigns. (§1.26)

- Class Representatives will also provide a general release and § 1542 waiver. (§3.13)

- Settlement checks will contain an advisement that cashing of the checks signifies the class members' intent to opt-in to the release of federal claims. (§3.10, as amended.)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” (Cal. Rules of Court, rule 3.769(h).)

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”) [Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”] [internal quotation marks omitted].)

*4 “The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” (See *Wershba, supra*, 91 Cal.App.4th at pg. 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. (“*Dun*”)].) Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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, supra*, 91 Cal.App.4th at pg. 250.)

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. In May of 2017, the parties agreed to participate in private mediation with Steven Serratore, Esq. (Declaration of Brett Markson ISO Preliminary Approval, ¶17.) The mediation took place on August 31, 2017. After a full day of negotiation, Mr. Serratore presented the parties with a mediator's proposal. The parties accepted the proposal and a conditional settlement was reached that evening and memorialized with a signed Memorandum of Understanding. (*Id.* at ¶19.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. Each Plaintiff propounded sets of separate written discovery on each Defendant on all topics at issue. Each Defendant produced records in response. In addition, Plaintiffs took depositions of four PMK witnesses regarding Defendants' payroll practices, as well as the deposition of Defendants' Director of Operations. (*Id.* at ¶13.) Beyond formal discovery, Plaintiffs' counsel conducted surveys and interviews of hundreds of putative class members after Defendant produced a random list of 400 putative class members. Concurrent therewith, Plaintiffs' counsel collected dozens of putative Class Member declarations to obtain evidence bolstering Plaintiffs' contentions. (*Id.* at ¶15.)

c. *Is counsel experienced in similar litigation?* Yes. Class Counsel has prior experience in wage and hour class action litigation. (*Id.* at ¶¶ 28-33.)

d. *What percentage of the class has objected?* Zero. (Garrido Decl., ¶12.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

2. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiff's case.* “The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement.” (Kullar, *supra*, 168 Cal.App. 4th at pg. 130.)

Class Counsel worked with an outside economist who used a 12,000 page sampling of payroll data provided by Defendant, as well as statistical information extracted from a survey of hundreds of Class members to project the values of the claims. (Declaration of Brad Kane ISO Preliminary Approval, ¶4.) These estimated claim values are summarized in the table below:

*5 Violation	Maximum Exposure
Regular Rate of Pay	\$3,767,254.92
Overtime	\$2,618,375.76
Meal Breaks	\$2,374,736.00
Rest Breaks	\$2,951,457.60
Unreimbursed Business Expenses	\$1,332,760.00
Total	\$13,044,584.28

(Supplemental Declaration of Brett Markson ISO Preliminary Approval, ¶7.) As discussed at the final approval hearing this estimate was based on the number of class members then estimated by Defendants (i.e. approximately 6200).

While Plaintiffs believe they have a strong case on the merits as to the critical misclassification issue and joint employer issue, Defendants also believe that they have strong arguments that the Direct Staff employees were properly classified as exempt under the personal attendants exemption. Given the dearth of legal authority as to what it means to be “recognized in the health care industry” under IWC Wage Order 15 and the lack of a clear definition in the Wage Order itself, there is significant uncertainty whether Plaintiffs would prevail on this core issue. If Defendants were to defeat Plaintiffs on the misclassification issue, virtually all of Plaintiffs' claims, other than expense reimbursement claim, would be eliminated, leaving a potential recovery of about \$2.5 million if Plaintiffs were to fully prevail on that claim after it is certified and reaches trial. That said, the expense reimbursement claim also presents liability challenges, and counsel assert that similar published cases seem to cut both ways on class certification. (*Id.* at ¶6.)

Counsel for plaintiffs assert that collectability of a larger settlement is uncertain. The Defendants were operated by a husband and wife team. The husband passed away earlier this year and there is now a significant management transition. It is asserted that a full trial victory after class certification could trigger bankruptcy filings and a verdict of questionable collectability. A large verdict is also predicted to lead to a shut down the business and put thousands of Class Members out of work. (*Id.* at ¶7.) The Court gives no weight to these assertions as there was no discovery on the financial condition of defendants.

Class Counsel obtained a gross settlement valued at \$2,750,000. This is 21.08% of the calculated estimated potential exposure of \$13,044,584.28. That number is likely higher (and the corresponding percentage of recovery lower), given the actual number of class members. Nonetheless, given the uncertainties in prevailing on the merits, the settlement is within the “ballpark of reasonableness.”

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. (🚩 *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

*6 d. *Amount offered in settlement.* As indicated above, the Maximum Settlement Amount is \$2,750,000. Assuming that the Court approves all of the maximum requested deductions, approximately \$1,728,594.31 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$225.72. [$\$1,728,594.31 \text{ Net} \div 7,658 \text{ class members} = \$225.72$]

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases. Class Counsel believes that the settlement is fair, reasonable and adequate for each participating Class Member. (Settlement Agreement, ¶2.4.)

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	7,665
Number of notices mailed:	7,665
Number of undeliverable notices:	73
Number of opt-outs:	7
Number of objections:	0
Number of participating class members:	7,658

(Garrido Decl., ¶¶9-14.)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.” The Court finds that the notice was adequate and conforms to due process requirements.

D. ATTORNEY FEES AND COSTS

Class Counsel request **\$916,666.66** for attorney fees and **\$22,739.03** for costs. (Markson Decl. ISO Final Approval ¶¶38, 48.)

In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (Laffitie v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

In the instant case, fees are sought pursuant to the percentage method. (Markson Decl. ISO Final Approval ¶38.) The \$916,666.66 fee request is 1/3 of the \$2,750,000.00 gross settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

Here, the \$916,666.66 fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request. There were no objections. (See Garrido Decl., ¶12 and Exhibit A thereto.) Accordingly, the Court awards fees in the amount of **\$916,666.66**.

Class Counsel has agreed to share awarded fees on the following basis: Markson Pico LLP (45%), Kane Law Firm (45%), and Nano Law Group (10%). The fee sharing arrangement was disclosed to all Named Plaintiffs in writing, and Named Plaintiffs provided their written approval thereof. (Markson Decl. ISO Final Approval ¶40.)

As for costs, Class Counsel requests \$22,739.03. (*Id.* at 48.) Markson Pico LLP's total costs were \$16,392.03, Kane Law Firm's costs were \$5,527.00, and Nano Law Group's costs were \$864.50. (*Ibid*; Look Decl. ISO Final ¶8.)

*7 Markson Pico LLP's costs reflect additional costs invoiced by the settlement administrator. (Markson Decl. ISO Final Approval ¶49.) CPT Group, Inc. originally bid this project on a \$40,000.00 flat fee basis based on the assumption of a projected class size of 6,500 persons. (Garrido Decl. ¶16.) By the time preliminary approval was granted, however, the size of the class grew and the final count came to 7,665 persons. (*Ibid.*) Given CPT Group's additional expenses, CPT Group provided Class Counsel with an additional invoice, adding \$4,500 to its original bid. (Markson Decl. ISO Final Approval ¶49.) Markson Pico LLP's costs bill reflects the additional settlement administration amount of \$4,500 accordingly. (*Ibid.*)

This is less than the \$30,000 cap provided in the settlement agreement. (¶3.14.)

The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, costs of **\$22,739.03** are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (Citations.)”].)

Here, Class Representatives Marisa Lopez Halcomb, Amanda Alvarado, and Kathryn Hoyle each request an incentive award of \$10,000 [**\$30,000 total**]. (Markson Decl. ISO Final Approval ¶50.)

Plaintiff Marisa Lopez-Halcomb worked for Defendant as a Behavior Therapist and Respite Provider during the class period. (Declaration of Marisa Lopez-Halcomb ¶3.) Ms. Halcomb's contributions to this litigation include numerous in-person and telephonic meetings with Class Counsel, responding to discovery, providing relevant documents, providing names of potential witnesses, preparing for and attending deposition. (*Id.* at ¶¶7-8-) In total, Ms. Halcomb estimates she has devoted approximately 56 hours to activities related to this litigation. (*Id.* at 17.)

Plaintiff Amanda Alvarado worked for Defendant as a Behavior Therapist or Behavioral Instructor during the class period (Declaration of Amanda Alvarado ¶3.) Ms. Alvarado's contributions to this litigation include numerous in-person and telephonic meetings with Class Counsel, responding to discovery, providing relevant documents, providing names of potential witnesses, preparing for and attending deposition. (*Id.* at ¶8.) In total, Ms. Alvarado estimates she has devoted approximately 50.5 hours to activities related to this litigation. (*Ibid.*)

Plaintiff Kathryn Hoyle worked for Defendant as a Behavior Therapist and Respite Provider during the class period (Declaration of Kathryn Hoyle ¶3.) Ms. Hoyle's contributions to this litigation include numerous in-person and telephonic meetings with Class Counsel, responding to discovery, providing relevant documents, providing names of potential witnesses, preparing for and attending deposition. (*Id.* at ¶8.) In total, Ms. Hoyle estimates she has devoted approximately 48 hours to activities related to this litigation. (*Ibid.*)

*8 Counsel represented at hearing that the class representatives were required to be prepared on more than one occasion for their depositions, as the testimony was rescheduled. They also represent that the named plaintiffs were particularly attentive to their responsibilities. Insofar as the Court can determine the class representatives did not participate in the settlement discussions. They also have not indicated that the action adversely impacted their employment or that they have other claims that are being released in the settlement beyond that pled on behalf of the class.

In light of the above, \$ 7,500.00 per class representative (**\$22,500 total**) appears to be reasonable inducement for Plaintiffs' participation in the case. Accordingly, Incentive Awards in that amount only are approved.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator, CPT Group, Inc. requests **\$44,500** in compensation for its work in administering this case. (Garrido Decl. ¶ 16.) At the time of preliminary approval, Class Counsel represented that costs for settlement administration *would not exceed* \$40,000. (Settlement Agreement ¶3.17.) The Notice to Class Members also indicated that costs would not exceed \$40,000. (Garrido Decl. at Ex. A.)

CPT Group, Inc. originally bid this project on a \$40,000 flat fee basis based on the assumption of a projected class size of 6,500 persons. (Garrido Decl. ¶ 16.) By the time preliminary approval was granted, however, the size of the class grew and the final count came to 7,665 persons. (*Ibid.*) Given CPT Group's additional expenses, CPT Group provided Class Counsel with an additional invoice, adding \$4,500 to its original bid. (Markson Decl. ISO Final Approval ¶ 49.) Class counsel has represented that its costs will cover the additional amount of requested administrative fees, without exceeding the maximum fees preliminarily approved. (*Ibid.*) Thus, the previously estimated amount to be paid to class members is not affected by this increase in administration costs.

Accordingly, claims administration costs are approved in the amount of **\$40,000**.

III. CONCLUSION AND ORDER

A. *RULING* The Court hereby:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards **\$916,666.66** in attorney fees to Class Counsel, Markson Pico LLP, Kane Law Firm, and Nano Law Group;
- (4) Awards **\$22,739.03** in litigation costs to Class Counsel;
- (5) Awards **\$22,500** as Class Representative Service Awards to Marisa Lopez Halcomb (\$7,500), Amanda Alvarado (\$7,500) and Kathryn Hoyle (\$7,500);
- (6) Awards \$740,000 in claims administration costs to CPT Group, Inc.;
- (7) Enters Judgment concurrently with this Order;
- (8) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds for June 14, 2019 at 8:30 a.m. Final Report is to be filed by June 4, 2019.

Dated: 7/18/18

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2017 WL 9342308 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Barry Van HAUWE, as an individual and on behalf of all others similarly situated, Plaintiff,

v.

TECHNICOLOR CREATIVE SERVICES USA, INC., a Delaware Corporation; and Does 2 through 100, Defendants.

No. BC584499.

July 27, 2017.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Dept.: 307

Date: July 27, 2017

Time: 10:00 a.m.

I. BACKGROUND

Plaintiff Barry Van Hauwe filed this class action lawsuit on behalf of himself and similarly situated employees of Defendant Technicolor Creative Services, USA, Inc. Defendant is involved in the production of digital video and audio services to companies in the United States, Europe and Asia, and the provision of internet streaming and DVD services. (Complaint, ¶4.) The complaint sets forth a variety of wage and hour claims including failure to pay minimum and overtime wages, rounding, failure to provide meal periods and rest breaks, and PAGA. Plaintiff initially filed a class action lawsuit (this one) and a separate PAGA action (BC588048). He subsequently amended this action to include the PAGA claim and dismissed the separate action.

Following discovery and mediation, the parties settled the matter. On February 2, 2017, the Court granted preliminary approval of the settlement. Now before the Court is Plaintiff's motion for final approval.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

The proposed settlement class is defined as, "All current and former non-exempt employees of Technicolor who worked in the State of California between June 9, 2011 through the date of preliminary approval, excepting only such non-exempt employees whose entire duration of employment from June 9, 2011 through the date of preliminary approval was covered by a collective bargaining agreement." (Settlement Agreement, ¶1)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms of the Settlement Agreement are as follows:

- The Gross Settlement Amount is \$3,750,000, non-reversionary. (¶¶ 3, 3.B)

- If the class size exceeds 1,455, Plaintiff may elect to revoke this agreement. (¶9.D.iii) Under the terms of the Settlement Agreement Defendant could preclude such revocation by increasing the Gross on a pro rata basis, which it did. (Ibid.) The class size is 1,477 and the Gross was increased to \$3,805,701.03. (Declaration of Abel Morales, ¶13.)]
- New Gross: \$3,805,701.03.
- The Net Settlement Amount (\$2,280,000) is the Gross minus the following:
 - Up to \$1,250,000 (1/3) for attorney fees;
 - Up to \$35,000 for attorney costs;
 - Up to \$10,000 for a service award to the sole class representative;
 - Estimated \$25,000 for claims administration costs;
 - \$150,000 (75% of \$200,000 PAGA penalty) to the LWDA; and
 - Defendant's share of payroll taxes.
- There is no claims process. The response deadline is 60 days. (¶¶ 9.D, 9.E)
- Settlement payments will be calculated pursuant to the following (¶4):
 - \$50,000 PAGA penalty going to aggrieved employees will be dividing pro rata among employees employed between June 9, 2014 and preliminary approval (PAGA subclass);
 - 5% of the Net will go to class members who worked a 4/10 workweek;
 - 15% will be considered Waiting Time penalties for those class members who separated employment during the class period;
 - 5% will be designated as Wage Statement amount and will be distributed pro rata based on workweeks;
 - 75% will be paid on a pro rata basis determined by workweeks.
- *2 • For tax purposes, payments will be allocated 1/3 to wages and 2/3 to penalties and interest. (¶4.D)
- Checks must be cashed within 180 days of issuance; thereafter, funds escheat. (¶4.E)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.”  CRC 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.”  CRC 3.769(h).

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See  *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” See *Wershba* at 245 (citing  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”  *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba* at 245.

*3 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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.’” *Id.* at 250.

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm’s-length bargaining?* Yes. Following extensive discovery, the parties mediated with Michael E. Dickstein for a full day. Negotiations were vigorous and, while not successful that day, the parties were ultimately able to reach settlement terms with the mediator’s continued assistance in the weeks following mediation. (Declaration of Hernaldo Baltodano, ¶ 14.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. The parties exchanged information in preparation for mediation. Defendant produced timekeeping and payroll records for the class, as well as all relevant policies. Plaintiff, with the assistance of a retained economist expert, analyzed all data and prepared damage models. Plaintiff also engaged in extensive legal research into the claims. (*Id.* at ¶¶ 13, 14.)

c. *Is counsel experienced in similar litigation?* Yes. (Id. at ¶¶2-9; Declaration of Paul K. Haines, ¶¶ 2-7; Declaration of Matthew K. Moen, ¶¶2-7; Declaration of Fletcher W. Schmidt, ¶¶ 2-6; Declaration of Tuvia Korobkin, ¶¶ 2-4.)

d. *What percentage of the class has objected?* Zero. (Morales Declaration, ¶9.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiffs' case.* “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Class Counsel's assessment of the class claims is that they have a realistic settlement value of \$4,406,712.10. (Baltodano Declaration ISO Preliminary Approval, ¶¶ 24 - 37.) This consists of \$131,241.04 for overtime stemming from Defendant's Alternative Work Schedule, \$37,773.45 for “short shifts,” \$58,935.72 for rounding, \$1,712,173.60 for meal period violations, \$1,105,211.10 for rest period violations, \$864,097.20 for waiting time penalties, \$266,400 on the wage statement claim, and \$230,880 on the PAGA claim. The non-reversionary \$3,375,000 settlement (now \$3,805,701.03) represents recovery of approximately 86% of the settlement value of the claims, which is well within the ball park of what may be considered reasonable.

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. See  *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).

*4 d. *Amount offered in settlement.* As indicated above, Defendant has agreed to settle for \$3,805,701.03. Based on the settlement administrator's calculations, the average payment amount will be \$1,595.18. The highest estimated payment is \$5,302.79. (Morales Declaration, ¶ 12.)

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	1,477
Number of notices mailed:	1,477
Number of undeliverable notices:	8
Number of opt-outs:	4 (1 is deficient, cure letter sent)

Number of objections:	0
Number of participating class members:	1,473 (99.73% participation rate)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel, Baltodano & Baltodano LLP and Haines Law Group, APC, request \$1,250,000 for attorney fees and \$27,193.60 for costs.

In determining the appropriate amount of a fee award courts may use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096.) Alternatively, a percentage calculation (with lodestar cross-check if data is provided) is permitted in common fund cases. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

Here, counsel seeks fees pursuant to the percentage method. (Motion at 13:12-15:12.) The \$1,250,000 fee request is 1/3 of the original \$3,750,000 settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, FN13: “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”) Although the gross settlement amount increased as a result of the escalator clause, counsel do not seek an increased amount for fees. (Baltodano Declaration, ¶15.) The \$1,250,000 fee request represents a reasonable percentage of the gross settlement amount and was not objected to by the class. Accordingly, fees are awarded in the amount requested. At the time of preliminary approval, counsel provided evidence of Plaintiff's written consent to their fee-splitting agreement, pursuant to which 50% will be paid to Baltodano & Baltodan, 43.75% to Haines Law Group, APC, and 6.25% to Boren, Osher & Luftman. (Declaration of Paul Haines ISO Plaintiff's Response to Issues Raised by Court, ¶3 and Exhibit B thereto.)

As for costs, Class Counsel request \$27,193.60. [Baltodano Declaration, ¶22 and Exhibit A thereto (\$6,387.95); Haines Declaration, ¶13 and Exhibit 13 thereto (\$20,805.65).] This is less than the \$35,000 estimated at the time of preliminary approval and made known to the class. Costs include filing fees, experts (\$12,452), mediation (\$3,975 + \$3,975), filing and messenger service (\$3,139), Case Anywhere, travel, legal research, and postage. The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class. For all these reasons, costs are awarded in the amount requested.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

*5 An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807; see also Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395 (“[Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the

duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”)

The named Plaintiff requests an incentive award of \$10,000. Plaintiff Barry Van Hauwe was an hourly employee of Defendant from 2002 through 2011 and October, 2013 through August, 2014. (Van Hauwe Declaration, ¶2.) He retained counsel and agreed to act as a class representative, knowing the potential employment risk of doing so. (Id. at ¶3.) Plaintiff has been involved in this litigation, performing approximately 20 hours of work gathering documents, reviewing them with counsel, and engaging in numerous conversations with counsel regarding Defendant's wage and hour practices. (Id. at ¶4.)

In light of the above as well as the benefits obtained on behalf of the class, \$5,000 appears to be a reasonable inducement for Plaintiff's participation in this case.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator CPT Group, Inc. requests \$19,800. (Morales Declaration, ¶14.) This is the \$25,000 amount estimated at the time of preliminary approval, and of which the class has received notice. Given the tasks performed (and still to be performed), this amount appears to be reasonable and is awarded in full.

III. CONCLUSION AND ORDER

A. RULING

The Court:

(1) Grants class certification for purposes of settlement;

(2) Grants final approval of the settlement as fair, adequate, and reasonable;

(3) Awards \$1,250,000 in attorney fees and \$27,193.60 in costs to Class Counsel;

(4) Awards \$5,000 as an incentive award to Class Representative Van Hauwe;

(5) Award \$19,800 in claims administration costs to CPT Group, Inc.;

(6) Approves \$150,000 PAGA penalty payment to the LWDA;

(7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, release language, and the names of all class members who opted out, by 7/31, 2017;

(8) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b);

(9) Orders class counsel to submit a copy of the judgment to the LWDA within 10 days of entry of judgment, as required by  Labor Code §2699(l)(3); and

(10) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds is set for 4/10/18, at _____. Final Report is to be filed by 4/3/18

Dated: 07/27/17

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

Counsel to notice class members re: last date to cash checks and submit proposed notice to court with judgment for approved.

End of Document

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2017 WL 9751227 (Cal.Super.) (Trial Order)

Superior Court of California.

Los Angeles County

Nazario HERNANDEZ, on behalf of himself and all others similarly situated, Plaintiff,

v.

GOLD POINT TRANSPORTATION, INC., a California corporation; GNC Association, Inc., a California corporation; and Does 1 through 100, inclusive, Defendant.

Nos. BC477445, BC516215, BC508808, BC656928.

September 8, 2017.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

I. BACKGROUND

*1 Anthony Hall and Nazario Hernandez each filed class action lawsuits against Defendant Gold Point Transportation, Inc. The complaint filed by Plaintiff Nazario Hernandez (BC47744S) includes claims against Defendant GNC Association, Inc., while the Hall pleading (BC516.215) does not. These two cases were related to each other and to another case, BC508808, which was resolved separately. Plaintiffs and the class members are current and former drivers employed by Defendant.

The *Hall* action alleges claims for: (1) misclassification of employees; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to pay overtime wages; (5) failure to pay minimum wages; (6) failure to pay all wages owed upon separation; (7) failure to furnish timely and accurate wage statements; (8) failure to pay all wages owed every pay period; and (9) violation of California Unfair Competition Act.

The *Hernandez* action alleges claims for: (1) failure to pay hourly wages and minimum wages; (2) failure to provide rest and meal periods or compensation in lieu thereof; (3) failure to timely pay wages; (4) failure to reimburse employee expense; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; and (6) violations of the unfair completion law.

Plaintiff Hernandez and Defendants Gold Point and GNC participated in a mediation with Lisa Klerman that took place on July 29, 2013 which did not result in a resolution of the *Hernandez* action. The two cases were deemed related on September 10, 2013. (Declaration of Brian Kabateck, ¶3) Thereafter, on October 28, 2016, a joint mediation took place between both Plaintiffs Hernandez and Hall and Defendant Gold Point wherein counsel for the parties negotiated a potential class-wide settlement agreement.

By stipulation dated February 16, 2017, class representative Anthony Hall was substituted by Ervin Midence Gonzalez. (Settlement Agreement, Recitals ¶E.)

The Court granted preliminary approval of the settlement on March 14, 2017. A fully executed copy of the *Stipulation and Agreement for Class Action Settlement* ("Settlement Agreement") is attached to Plaintiffs' Motion for Final Approval of the Class Action Settlement. On the same date, the Court signed an Order approving Plaintiff's Request for Dismissal of Class Action Claims Against GNC Association, Inc. Pursuant to CRC 3.770 and Individual Claims Against GNC Without Prejudice.

Now before the Court is the hearing Plaintiffs' request for final approval of the settlement.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

The proposed settlement class is defined as, "All persons who have performed services as an independent contractor-driver for Gold Point Transportation, Inc. at any time between December 27, 2007 through the date the Settlement is preliminarily approved (§I.B)

For purposes of settlement the parties stipulate to certification of these classes. (§IV.B)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Amount is \$2,800,000, non-reversionary. (§I.N)

*2 • If confirmatory discovery reveals that the number of class members is at least 5% larger or the number of workweeks is at least 5% larger than the estimates presented at mediation, the Gross will increase proportionally. (§VIII.C)

- The Net Settlement Amount is \$ 1,780,667:

- Up to \$933,333 for attorney fees (§II.A);
- Up to \$45,000 for attorney costs (Ibid.);
- Up to \$ 10,000 (for two \$5,000 service awards) (Ibid.);
- Estimated \$ 16,000 - \$20,000 for claims administration costs (Ibid.)

The cap is \$25,000, only if needed, with the additional \$5,000 paid directly by Defendant rather than deducted from gross (§I.EE; §II.F);

- \$ 15,000 (75% of \$20,000 PAGA penalty) to the LWDA (§II.A);

• Employer Taxes. (Motion for Final Approval, pg. 7.) Defendant will not owe any payroll taxes under the settlement, however, any tax obligations the Court may fund must be paid from the Net Settlement Amount. (Settlement Agreement, II.B.4.)

- There is no claims process. Each Participating Class Member (defined as a class member who does not opt out, §I.W) will receive a pro rata share of the Net based on the number of weeks worked during the Class Period as a percentage of total weeks worked by all Participating Class Members. (§II.B. 1)

- The Objection/Exclusion Deadline is 45 days. (§I.T; §IV.F; §IV.G)

- Class members who receive re-mailed notice packets have 45 days from the date the notice was re-mailed to respond. (Ibid.)

- If more than 10% opt out, Defendant may rescind. (§VIII.B)
- For tax purposes, payments will be allocated 33.33% to unreimbursed expenses and 66.66% to penalties and interest. (§II.B.4) The settlement administrator will issue 1099s and Defendant will not owe any payroll taxes. (Ibid.)
- Checks must be cashed within 180 days of issuance; thereafter, funds escheat to the State of California, State Controller's Office, Unclaimed Property Division, in the name(s) of the corresponding Participating Class Members), which shall remain available for those Participating Class members to claim thereafter. (§II.B.5)
- The settlement administrator is Simpluris, Inc. (§I.DD)

All class members who do not opt out will release certain claims against Defendant.

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.”  CRC 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.”  CRC 3.769(h).

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v.  Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

*3 “The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” See *Wershba* at 245 (citing  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”  *Id.*

at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba* at 245.

Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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.’” *Id.* at 250.

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. The parties engaged in arms-length mediation before Judge Peter Lichtman on October 28, 2016. (Declaration of Brian Kabateck ISO Preliminary Approval, ¶5.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. The parties have engaged in extensive discovery and the exchange of information and documentation, which has allowed the parties to seriously evaluate the claims alleged. (*Id.* at ¶4.) The parties exchanged a substantial amount of discovery, including at 15,000 pages of documents produced, classwide data, and responses to interrogatories. (*Id.* at ¶5.) Class Counsel conducted the depositions of the PMKs for both Defendant Gold Point Transportation and GNC; Defendant conducted depositions of both class representatives. (*Ibid.*)

c. *Is counsel experienced in similar litigation?* Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Kabateck Declaration ISO Preliminary Approval, ¶13; Declaration of James Hawkins ISO Preliminary Approval, ¶6.)

d. *What percentage of the class has objected?* Zero. (Declaration of Jeremiah Kincannon, ¶14)

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiffs' case.* “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,130. Plaintiffs have provided the following information regarding the strength of the class claims. Statutory penalties for the misclassification of the drivers ranges from \$3,575,000 to \$10,725,000, and up to \$17,875,000 if Plaintiffs could establish a pattern and practice of willful misclassification. (Motion for Preliminary Approval, pgs. 24-25.) Plaintiffs estimate that a conservative estimate for the meal period and rest break violations is \$9.6 million, (*Id.* at pgs. 25-26) and for the failure to pay overtime is \$10.7 million. (*Id.* at 26-27). For the violation of failing to pay all wages due at separation, assuming all 570 former drivers did not receive all wages upon separation, the penalties of this cause of action amount to \$4 million. (*Id.* at pg. 27.) Damages for penalties for failure to furnish timely and accurate wage statements are estimated to be approximately \$4.9 million. (*Id.* at pg. 27-' 28.) The estimate for failure to reimburse business expenses (items such as truck insurance, truck maintenance, and fuel) is \$27.3 million. (*Id.* at 28.) Plaintiffs have thus calculated Defendant's exposure is between \$60 million and \$74 million. (*Id.* at pgs. 28-29.) With a gross settlement amount of \$2.8 million, the settlement represents approximately 3.8 to 4.6% of the total estimated damages. The Settlement represents a compromise based on the facts and circumstances of this action, including significant litigation risk. (*Id.* at Pg. 29.) Class Counsel have considered Defendant's financial position. (Kabateck Declaration ISO Preliminary Approval, ¶5; Hawkins Declaration ISO Preliminary Approval, ¶19.) Counsel believes that class members could not do substantially better than this settlement by litigating alone. (Hawkins Declaration, ¶17.)

*4 b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. See

 *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal. App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).

d. *Amount offered in settlement.* As indicated above, the Gross Settlement Amount is \$2.8 million. Assuming that the Court approves all of the maximum requested deductions, approximately \$1,780,667 will be available for automatic distribution to participating class members. According to the claims administrator, if all the requested deductions are approved, approximately \$1,788,326.12 will be available for automatic distribution to the 693 participating class members. (Kincannon Declaration, ¶15.)

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members: 717

Number of notices mailed: 717

Number of undeliverable notices: 17

Number of claim forms: n/a

Number of opt-outs: 14 (representing 1.98% of the settlement class)

Number of objections: 0

Number of participating class members: 693

Average settlement payment: \$2,580.56

(Kincannon Decl., ¶¶7-15)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel requests \$933,333 for attorney fees and \$38,599.88 for costs.

In determining the appropriate amount of a fee award courts use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096.) A percentage calculation is permitted in common fund cases. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

Here, Class Counsel seeks fees pursuant to the percentage method. The fee request constitutes 1/3 of the settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, FN 13: “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”)

*5 Here, the \$933,333 fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request, and not a single class member objected to it. Accordingly, the Court awards fees in the amount requested.

As for costs, Class Counsel requests \$38,599.88, which is below the litigation cost cap of \$45,000. Class Counsel's actual costs are \$38,599.88 - \$12,600.08 for Kabateck Brown Kellner LLP and \$25,609.80 for James Hawkins APLC. (Declaration of Brian Kabateck ISO Final Approval, ¶ 19 and Exhibit A; Declaration of James Hawkins ISO Final Approval, 1(30). The costs to date include mediation fees (\$12,533.33), court and filing fees (\$4,085.37), and Case Anywhere costs (\$1,308.80). (Ibid.; Ibid. Note: The actual cost invoice for James Hawkins APLC is attached as the last exhibit to the Motion for Final Approval.) The costs appear to be reasonable, necessary to the litigation, and reasonable in amount, and were not objected to by the class. The \$45,000 litigation cost cap was not objected to by the class.

For all of the foregoing reasons, costs of \$38,599.88 are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807; see also Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”)

Here, the named Plaintiffs, Nazario Hernandez and Ervin Midence Gonzalez, request a \$5,000 enhancement award each.

Nazario Hernandez worked for Defendant as a truck driver from approximately March 2010 through approximately October 2011. As a class representative, Mr./Mrs. Hernandez continuously interacted with his/her attorneys to discuss the status of the case, provided relevant oral and documentary information necessary to prosecute the class claims including two full days of depositions by Defendant on February 22, 2013 and February 27, 2014, and responded to discovery propounded by Defendant. He/She also provided a much broader and general release than absent class members. (Declaration of Nazario Hernandez ISO Final Approval, ¶¶2-9.)

Ervin Gonzalez worked for Defendant in the position of independent contractor during two separate periods of time during the Class Period, which were from approximately June 2010 through December 2010 and February 2013 through July 2013. (Declaration of Ervin Gonzalez ISO Preliminary Approval, ¶4.) During his engagement with Defendant, Defendant misclassified him as an independent contractor instead of an employee. (Ibid.) He has been in constant contact with his attorneys and kept himself up to date with the proceedings. (Declaration of Ervin Gonzalez ISO Final Approval, ¶¶4-7.) He reviewed the settlement agreement prior to signing it and believes the settlement is fair and reasonable. (Id. at ¶10) Counsel represented at hearing that he was fully engaged in the settlement process.

*6 In light of the above as well as the benefits obtained on behalf of the class, \$5,000 to Nazario Hernandez and \$5,000 to Ervin Gonzalez appears to be a reasonable inducement for Plaintiffs' participation in this case. The incentive awards are approved.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator Simpluris, Inc. requests \$14,741 for costs. (Kincannon Decl. at ¶20:) \$16,000 to \$20,000 was agreed to be the estimated amount at the time of preliminary approval. Given the tasks performed (and still to be performed), this amount appears to be reasonable, this amount was also disclosed to class members and deemed unobjectionable.

III. CONCLUSION AND ORDER

A. RULING

Contingent upon the parties providing proof of service of the proposed settlement on the LWDA (Labor Code §2699(l)(2)), the Court

(1) Grants class certification for purposes of settlement;

(2) Grants final approval of the settlement as fair, adequate, and reasonable;

(3) Awards \$933,333 in attorney fees and \$38,599.88 in costs to Kabateck Brown Kellner LLP and James Hawkins APLC;

(4) Awards \$5,000 service award to Nazario Hernandez and \$3,000 to Ervin Midence Gonzalez;

(5) Awards \$14,741 in claims administration costs to Simpluris, Inc.;

(6) Approves \$15,000 PAGA penalty payment to the LWDA;

(7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling by September 11, 2017;

(8) Order class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(9) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds is set for June 8, 2018 at 8:30 a.m. Final Report is to be filed by June 1, 2018.

Dated: 9/8/17

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2018 WL 3484814 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Tiffany M. HERNANDEZ, individually and on behalf of all others similarly situated, Plaintiff,

v.

THE BICYCLE CASINO LP, a California Limited Partnership; The Bicycle
Casino, Inc., a California Corporation and Does 1 through 25, Defendants.

Nos. BC628414, BC677557.

June 21, 2018.

Amended Order Granting Final Approval of Class Action Settlement

Aaron C. Gundzik (State Bar No. 132137), Rebecca G. Gundzik (State Bar No. 138446), Gartenberg Gelfand Hayton LLP, 15260 Ventura Blvd., Suite 1920, Sherman Oaks, CA 91403, Telephone: (213) 542-2100, Facsimile: (213) 542-2101; Marshall A. Caskey (State Bar No. 65410), Daniel M. Holzman (State Bar No. 176663), Caskey & Holzman, 24025 Park Sorrento, Ste. 400, Calabasas, CA 91302, Telephone: (818) 657-1070, Facsimile: (818) 297-1775, for plaintiff Tiffany M. Hernandez, individually and on behalf of all others similarly situated.

Carolyn B. Kuhl, Judge.

***1 Date: June 20, 2018**

Time: 11:00 a.m.

Dept: 12 (Spring Street Courthouse)

Complaint Filed: July 26, 2016

The Court, having considered whether to order final approval of the Settlement of this matter pursuant to the Stipulation of Class Action Settlement ("Settlement Agreement"), and having granted preliminary approval on January 23, 2018, having directed that notice be given to all Class Members of preliminary approval of the Settlement Agreement and the final approval hearing and the right to be excluded from or object to the Settlement, and having read and considered all of the papers of the parties and their counsel (and the papers of Michael R. Lancaster-Carson, the plaintiff in related Case No. BC677557) and having received no timely objections to the Settlement; and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The motion for final approval of the Settlement is granted;
2. The parties to this action are Plaintiff Tiffany Hernandez, individually and on behalf of all others similarly situated ("Plaintiff"), and Defendants The Bicycle Casino, L.P. and The Bicycle Casino, Inc. ("Defendants").
3. After participating in two arms' length mediations, Plaintiff and Defendant The Bicycle Casino, L.P. ("Defendant" or "TBC") have agreed to a proposed settlement of this action on behalf of the Class that Plaintiff seeks to represent. The terms of the proposed settlement are fully set forth in the Stipulation of Class Action Settlement, attached to the Declaration of Aaron C. Gundzik in Exhibit A.

4. This Court has jurisdiction over the subject matter of this action (the “Action”) and over all parties to the Action, including the Representative Plaintiff and the members of the Settlement Class.

5. The terms used in this Order have the meaning assigned to them in the parties' Settlement Agreement.

6. The Court finds that the following individuals are members of the Settlement Class: “all current and former non-exempt employees of Defendant employed by Defendant in California during the Settlement Class Period,” except for the following individuals, who timely requested to be excluded from the Settlement: Michael V. Harris, Paula Chea, George Tanus, Jaime Hernandez (employee identification no. 10841),¹ Raymond Mehlbaum (whose widow requested exclusion from the Settlement on his behalf), Bertha Parrington, and Eivon S. Henan.

7. The Court finds that the Settlement Class Period means the period from July 26, 2012 through January 23, 2018.

8. In settlement, TBC will pay the gross settlement amount of \$1,750,000. From this gross amount, the parties propose to deduct \$22,500 in fees to be paid to the Settlement Administrator, a Service Payment to Representative Plaintiff Tiffany Hernandez in the amount of \$5,000, a payment of \$25,000.50 to the California Labor Workforce and Development Agency, Class Counsel's costs of \$11,740.30, and Class Counsel's attorneys' fees of \$583,331.33; which is justified in high of the benefit provided to the class.

*2 9. The amount remaining, after the above-referenced deductions approved by the Court, will be distributed to the individual Settlement Class Members in accordance with the formula specified in the Settlement Agreement.

10. All of the Settlement Class Members (which by definition excludes the seven individuals referenced above who timely requested exclusion from the Settlement) are bound by the Settlement, this Order, and the Court's judgment in this Action.

11. As of the Effective Date of this Final Approval Order (which will be the later of (a) the first business day immediately following the date on which the time for all appeals or requests for review relating to Objections to Settlement and the Final Approval Order has expired; or (b) if an appeal, review or writ is sought from the Final Approval Order, the date on which (i) the highest reviewing court renders its decision denying the petition or writ challenging the Final Approval Order or renders its decision affirming the Final Approval Order and (ii) the Final Approval Order is no longer subject to further review), all of the Released Claims of each Settlement Class Member is and shall be deemed to be released as against the Released Parties. All Settlement Class Members will be precluded in the future from bringing any Released Claims against the Released Parties. Further, as of the Effective Date of this Final Approval Order, Representative Plaintiff will be precluded in the future from bringing any Representative Plaintiff's Released Claims against the Released Parties.

12. Neither the Settlement, nor any of the terms set forth in the Settlement Agreement, constitute any admission by Defendants, or any of the other Released Parties, of liability to the Representative Plaintiff or any member of the Class, nor does this Final Approval Order constitute a finding by the Court of the validity of any of the claims alleged in the Action, or of any liability or wrongdoing of Defendants or any of the other Released Parties. Nor should the Settlement, or any of the terms set forth in the Settlement Agreement, be construed as a determination as to the certifiability of any class if the merits of class certification had been litigated in this Action, or in any other action. Further, no action taken to carry out the terms of the Settlement shall be construed as an admission or concession by or against the Released Parties. Evidence of the making or entering into the Settlement shall not be offered or received into evidence in any action or proceeding against any party hereto in any Court, or other tribunal for any purpose,,other than to enforce the instant Order, the resulting judgment, or the Settlement, or to support a defense by the Released Parties of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction.

13. The Court finds that the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval (“Notice of Settlement”) has been mailed to all members of the Class by the best practicable means as previously ordered by the Court, and

that such Notice of Settlement fairly and adequately described the terms of the proposed Settlement Agreement, the manner in which the Class Members could object to or participate in the settlement, and the manner in which Class Members could opt out of the Settlement Class; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with  California Rule of Court 3.769, due process, and all other applicable laws. The Court further finds that a full and fair opportunity has been afforded to Class Members to participate in the proceedings convened to determine whether the proposed Settlement Agreement should be given final approval.

***3** 14. The Court finally approves of the distribution of the Net Settlement Amount to the Settlement Class Members. Settlement Class Members are not required to submit a claim form in order to receive payment. Rather, the settlement amount paid to each member of the Settlement Class will be based on the number of Qualifying Workweeks she or he worked for TBC during the Class Period.

15. The Court finds that the Settlement Agreement is fair, reasonable and adequate as to the Class, the named Plaintiff and Defendants, and is the product of good faith, arms' length negotiations between the parties, and further, that the Settlement Agreement is consistent with public policy, and fully complies with all applicable provisions of law. Accordingly, the Court hereby finally and unconditionally approves the Settlement Agreement and specifically approves of the allocation of the Gross Settlement Amount of \$1,750,000 ("Gross Settlement Amount"), as follows, to be distributed pursuant to the provisions of paragraph 16 of this Order:

- a. The Court approves of payment of the remainder of the Gross Settlement Amount (the "Net Settlement Amount"), approximately \$1,102,425.87, to the members of the Settlement Class, and that payment to each Settlement Class Member shall be deemed one-third wages, one-third penalties, and one-third interest;
- b. The Court approves of the payment of Settlement Administration Costs of \$22,500 to Phoenix Settlement Administrators;
- c. The Court approves of a payment in the amount of \$25,000.50 to the California Labor and Workforce Development Agency ("LWDA") as the LWDA's share of the settlement of the Private Attorneys General Act of 2004 ("PAGA") claims;
- d. The Court approves of the service and release payment in the amount of \$5,000 to the Representative, Plaintiff, Tiffany Hernandez, for her time and effort in pursuing this Action and as additional compensation for the expanded release she is providing;
- e. The Court approves of Class Counsel's attorneys' fees request of \$583,333.33, which is one-third of the Gross Settlement Amount, finding that it is reasonable to compensate Plaintiff's counsel on a contingency basis in light of the benefit provided to the Class;
- f. The Court approves of Class Counsel's request for reimbursement of litigation costs and expenses in the amount of \$11,740.30;
- g. The Court approves that if a Settlement Class Member's check is not cashed within 180 days, the check will be void and a stop payment order may be placed on the check, and that approximately one year after the Effective Date, the amount of each uncashed Settlement Payment check shall be entirely distributed to the Department of Industrial Relations Labor Code § 96.7 Unpaid Wage Fund in the name of the individual Settlement Class Member, which will provide such Settlement Class Members a further opportunity to obtain their settlement payments.

16. The Court approves of the following implementation schedule for further proceedings:

- Deadline for Defendant The Bicycle Casino, L.P. to deliver the Gross Settlement Amount to the Settlement Administrator: Within fifteen (15) calendar days of the Effective Date.
- Mailing of Payments to Class Members: Within ten (10) days of receipt by the Settlement Administrator of the Gross Settlement Amount and Employees Withholding Share from Defendant.
- Payment to Representative Plaintiff: Within ten (10) days of receipt by the Settlement Administrator of the Gross Settlement Amount and Employer's Withholding Share from Defendant.
- *4 • Payment to Class Counsel of Class Counsel's attorneys' fees and Class Counsel's costs: Within ten (10) days of receipt by the Settlement Administrator of the Gross Settlement Amount and Employer's Withholding Share from Defendant.
- Payment to LWDA for its share of PAGA settlement: Within ten (10) days of receipt by the Settlement Administrator of the Gross Settlement Amount and Employer's Withholding Share from Defendant.
- Submission of Final Approval Order to LWDA: Within ten (10) days of receipt by the Settlement Administrator of the Gross Settlement Amount and Employer's Withholding Share from Defendant.
- Final Report from the Settlement Administrator: After final distribution of Net Settlement Amount.

17. A compliance hearing is set for March 19, 2019. If a satisfactory compliance status report is filed at least 5 court days before the compliance hearing, no appearances will be required.

18. As provided in the Settlement Agreement, invalidation of any material portion of the Settlement Agreement shall invalidate the Settlement Agreement in its entirety (unless the Parties shall agree in writing that the remaining provisions shall remain in full force and effect), in which case, this Order shall be rendered null and void and shall be vacated, *nunc pro tunc*, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Plaintiff, Class Members, and Released Parties.

Dated: June 21, 2018

<<signature>>

Hon. Carolyn B. Kuhl

Footnotes

- 1 Jaime Hernandez's employee identification number is stated in this Order to avoid confusion, as there are two individuals named "Jaime Hernandez" in the Class. Only the Jaime Hernandez with this employee identification number is excluded from the Settlement.

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2017 WL 9286742 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Kevin A. HERRERA on behalf of himself and others similarly situated, Plaintiff,

v.

PHARMAVITE LLC, a California limited liability company; and Does 1 to 100, Inclusive, Defendants.

No. BC599201.
November 21, 2017.

Judgment

Joseph Lavi, Esq. (State Bar No. 209776), Jordan D. Bello, Esq. (State Bar No. 243190), Lavi & Ebrahiman, LLP, 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211, Telephone: (310) 432-0000, Facsimile: (310) 432-0001, jlavi@lavelawfirm.com, jbello@lavelawfirm.com, for plaintiff, Kevin A. Herrera on behalf of himself and others similarly situated.

Carolyn B. Kuhl, Judge.

***1 CLASS ACTION**

Pursuant to the Court's Order Granting Motion for Final Approval of Class Action Settlement, a copy of which is attached as Exhibit 1, JUDGMENT IS HEREBY ENTERED as follows:

1. The settlement class is defined as:

All current and former non-exempt, hourly employees who were employed by Defendant in California at any time from October 28, 2011 through June 28, 2017.

2. The settlement Class Members' payments shall be made from the net settlement amount according to the terms of the Settlement Agreement approved by the Court. The net settlement amount is equal to the entire class settlement amount of \$1,925,000, minus the following payments, which shall also be made pursuant to the terms of the Settlement Agreement:

a. \$7,900 as an incentive award, in addition to any recovery that Plaintiff may receive under the Settlement, shall be paid to Plaintiff;

b. \$641,66.6 in attorneys' fees shall be paid to Lavi & Ebrahiman, LLP;

b. \$11,503 in costs shall be paid to Lavi & Ebrahiman, LLP;

c. \$17,500 in administrative fees and costs shall be paid to CPT Group, Inc.;

d. \$22,500 as 75% of the payment allocated toward PAGA penalties shall be paid to the Labor Workforce and Development Agency;

3. Upon the Effective Date, the Plaintiff and all members of the Settlement Class, have by operation of the final approval order and this Judgment, fully, finally and forever released, relinquished, and discharged Defendants from all claims as defined by the terms of the approved Settlement.

4. This Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the settlement, and any and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the settlement and the determination of all controversies relating thereto.

5. This document shall constitute a judgment for purposes of  California Rules of Court, rule 3.769(h).

6. Except as otherwise provided by the Order Granting Final Approval and the Settlement Agreement, the parties shall bear their own costs and attorneys' fees.

7. Notice of this Judgment as required by California Rules of Court, rule 3.771(b) shall be given to the settlement class.

IT IS SO ORDERED.

Dated: Nov. 21, 2017

<<signature>>

Honorable Carolyn B. Kuhl, Department 309

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2017 WL 8809458 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Francisco HUERTA, individually, and on behalf of all others similarly situated, Plaintiff,

v.

PRIME WHEEL CORPORATION, a California corporation; and Does 1 through 50, inclusive, Defendants.

No. BC559408.
April 25, 2017.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Dept.: 307

Date: April 25, 2017

Time: 10:00 a.m.

I. BACKGROUND

Plaintiff Francisco Huerta brings this wage and hour class action lawsuit against his former employer, Defendant Prime Wheel Corporation, and certain staffing agencies. The operative First Amended Complaint alleges claims for unpaid minimum and overtime wages, meal and rest period violations, unpaid wages during employment, failure to pay wages due at separation of employment, failure to provide accurate itemized wage statements, failure to reimburse, FLSA claims for minimum and overtime wages, and PAGA.

On September 21, 2016, the Court conditionally granted preliminary approval of a settlement agreement resolving all claims. The Court indicated that it would not approve ¶3.06(g) of the settlement, pursuant to which payments allocated to class members who did not opt out but also did not submit claims would be paid to the Department of Labor Standards Enforcement Unpaid Wage Fund in the name of the class member, with associated payroll taxes being remitted to the appropriate taxing agencies. The parties resolved this issue by amending the settlement agreement to provide that class members who do not submit claims will not be permitted to recover anything by way of this settlement. The Court granted approval of this modified settlement, along with a modified schedule for this fairness hearing, on December 19, 2016.

Now before the Court is Plaintiff's motion for final approval.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

The proposed "Settlement Class" is defined as, "all nonexempt and/or hourly-paid workers employed by Select, Prime, and/or Adecco and placed to work at a Prime facility in California at any time from October 6, 2010 through the end of the Class Period." (§I ¶ff)

- Class Period is October 6, 2010 through September 21, 2016. (§I ¶f).
- Class size is 4,111 as of April 8, 2016. (§I ¶ff)
- If the class increases by more than 10% (to more than 4,522), Defendants owe a corresponding proportional increase. (§I ¶r)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms of the Settlement Agreement are as follows:

- The **Maximum Settlement Amount is \$1,100,000**, non-reversionary, plus employer payroll taxes. (§I ¶r)
- The Net Settlement Amount (\$664,584) is the Maximum minus the following:
 - Up to \$366,666 (1/3) for attorney fees (§I ¶t);
 - Up to \$20,000 for attorney costs (§I ¶t);
 - Up to \$15,000 for a service award (§I ¶t);
 - Up to \$30,000 for claims administration costs (§I ¶t) and
 - \$3,750 (75% of **\$5,000**) for **PAGA penalties** (§I ¶r).
- If the amounts awarded for attorney fees or costs, enhancement payment, or PAGA penalty payment are reduced, the difference will be re-allocated to the Net. (§III ¶3.06.h)
- The Response Deadline (for claim forms, requests for exclusion, and objections) is 45 days. (§I ¶dd; §III ¶¶ 3.04.a, 3.04.b, 3.04.c)
 - If 5% of more opt out, Defendants have the right to void the agreement. (¶3.04.h)
- The Net Settlement Sum will be divided between all Verified Settlement Class Members (class members who submit claims) based on the number of Pay Periods they worked for Defendant during the Class Period. The maximum amount each Verified Settlement Class Members will receive is determined by multiplying the Net Settlement Sum by a ratio determined by dividing a Verified Settlement Class Member's total Pay Periods by the total number of Pay Periods worked by all Verified Settlement Class Members. (§III ¶3.06.f)
- *2 • Payments will be allocated 25% to wages, 25% to interest, and 50% to penalties. (§III ¶3.06.0)
- Checks will be valid for 120, after that time will be void, and funds will be delivered to the Department of Labor Standards Enforcement Unpaid Wage Fund in the name of the claimant. (§III ¶3.06.f)
- On the Date of Finality (date when the Final Order becomes Final), Plaintiff and all class members who do not opt out will release the Released Parties from, “any and all causes of action... of any nature whatsoever, known or unknown, suspected or unsuspected, from October 6, 2010, through the Date of Finality, that were alleged in the Action, or that could have been alleged in the Action, including but not limited to, those claims relating to alleged violations of California Labor Code sections [sections listed], the unfair competition law

('UCL') codified in California Business and Professions Code sections 17200 *et seq.*; the IWC Wage Orders; and California Code of Regulations, Title 8, sections 11000, *et seq.* and 11070, including without limitation, any and all causes of action alleged in the Class Action Complaint, while specifically excluding any and all claims relating to any alleged violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (with the exception of Verified Settlement Class Members). In addition to the above mentioned releases, all Verified Settlement Class Members shall also release any and all claims relating to any alleged violation of the Fair Labor Standards Act as to all Released Parties.” (§V ¶5.02)

- Plaintiff will provide a general release and CC§ 1542 waiver. (§V ¶¶ 5.03, 5.04)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” CRC 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” CRC 3.769(h).

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46,60 (internal quotation marks omitted); see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

*3 “The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” See *Wershba* at 245 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba* at 245.

Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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.'" Id. at 250.

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. The parties engaged in early dialogue, and attended mediation with Carl West on December 9, 2015. (Declaration of Kevin Mahoney, ¶17.) With Judge West's assistance, the parties were able to reach an agreement on February 4, 2016. (Motion at 3:4-8.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. Class Counsel conducted an investigation that included an informal exchange of documents. Defendant produced voluminous records and sampling of records, which allowed Class Counsel to fully assess the value of the claims. (Id. at ¶¶15-18.)

c. *Is counsel experienced in similar litigation?* Yes. (Id. at ¶¶ 19, 28, 29; Declaration of Briana Kim, ¶¶ 8,16-22.)

d. *What percentage of the class has objected?* Zero. (Declaration of Melissa Meade, ¶11.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiffs' case.* "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,130. At the time of preliminary approval, Class Counsel presented estimated damage calculations. The core claim is for unpaid overtime. The overtime claim based on work in excess of 8 hours per day was valued at \$141,739.21, and the value of the claim based on work in excess of 40 hours per week was calculated to be \$1,533,748.50. Defendant denies that it owes any unpaid overtime. (Declaration of Kevin Mahoney ISO Preliminary Approval, ¶¶ 13-15.) The meal and rest breaks were valued at \$2,044,998, but these claims are subject to Defendants' defenses that class members were "provided" breaks as required by *Brinker*. (Id. at ¶¶ 16-19.) The other class claims were not given positive settlement values, based on the challenges posed by Defendants' defenses, including the need to demonstrate that Defendants' conduct was willful. (Id. at ¶¶ 20-27.) The PAGA claim was assessed a maximum value of \$4,486,000, assuming certification of a class and a finding of liability on the underlying claims. (Id. at ¶¶ 30-32.) Thus, the estimated maximum value of the class claims is approximately \$8,206,485.71. The \$1,100,000 non-reversionary settlement constitutes recovery of approximately 13% of this amount, which is within the ballpark of what may be considered reasonable.

*4 b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. See  *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").

d. *Amount offered in settlement.* As indicated above, Defendants have agreed to settle for the non-reversionary amount of \$1,100,000. Based on the estimated Net (above), if all class members had submitted claims, the average settlement payment

would be \$149. [\$664,584 Net ÷ 4,475 class members = \$ 148.51] Not all class members did submit claims, however. According to the claims administrator, average settlement payments for the 1,136 class members who submitted claims is \$590.65. (Meade Declaration, ¶15.)

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	4,475
Number of notices mailed:	4,475
Number of undeliverable notices:	42
Number of claims:	1,136 (25%)
Number of opt-outs:	5 (.1%)
Number of objections:	0
	1,136
Number of participating class members:	

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel, Kevin Mahoney and Briana Kim, request \$366,666 for attorney fees and for \$13,597.54 for costs.

In determining the appropriate amount of a fee award courts use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096.) A percentage calculation is permitted in common fund cases. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) A lodestar comparison may also be appropriate. (Id.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

Here, fees are sought pursuant to the percentage method. (Fee Motion, pages 3-8.) The \$366,666 fee request is 1/3 of the \$1,100,000 settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, FN13:

“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”)

*5 No lodestar cross-check supports the requested fee award, however. Based on evidence presented, the combined lodestar of the two firms is \$259,980. (Mahoney Declaration, ¶26 and Exhibit A thereto; Kim Declaration, ¶14 and Exhibit A thereto.) No information is provided to the Court to demonstrate that the proposed hourly rates are reasonable and in line with prevailing rates in the community. Thus, a lodestar cannot be calculated. Nonetheless a lodestar comparison, although desirable, is not required.

Here, because the fee request represents a reasonable percentage of the non-reversicary settlement and was made known to class members, none of whom objected, the Court finds the fee request reasonable.

As for costs, Class Counsel request \$13,597.54. The costs to date include filing fees; complex fee, copying costs, e-service costs (Case Homepage), mediation (\$2,441.67), deposition translation services (\$2,725), and other miscellaneous items. (Mahoney Declaration, ¶27 and Exhibit B thereto; Kim Declaration, ¶15 and Exhibit B thereto.) The costs appear to be reasonable and necessary to the litigation and are reasonable in amount. The class was made aware of the \$20,000 litigation cost cap and none objected.

For all of the foregoing reasons, the fee and cost requests are approved in the amounts requested.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”)

Here, the named Plaintiff requests an incentive award of \$15,000. Plaintiff Francisco Huerta was employed by Defendant Prime Wheel Corporation from February through October, 2013. (Declaration of Francisco Huerta, ¶3.) He decided to file this class action lawsuit based on what he believed were Defendant's unlawful practice and policy of not paying shift differentials. (Id. at ¶¶ 5, 6.) Huerta undertook this litigation despite the risks and has diligently served as class representative; he has had numerous phone calls with his attorneys, assisted with documents and information gathering, and assisted with interpretation of time and payroll records. (Id. at ¶¶ 7-10.) He also attended mediation. (Id. at ¶11.) Huerta estimates that he has devoted over 100 hours to this litigation. (Id. at ¶13.) Huerta undertook the reputational and monetary risks associated with acting as class representative and has agreed to a much broader release than class members. (Id. at ¶¶ 14-16.) Counsel also represented at hearing that Huerta was deposed. Huerta is giving a general release.

In light of the above as well as the benefits obtained on behalf of the class, \$10,000 appears to be a reasonable inducement for Plaintiff's participation in this case.

F. CLAIMS ADMINISTRATION COSTS

*6 Claims administrator Phoenix Settlement Administrators requests \$30,000. (Meade Declaration, ¶16.) This settlement cap, which was made known to class members without objection. Given the size of the class, the tasks performed (including translating into Spanish), and the tasks still be performed, this amount appears to be reasonable.

III. CONCLUSION AND ORDER

A. RULING

The Court:

(1) Grants class certification for purposes of settlement;

(2) Grants final approval of the settlement as fair, adequate, and reasonable;

(3) Awards \$366,666 in attorney fees and \$13,597.54 in costs to ;

(4) Awards \$5,000 as an incentive award to Plaintiff Francisco Huerta;

(5) Awards \$30,000 in claims administration costs to Phoenix Settlement;

(6) Approves \$3,750 PAGA penalty payment to the LWDA;

(7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, release language, and the names of all class members who opted out, by April 29, 2017;

(8) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds for August 18, 2017, at 8:30 a.m. Final Report is to be filed by August 11, 2017.

Dated: 4/25/17

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2017 WL 10242491 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Jesus JIMENEZ, individually and on behalf of all others similarly situated, Plaintiff,

v.

PPG INDUSTRIES, INC., a Pennsylvania corporation; Seaton, LLC, doing business as Staff Management Solutions, LLC, an Illinois limited liability company; and Does 1 through 25, Defendants.

No. BC613324.
October 25, 2017.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Dept.: 307

Date: October 25, 2017

Time: 10:00 a.m.

I. BACKGROUND

In this wage and hour class action lawsuit, Plaintiff Jesus Jimenez sues his former employers for a Labor Code violations and related claims. Plaintiff alleges that Defendant PPG Industries, Inc. is a supplier of paints, coatings, fiber glass, and other materials, and that Defendant Seaton, LLC, provides staffing for companies, including PPG.

The operative First Amended Complaint contains claims for failure to provide meal breaks, inaccurate wage statements, failure to pay unpaid wages at time of discharge, unfair business practice, conversion, and for PAGA penalties.

Following mediation, the parties entered into a Stipulation of Class Action Settlement (Settlement Agreement). The Court granted preliminary approval of the settlement on June 16, 2017. Now before the Court is Plaintiff's Motion for Final Approval.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

The class is defined as, "all current and former non-exempt employees of Defendant in California who worked Qualifying Shifts at Qualifying Locations during the Settlement Class Period." (Settlement Agreement, (¶II.C))

Qualifying Shift means a shift of more than 10 hours on the clock. (¶II.U)

Qualifying Locations means as to PPG its Aerospace locations in Sylmar, Mojave, Burbank, Irvine, and Valencia; and as to SMS it means the locations were SMS placed employees for work at the PPG facilities in Mojave and Sylmar. (¶II.T)

Settlement Class Member is a class member who has not opted out. (§§ II.DD, II.EE)

There are approximately 912 class members. (Ibid.)

If the class size exceeds 912 by more than 3%, Plaintiff may void the agreement. (§IV.C)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Amount is \$975,000. (§II.N)
- The Net Settlement Amount (\$604,000) is the Gross minus:
 - Up to \$325,000 (1/3) for attorney fees (§I.B);
 - Up to \$15,000 for attorney costs (§I.C);
 - Up to \$10,000 for a service award to the class representative (§I.D);
 - Up to \$13,500 for claims administration costs (§I.A); and
 - \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA (§I.E).
- Defendant's share of employer taxes will be paid in addition to the Gross. (§IV.J.6)
 - There is no claims process. All class members who do not opt out are eligible to receive a payment. (§IV.J.3)
- The response deadline is 45 days, (§§ IV.E, IV.H)
- If 5% or more opt out, Defendant may rescind. (Ibid.)
 - Settlement payments will be calculated by dividing each Settlement Class Member's Qualifying Shifts by the aggregate number of Qualifying Shifts by all Settlement Class Members, and then multiplying that fraction by the Net. (§IV.J.1, as amended.) This resolves the issue flagged in the Checklist.
 - For tax purposes, payments will be allocated 1/3 to wages, 1/3 to penalties and 1/d to interest, (§IV.J.5)
 - Checks must be cashed within 180 days of issuance; thereafter, funds will be paid to the Wounded Warriors Project, Warriors to Work Program. (§IV.N) No party or counsel has any affiliation with this cy pres recipient. (Gundzik Declaration, ¶41.) Pursuant to Cal. Code of Civ. Pro. § 384 the Court finds good cause to approve this recipient, as it was agreed upon prior to the effective date of section 384 as amended and notice to the class would need to be resent if this distribution is not approved. Re-noticing the settlement will reduce the amounts available to the class and delay payments to them, which is not in the best interest of the class.
- *2 • The settlement administrator is Rust Consulting, Inc. (§II.CC) The parties have presented sufficient information to satisfy the Court's concern regarding the settlement administrator. (Supplemental Gundzik Declaration, ¶¶ 5, 6; Declaration of Jonathan Paul of Rust Consulting.)

- All class members who do not opt out will release certain claims against Defendant as follows:
 - Upon final approval and except as to rights or claims created by this settlement, Class Members fully release and discharge the Released Parties from any and all Released Claims. (§VI)
 - Released Claims means all claims...or causes of action based on or arising from the facts alleged in the Complaint, including, without limitation, [causes of action alleged in the FAC] and all other claims, to the extent that they could have been asserted or sought based solely on the facts and claims alleged in the Complaint for related claims under common law, statute, or regulation and all damages...and/or penalties of any nature whatsoever arising solely from the facts and claims alleged in the Complaint, where such claims arose at any time based on acts or omissions during the Settlement Class Period; and includes any and all claims that are derivative of any of the foregoing, including claims arising after the Settlement Class Period so long as such claim is derived from the alleged failure to provide compliant meal periods and/or to otherwise pay wages allegedly earned during the Settlement Class Period. Claims and damages that were not alleged in the Complaint or could not have been based on the facts and claims alleged in the Complaint are specifically excluded from the Released Claims.” (§II.V)
 - The representative plaintiff will provide a general release and CC§1542 waiver. (§VII)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.”  CRC 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.”  CRC 3.769(h).

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See  *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

*3 “The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” See *Wershba* at 245 (citing  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those

whose claims will be extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba* at 245.

Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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.’” *Id.* at 250.

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. The parties mediated with Mark Rudy on January 24, 2017. While the case did not settle that day, the parties later accepted the mediator's proposal. (Declaration of Aaron Gundzik ISO Preliminary Approval, ¶19.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. Class Counsel have reviewed and analyzed documents, including documents produced by Defendants regarding handbooks and policies, timesheets and pay records for Plaintiff, and information regarding the number of employees and the average hourly rate. (*Id.* at ¶¶ 8, 9.) Counsel have also interviewed witnesses. (*Ibid.*)

c. *Is counsel experienced in similar litigation?* Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (*Id.* at ¶¶ 2-5.)

d. *What percentage of the class has objected?* Zero. (Declaration of Abigail Schwartz, ¶15.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiffs' case.* “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Based upon their investigation of the evidence, Class Counsel prepared damage estimates. (Gundzik Decl. ISO Preliminary Approval, ¶10.) The first cause of action, which is for failure to provide a second meal period, is the most significant and is valued at a maximum of \$2,064,000. (*Id.* at ¶24.) However, since the bulk of the shifts were less than 12 hours (and a large number exceeded 10 hours by only a few minutes), because Defendants contend second meal periods were waived, and due to the potential difficulty of certification, counsel valued this cause of action at zero. (*Ibid.*) The wage statement cause of action was valued at a maximum of \$475,000, but was also given a realistic value of zero in light of *Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th 1242. (*Id.* at ¶25.) The same is true for the claim for waiting time penalties, which was assessed a maximum value of \$458,000 and a potential realistic value of zero. (*Id.* at ¶26.) The fourth and fifth causes of action for unfair business practices and conversion are derivative. (*Id.* at ¶27.) The PAGA claim was assessed a potential value of \$375,000. (*Id.* at ¶28.) Given the maximum potential value of \$3.4 million, and minimum value of \$0, the \$975,000 settlement represents a compromise and recognizes that litigants almost never recover everything they seek at trial. (*Id.* at ¶¶29-30.) Based upon this information, it appears that the settlement is within the ballpark of what is reasonable.

*4 b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).

d. *Amount offered in settlement.* As indicated above, the Gross Settlement Amount is \$975,000. Assuming that the Court approves all of the maximum requested deductions, approximately \$604,000 will be available for automatic distribution to participating class members.

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	863
Number of notices mailed:	863
Number of undeliverable notices:	7
Number of opt-outs:	1
Number of objections:	0
Number of participating class members:	862
Estimated average payment:	\$701.86

(Schwartz Decl., ¶7-16)

Based on the above, the Court finds that notice was adequate and conforms to due process requirements.

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel requests \$325,000 for attorney fees and \$13,842.99 for costs.

In determining the appropriate amount of a fee award, use the lodestar method, applying a multiplier where appropriate.

 *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96. A percentage calculation is permitted in common fund

cases.  *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable.

 *Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal. App.4th 123, 128.

In the instant case, fees are sought pursuant to the percentage method. The \$325,000 fee request is approximately 1/3 of the \$975,000 gross settlement amount, which is average. *In re*  *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, FN13: “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”

Here, the \$325,000 fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request, and not a single class member objected to it. Accordingly, the Court awards fees in the amount requested.

*5 As for costs, Class Counsel requests \$13,842.99. The Settlement Agreement provided that Class Counsel could seek reimbursement of costs up to \$15,000. (Settlement Agreement, ¶I.C.) To date, Class Counsel has incurred actual costs in the amount of \$13,842.99. (Declaration of Aaron Gundzik ISO Final Approval, ¶45 and Exhibit F; Declaration of Daniel Holzman ISO Final Approval, ¶11 and Exhibit A.) The largest of these expenses include \$6,250 for the mediator's fee. (Gundzik Decl. ISO Final Approval, ¶45.) The costs appear to be reasonably necessary to the litigation, reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, costs of \$13,842.99 are approved.

The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”).

Here, the named plaintiff, Jesus Jimenez, requests a \$10,000 service award. (Declaration of Jesus Jimenez, ¶11.)

Mr. Jimenez was employed at Defendant's Mojave facility from August 2012 to February 2016. He was concerned by the attention a publicly-filed lawsuit, especially a class action, would attract. Nevertheless, he fulfilled his duties as class representative on behalf of himself and the rest of the class. He traveled to San Francisco for the full-day mediation. He also travelled several times from his home in Simi Valley to meet with his attorneys in Sherman Oaks and Calabasas. He identified relevant witnesses and provided relevant documents. He is providing a general release and CC§1542 waiver. (Settlement Agreement, ¶VII.) He estimates he spent in excess of 85 hours assisting with this case. (Declaration of Jesus Jimenez, ¶¶2-10.)

In light of the above, as well as the benefits obtained on behalf of the class, \$10,000 appears to be a reasonable inducement for Plaintiff's participation in this case. The requested incentive award is approved.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator, Rust Consulting, requests \$13,500 in compensation for their work in administering this case. (Schwartz Decl., ¶21.) At the time of preliminary approval, costs for settlement administration were capped at be \$13,500. (Settlement Agreement, ¶I.E.) This amount was also disclosed to class members and deemed unobjectionable.

Accordingly, claims administration costs are approved in the amount of \$13,500.

III. CONCLUSION AND ORDER

A. RULING

The Court:

Grants class certification for purposes of settlement;

(1) Grants final approval of the settlement as fair, adequate, and reasonable;

(2) Awards \$325,000 in attorney fees and \$13,842.99 in costs to Gartenberg Gelfand Hayton LLP and Caskey & Holzman;

(3) Awards \$10,000 as a Class Representative Service Award to Jesus Jimenez; *

*6 (4) Awards \$13,500 in claims administration costs to Rust Consulting, Inc.;

(5) Approves \$7,500 PAGA penalty payment to the LWDA;

(6) Executes the proposed Judgment tendered by counsel;

(7) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(8) Sets a Non-Appearence Case Review re: Final Report re: Distribution of Settlement Funds is set for July 13, 2018 at 8:30 a.m. Final Report is to be filed by July 6, 2018.

Dated: 10/25/17

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2019 WL 11704236 (Cal.Super.) (Trial Order)
Superior Court of California,
Stanley Mosk Courthouse.
Los Angeles County

JOON HAN KIM, as an individual and Philip Richey as an individual and on behalf of all Aggrieved Employees, Plaintiff,
v.
FNS, INC., a California corporation, and Does 1-50, inclusive, Defendant.

No. BC578015.
October 2, 2019.

*1 Dept. 37
Case filed: April 11, 2015
Trial date: TBD
Hearing Date: September 5, 2019
Time: 8:30 a.m.
Dept.: 37

Final Order and Judgment Granting Plaintiffs' Motion for Final Approval of Class Action Settlement

Honorable Richard J. Burdge, Judge.

THIS MATTER came before the Court on September 5, 2019 on Plaintiffs' Motion for Final Approval of Class Action Settlement and their Motion for an Order Awarding Attorneys' Fees and Costs to Plaintiff's Counsel and Enhancement Fee to the Class Representative. In accordance with the Final Approval Order, Class Members have been given notice of the terms of the Settlement, including had an opportunity to object to it, comment on it, participate in it, and/or exclude themselves from it. Having considered the proposed Settlement, the award of attorneys' fees and costs and the service award to the class representative, and the argument at the final approval hearing held on September 5, 2019, the Court pursuant to Code of Civil Procedure § 382, hereby grants Plaintiffs' motion.

I. FACTUAL BACKGROUND

Plaintiffs Joon Han Kim and Philip Richey filed the amended complaint in this action wherein the initial complaint was filed on April 11, 2015, alleging that Defendant FNS Inc. (referred to herein as "Defendant") had a company policy and practice of providing inaccurate wage statements, misclassifying employees as independent contractors, preventing employees from taking a duty-free 10-minute rest break every four hours of work and a 30 minute duty-free meal break every 5 hours, failing to pay overtime and failing to reimburse necessary business expenses.

In the Second Amended Complaint ("SAC"), Plaintiff Kim asserts the following individual claims: (1) first cause of action for violation of the FEHA; (2) the seventeenth cause of action for retaliation in violation of Labor Code, § 1102.5 and (3) the eighteenth cause of action for wrongful termination in violation of public policy.

In addition, Plaintiff Kim and Richey, on behalf of themselves and the other similarly aggrieved employees, asserts the following PAGA claims: (1) the second cause of action under the  Labor Code §§ 226(a), 1174 and 1198 and Wage Orders for failure to provide and maintain accurate itemized wage statements and failure to maintain records; (2) the third cause of action under

the Labor Code §§ 1174 and 1198 and Wage Orders for failure to maintain records; (3) the fourth cause of action under the Labor Code § 204, 1174 and 1198 and Wage Orders for failure to pay timely wages; (4) the sixth cause of action under the Labor Code §§ 226.7 and 1198 and Wage Orders for failure to provide meal breaks; (5) the eighth cause of action under the Labor Code §§ 226.7 and 1198 and Wage Orders for failure to provide rest periods; (6) the tenth cause of action under the Labor Code §§ 510 and 1198 and Wage Orders for failure to pay overtime wages; (7) the twelfth cause of action under the Labor Code §§ 2802 and 2804 for failure to reimburse Plaintiffs for all necessary expenses and (8) the fourteenth cause of action under the Labor Code § 226.8 for willful misclassification of an individual as an independent contractor.

*2 Lastly, Kim and Richey assert the following class claims on behalf of a putative class of aggrieved employees: (1) the fifth cause of action under the Labor Code § 204 for failure to pay timely wages; (2) the seventh cause of action under the Labor Code §§ 226.7 and 1198 and Wage Orders for failure to provide meal breaks; (3) the ninth cause of action by under the Labor Code §§ 226.7 and 1198 and Wage Orders for failure to provide rest periods; (4) the eleventh cause of action under the Labor Code §§ 510 and 1198 and Wage Orders for failure to pay overtime wages; (5) the thirteenth cause of action under the Labor Code §§ 2802 and 2804 under the Labor Code §§ 226(a), 1174 and 1198 and Wage Orders for failure to reimburse Plaintiffs for all necessary expenses; (6) the fifteenth cause of action under the Labor Code § 226.8 for willful misclassification of an individual as an independent contractor and (7) the sixteenth cause of action for violation of Business and Professions Code, §§ 17200, et seq. (the Unfair Competition Law, “UCL”) seeking an injunction and restitution.

On April 20, 2017, the parties agreed to settle the lawsuit pursuant to a non-reversionary \$2.4 million settlement agreement (the “Settlement”) after participating in a formal, full-day mediation conducted by mediator Jeffrey Krivis. (Mot. at p. 3.) On January 22, 2019, the court preliminarily approved the proposed Settlement subject to the court's final approval following a Final Approval Hearing. Plaintiffs moved for final approval of the class action settlement. The motion is unopposed as of September 4, 2019.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED;

1. For the reasons set forth in the September 5, 2019 Order, which is adopted and incorporated herein by reference, this Court finds that the applicable requirements of the California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court have been satisfied with respect to the Class and the proposed settlement. The Court hereby makes final its earlier provisional certification of the Class.
2. This Order and Judgment Granting Final Approval of Class Action Settlement hereby adopts and incorporates by reference the terms and conditions of the parties' Stipulation, together with the definitions of terms used and contained therein.
3. The Court finds that it has jurisdiction over the subject matter of the Class Action and over all parties to the Class Action, including all members of the Settlement Class.
4. The Class Notice given to the Class Members fully and accurately informed the Class Members of all material elements of the proposed Settlement and of their opportunity to object to or comment thereon, was the best notice practicable under the circumstances, was valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the State of California, the United States Constitution, due process, and other applicable law. The Class Notice fairly and adequately described the Settlement; provided Class Members adequate instructions and a variety of means to obtain additional information; provided Class Member with a full opportunity and the means to seek exclusion; and described to Class Members the consequences of remaining in the action as opposed to seeking exclusion. A full opportunity has been afforded to the Class Members to participate in the Final Approval hearing, and all Class Members and other persons wishing to be heard have been

heard. One (I) Class Member elected to exclude them self from the settlement. Accordingly, the Court determines that all Class Members are bound by this Order and Judgment as no class members opted out. The Court has considered all relevant factors for determining the fairness of the settlement and has concluded that all such factors weigh in favor of granting final approval. In particular, the Court finds that the Settlement was reached following meaningful discovery and investigation conducted by Class Counsel; that the Settlement is the result of serious, informed, adversarial, and arm's-length negotiations between the Parties, aided by a professional mediator; and that the terms of the Settlement are in all respects fair, adequate, and reasonable. In so, finding, the Court has considered all of the evidence presented, including evidence regarding the strength of the Plaintiffs' case; the risk, expense, and complexity of the claims presented; the likely duration and risks involved with further litigation and appeal; the amount offered in Settlement; the extent of investigation and discovery completed; and the experience and views of Class Counsel. Accordingly, the Court hereby approves the settlement as set forth in the Stipulation and expressly finds that said settlement is, in all respects, fair, reasonable, adequate and in the best interests of the entire Settlement Class and hereby directs implementation of all remaining terms, conditions, and provisions of the Stipulation.

***3** 6. The Court hereby approves attorneys' fees to Class Counsel in the amount of \$792,000 as compensation for all attorney time spent on this matter from inception through and including the final Settlement Fairness Hearing and all other work related to this case and costs not to exceed \$25,000 for all costs in connection to litigating this matter, as these requests are fair and reasonable. (Settlement Agreement ¶ 30.) Costs to the claim administrator in the amount of \$12,000 is hereby approved as fair and reasonable. (Settlement Agreement ¶ 32.) No other cost or fees shall be awarded, either against Defendants or any other of the Released Parties, as defined in the Stipulation.

7. The Court hereby approves Service Awards in the amount of \$15,000 to both Joon Han Kim and Philip Richey (the "Named Plaintiffs"). (Settlement Agreement ¶ 31.) Based on their contributions to the class, risks incurred, stress, execution of a general release of all known and unknown claims, as provided for in the Stipulation, and all other factors presented to the Court the Court finds these requests fair and reasonable. Upon the Effective Date Plaintiffs Kim and Richey will release and forever discharge the Released Parties, to the fullest extent permitted by law, and from any and all claims, known and unknown, asserted and not asserted, which plaintiffs Kim and Richey have or may have against the Released Parties as of the date of execution of this Settlement Agreement. (Settlement Agreement ¶ 63)

9. The Court hereby approves the settlement of the PAGA actions and a PAGA penalty of \$100,000 from the Maximum Settlement Amount and will be allocated to the resolution of the PAGA claims; \$75,000 will be paid directly to the LWDA and \$25,000 will be paid to the PAGA class. (Settlement Agreement ¶ 33.)

10. Entry of this Final Judgment shall constitute a full and complete bar against the Settlement Class Members as to all the claims released by the Stipulation, and shall constitute re judicata and collateral estoppel with respect to any and all such prior, current, or future released claims as no Class Members opted out. Upon entry of this Final Judgment by the Court in accordance with the Settlement Agreement, the Class Members shall and finally release and discharge the Releasees from the claims released in the Settlement. Specifically, the Settlement specifies the following releases from Class Members: The released claims include all claims, rights, demands, liabilities, and causes of action, arising from, or related to, the same set of operative facts alleged in the Action during the Class Period, including: (i) all claims for failure to maintain accurate records, including pursuant to Labor Code sections 226, 558, 1174 and 1198; (ii) all claims for failure to timely pay all wages owed (e.g., minimum wages, split shift premium pay, etc.), including pursuant to California Wage Order 9, section 3, 4, 5, 11 and 12, Labor Code sections 201, 201.3, 202, 203, 203.1, 204, 204a, 204b, 204.2, 206, 206.5, 208, 212, 213(d), 215, 216, 218.5, 218.6, 219, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.7, 227, 227.3, 510, 511, 512, 513, 558, 1194, 1197, and 1198 (iii) all claims for failure to provide meal periods and rest breaks or premium pay compensation in lieu thereof, including pursuant to Labor Code sections 512 and 226.7; (iv) all claims for failure to pay overtime wages, including pursuant to Labor Code sections 510 and 1198 and pursuant to the federal Fair Labor Standards Act; (v) all claims for failure to pay or reimburse for necessary business expenses, including pursuant to Labor Code sections 2802 and 2804; (vi) all claims

for willful misclassification of an individual as an independent contractor, including pursuant to Labor Code section 226.8; (vii) all claims for wage statement violations, including pursuant to Labor Code Section 226; and (viii) all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the preceding claims. California Labor Code sections 205, 209, 230, 230.1, 230.3, 230.4, 230.7, 230.8, 231, 232(c), 2325(c) and 233 are not subject to this release. (Settlement ¶ 21).

*4 11. The Court further confirms and finds that nothing contained in the Stipulation, the Preliminary Approval Order, this Final Order and Judgment, or any other Order entered in this action shall in any way or manner constitute an admission or determination of liability by or against Defendant, or any other Released Parties with respect to any of the claims and causes of action asserted by the Settlement Class or any member thereof, and shall not be offered in evidence in any action or proceedings against Defendant, or any other Released Parties in any court, administrative agency, or other tribunal for any purpose whatsoever, other than to the extent necessary to enforce the provisions of the Stipulation or this Order. This paragraph shall not, however, diminish or otherwise affect the obligation, responsibilities, or duties of Defendant under the stipulation and this Final Order and Judgment.

12. If the settlement does not become final and effective in accord with the terms of the Stipulation, then this Final Order and Judgment shall be rendered null and void and shall be vacated and, in such event, all orders entered, including but not limited to all releases delivered in connection herewith, shall be null and void.

JUDGMENT

In accordance with, and for the reasons stated in, the Final Approval Order, judgment shall be entered against Defendant and Released Parties.

The Court finds that certification of the following Class, for settlement purposes only, is appropriate under the California Code of Civil Procedure:

All current and former drivers who performed service for or worked at FNS, Inc. in California at any time during the period from April 7, 2011 to January 22, 2019.

(Settlement Agreement, p. 3, paragraph 5.)

The Court finds that the Class defined above meets ascertainability, numerosity, commonality, and predominance requirements that justify certification, and that resolution of this matter through a class action settlement is superior to other available methods.

The Court finds further that:

- (1) Plaintiffs are an adequate and typical Class Representatives and appoints them as Class Representatives; and
- (2) Plaintiff's Counsel has adequately represented the Class and its appointment as Class Counsel is confirmed.

Accordingly, the Court certifies the Class described above for settlement purposes only.

The Court has reviewed the terms of the Settlement and finds that the Settlement is fair, adequate, and reasonable when balanced against the possible outcome of further litigation relating to class certification, liability, and damages. The Court finds further that settlement at this time will avoid substantial additional costs and will avoid the delay and risks presented by continued

prosecution of the litigation. The Court also finds that the settlement has been reached after arm's length negotiations between the parties.

Following notice that was sent to each Class Member by first class mail, no Class Member objected to any of the terms of the Settlement and no Class Member opted out. Such non-opposition to the settlement is evidence of the settlement's fairness, adequacy, and reasonableness. Taking into account (1) the value of the \$2,400,000 cash settlement, (2) the risks inherent in continued litigation, (3) the complexity, expense, and likely duration of the litigation in the absence of settlement, (4) the experience and views of Class Counsel, and (5) the positive reaction of Class Members, the Court finds that the settlement is fair, adequate, reasonable, and deserves this Court's final approval.

Pursuant to California Code of Civil Procedure Section 664.6 and  Rule 3.769(h) of the California Rules of Court, this Court reserves exclusive and continuing jurisdiction over this action, the Representatives/Named Plaintiffs, Class Members, and Defendants, for the purposes of:

(a) supervising the implementation, enforcement, construction, and interpretation of the Stipulation, the plan of allocation, the Final Approval Order, and the Judgment; and

*5 (b) supervising distribution of amounts paid under this Settlement.

IT IS SO ORDERED.

Dated: 10/02/2019

JUDGE OF THE SUPERIOR COURT

By: <<signature>>

The Honorable Judge Richard J. Burdge

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2017 WL 3588448 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

John LEE, individually and on behalf of members of the general public similarly situated, Plaintiff,
v.
ACTIVISION BLIZZARD, INC., Blizzard Entertainment, Inc., and Does 1 through SO inclusive, Defendants.

No. BC575665.
June 28, 2017.

Amended Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Dept.: 307

Date: June 14, 2017

Time: 8:30 a.m.

The Court having been made aware of an error in its order of June 14, 2017 issues this Amended Order. The Amended Order corrects page 10, line 13 to read “\$10,000” in place of “\$5,000” and corrects the date for Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds from January 7, 2018 to January 10, 2018 at 8:30 a.m

I. BACKGROUND

Plaintiff John Lee sues his former employer in this class action lawsuit for a variety of wage and hour claims. Plaintiff alleges that he was employed as a Senior Artist for Defendant, and that he and other similarly situated employees were improperly classified as exempt. (Complaint, ¶¶ 1, 13.) The operative pleading contains claims for overtime, meal and rest breaks, waiting time penalties, wage statement penalties, and PAGA penalties.

On February 2, 2017, the Court granted Plaintiffs motion for preliminary approval of the settlement of this class action. Now before the Court is Plaintiff's motion for final approval.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

The settlement class is defined as, “all current and former employees of Blizzard who were employed as exempt senior level artists in Blizzard's cinematics department at any time from March 16, 2011 to the preliminary approval date.” (Settlement Agreement, ¶1.32)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms of the Settlement Agreement are as follows:

- The Maximum Settlement Amount is \$1,500,000, non-reversionary. (§1.17)
 - If the number of workweeks exceeds 15,474 by more than 5%, Defendants will increase the Maximum by \$96.94 for each workweek beyond the threshold. (§3.12) This provision was not triggered. The total number of workweeks is 16,202.48. (Declaration of Abel Morales, ¶13.)
 - The Net Settlement Amount (\$954,000) is the Maximum minus the following:
 - Up to \$500,000 for attorney fees (§1.3);
 - Up to \$22,000 for attorney costs (§1.4);
 - Up to \$15,000 for an enhancement award (§1.7);
 - Up to \$6,500 for claims administration costs (§1.30); and
 - \$2,500 (75% of \$3,333 PAGA penalty) to the LWDA (§1.16, as amended).
- There is no claims process. Settlement Class Members who do not opt out will receive a payment. (§3.11)
- The Response Deadline (for opting out or objecting) is 30 days, (§1.28)
 - If more than 5% opt out, Defendant may terminate the settlement. (§3.17)
- Each participating class member's settlement share will be based on his/her number of workweeks in relation to the aggregate number of workweeks during the class period. (§3.11)
- For tax purposes, payments to participating class members will be allocated 50% to wages and 50% to interest and penalties. (§3.10)
- Defendants will be separately responsible for any employer taxes for portions of the settlement proceeds that constitute wages. They will not be paid from the Maximum Settlement Amount (P.2, as amended)
- Checks will be valid for 180 days from the date of issuance, and thereafter will escheat. (§3.10)
- As of the Effective Date, all class members who do not opt out will release the Released Parties from the Released Claims for the beginning of the Class Period through Preliminary Approval, (§3.1) Released Claims means any and all federal and California state law wage-and-hour claims, rights demands, liabilities and causes of action of every nature and description, whether known or unknown, arising during the period from or related to any and all claims that were asserted or could have been asserted with regard to the workweeks used to calculate the Workweek Value and based on the facts alleged in the Lawsuit, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, reimbursements, damages, unpaid costs, penalties (including penalties under the Private Attorneys General Act of 2004, as amended,  California Labor Code section 2699 *et seq.*), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. The Released Claims shall not include any claims, rights, demands, liabilities or causes of action of any nature or description for workweeks during the Class Period in which Settlement Class Members officially were assigned positions and titles outside of the cinematics department. Claims under the federal Fair Labor Standards Act, as

amended, are release only by those Settlement Class Members who accept their Individual Settlement Payments and thereby are deemed to have consented to such release, (§1.25, as amended.)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

*2 “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.”  CRC 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.”  CRC 3.769(h).

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See  *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” See *Wershba* at 245 (citing  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”  *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba* at 245.

Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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.’” *Id.* at 250.

2. Does a presumption of fairness exist?

*3 a. *Was the settlement reached through arm's-length bargaining?* Yes. Settlement of this action resulted from a full day of mediation before David Rottman. (Declaration of J.E.B. Pickett, ¶16.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. The parties have conducted extensive investigation into the facts of this case. (Id. at ¶12.) Defendant produced documents (including employment policies, job duties, and correspondence relating to the allegations) and video clips, and Plaintiff took the deposition of Defendant's person most knowledgeable. Defendant took Plaintiff's deposition. Defendant provided class information that included salary and bonus data as well as dates of employment. (Id. at ¶¶ 13, 14, 17.)

c. *Is counsel experienced in similar litigation?* Yes. (Id. at ¶¶ 24-30.)

d. *What percentage of the class has objected?* The settlement administrator received no objections. (Morales Declaration, ¶10.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiffs' case.* “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Here, based on evidence obtained during discovery, Class Counsel has calculated that Defendants' damage exposure is approximately \$6,500,000, not counting attorney's fees. (Pickett Declaration, 118.) While Plaintiff believes that he has a good chance of prevailing he has taken into consideration the potential that Defendant's defenses could be believed by the trier of fact, along with other risks of continued litigation. For example, approximately 80% of the class are current employees of Defendant who could potentially testify that they are correctly classified, and/or that they worked no overtime. (Id. at ¶¶ 19-21.) The \$1,500,000 appears to be reasonable given the potential that the \$6,300,000 damage estimate could be reduced by 80% to \$1,300,000. (Id. at ¶22.) Additionally, Defendant produced declaration from class members that could defeat certification. (Id. at ¶20.)

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. See  *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).

d. *Amount offered in settlement* As indicated above, Defendant has agreed to settle for the non-reversionary amount of \$1,500,000. Based on the claims administrator's calculations, the 127 participating class members will receive settlement payments averaging \$7,511.81. (Morales Declaration, ¶13.)

*4 c. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here,

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	128
Number of notices mailed:	128
Number of undeliverable notices:	0
Number of opt-outs:	1
Number of objections:	0
	127

Number of participating class members:

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel request \$500,000 for attorney fees and \$21,995.51, reduced to \$21,475.51 at hearing, for costs.

A percentage calculation with or without a lodestar cross-check is permitted in common fund cases. (📄 *Laffitte v. Robert Half Int'l. Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (📄 *Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

Here, counsel seek fees pursuant to the percentage method. (Motion at 4-7.) The \$500,000 fee request is 1/3 of the \$1,500,000 settlement amount, which is average. (📄 *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, FN13: “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”) The Court finds the \$500,000 fee request to be reasonable in amount. Further, the notice expressly advised class members of the fee request. No class member objected.

Plaintiff has consented in writing to the 50-50 division of any fee award between the two firms representing him and the class. (Declaration of John Lee, ¶20.)

As for costs, Class Counsel request \$21,475.51. This is less than the \$22,000 cap, which was made known to class members and not objected to. The costs to date include filing fees, fees for service of process, travel and accommodations (for depositions and mediation), legal research, court reporters, postage, Case Anywhere costs, and other miscellaneous items. (Pickett Declaration, ¶44; Declaration of Brett Markson, ¶22; lodged billing and cost records of both firms.) The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, the fee and cost requests are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”)

*5 Here, the named Plaintiff requests an incentive award of \$15,000. Plaintiff John Lee retained legal counsel to pursue claims on his own behalf and on behalf of other similarly situated employees. (Lee Declaration, ¶¶ 2-4.) Plaintiff has assisted with this litigation by providing information to counsel and helping them learn the technical aspects of the work, providing documents to counsel, and identifying witnesses. (Id. at ¶¶ 6, 7.) Plaintiff also had his deposition taken and participated in settlement. (Id. at ¶8.) Plaintiff estimates that he has spent approximately 80 hours or more on this litigation, including about 20 for mediation alone which he attended in San Francisco. (Id. at ¶¶ 8, 9.)

In light of the above as well as the benefits obtained on behalf of the class, \$10,000 appears to be a reasonable inducement for his participation in this case. The requested incentive award is approved in the amount of \$10,000.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator CPT Group, Inc. requests \$6,500. (Morales Declaration, ¶ 14.) This is the amount estimated at the time of preliminary approval. Given the tasks performed (and still to be performed), this amount appears to be reasonable. This amount was also disclosed to class members and deemed unobjectionable.

III. CONCLUSION AND ORDER

A. RULING

The Court:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards \$500,000 in attorney fees and \$21,475.51 in costs to Edward J. Wynne and J.E.B. Pickett of the Wynne Law Firm and Brett S. Markson and Timothy A. Pico of Markson Pico LLP;
- (4) Awards \$10,000 as an incentive award to Class Representative John Lee;
- (5) Awards \$6,500 in claims administration costs to CPT Group, Inc.;
- (6) Approves \$2,500 PAGA penalty payment to the LWDA;
- (7) Enters Judgment;
- (8) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds for January 10, 2018 at 8:30 a.m. Final Report is to be filed by January 3, 2018.

Dated: 6/28/17

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2017 WL 6888559 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Martin J MARINE,
v.
GILTNER INC.

No. BC587123.
September 19, 2017.

Trial Order

David Garrett, Plaintiff Counsel.

Richard Rahm, Defendant Counsel.

Kenneth R. Freeman, Judge.

NATURE OF PROCEEDINGS:

***1** MOTION OF PLAINTIFF FOR FINAL APPROVAL OF CLASS-ACTION SETTLEMENT;

MOTION OF PLAINTIFF FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND ENHANCEMENT
AWARD

The Courts tentative ruling was issued via posting on the Los Angeles Superior Courts website under Civil "Tentative Rulings" this date.

The matters are called for hearing.

No Objectors appear this date in Court.

The parties submit to the Court's tentative ruling.

The Court now adopts its tentative ruling as the final order of the court. Said ruling is filed this date and is incorporated into the case file.

The above entitled motion is GRANTED.

The Order Granting Final Approval of Class Action Settlement and the Judgment Re Class Action Settlement are signed and filed this date.

The Court sets a Non-Appearance (Case Review) Re: Distribution on June 22, 2018 in Department 310.

The parties are ordered to file a Declaration Re: Distribution Report by NOON on June 20, 2018 in Department 310.

If Declaration is NOT filed by said date and time an Order to Show Cause hearing will be set.

Notice is waived.

DEPARTMENT 310 - LAW AND MOTION RULINGS

Hearing date: September 19, 2017

Dept. 310

Greg Habibi

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR FEES, COSTS, AND INCENTIVE PAYMENT

Grant final approval, finding that the settlement is fair, reasonable, and adequate. Award \$116,666 for fees and \$10,552.68 for costs to class counsel, \$5,000 for a service award to the class representative, and \$7,928 for administrative costs to the claims administrator. Approve payment of \$7,500 in PAGA penalties to the LWDA.

DISCUSSION

1. Background

This is a wage and hour class action. Plaintiff Martin Marine worked as a truck driver for Defendant from May to July, 2014. (Complaint, ¶9.)

The Complaint sets forth the following causes of action:

1. Missed Meal and Rest Breaks –  Labor Code §226.7
2. Continuing Wages –  Labor Code §203
3. Improper Pay Stubs –  Labor Code §226
4. Failure to Pay Overtime –  Labor Code §§ 204,  510,  1194
5. Improper Pay Stubs –  Labor Code §§ 226, 1174 (actually alleges failure to maintain records)
6. Failure to Indemnify for Necessary Expenditures – Labor Code §2802
7. Unfair Competition –  B&P Code §17200
8. Civil Penalties – Labor Code §2698
9. Unlawful Deduction from Wages – Labor Code §221

The complaint names Giltner, Inc. as defendant, but the settlement is with Progressive Logistics, Inc., dba Giltner, Inc. The parties filed a Stipulation to Amend Defendant to add Progressive Logistics, Inc. dba Giltner Inc. as a defendant and dismiss Giltner, Inc which was signed by the Court on April 25, 2017.

Following mediation, Plaintiff and Defendant entered into a settlement agreement. The Court granted preliminary approval on May 5, 2017. Now before the Court is Plaintiff's motion for final approval.

Notice and Claims Process

In California, the notice must have “a reasonable chance of reaching a substantial percentage of the class members.”  Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 251 (emphasis added). Importantly, however, the plaintiff need not demonstrate that each member of the class has received notice. As long as the notice had a “reasonable chance” of reaching a substantial percentage of class members, it should be found effective.

*2 Dahl Administration, LLC (“Dahi”) is providing settlement administration services for this settlement. (Declaration of Kelly Kratz, ¶2.) On May 15, 2017, Dahl received the class list from defense counsel; it contained 136 class members. (Id. at ¶4.) Dahl conducted a search of the NCOA to update the addresses and mailed notice packets to all class members on June 8, 2017. (Id. at ¶¶15-6.)

16 notice packets were returned and sent to a professional address search firm for tracing. (Id. at ¶7.) An updated address was received for 11 class members and notice packets were remailed to the traced address. (Ibid.) Updated addresses could not be found or 5 class members. (Ibid.) Of the 11 notice packets remailed to a traced address, one was subsequently returned as undeliverable. (Ibid.)

The deadline for responding was July 24, 2017. (Id. at ¶6.) As of August 11, 2017:

0 objections were received;

1 request for exclusion was received;

(Id. at ¶¶19-10)

II. Terms of Settlement

The proposed settlement class is defined as, “all California-resident truckers employed by Defendant or Progressive Logistics, Inc. at any time between July 7, 2011 through the date of Preliminary Approval.” (¶6)

The Settlement Fund is \$350,000. (¶35)

The Net Settlement Amount (**\$180,834**) is the above minus:

- Up to \$116,666 for attorney fees (33.33%) (¶3);
- Up to \$20,000 for attorney costs (Ibid.);
- \$2,500 to Plaintiff for a general release (MI 19, 70);
- \$2,500 for an incentive award to Plaintiff (¶72, as amended);

- Estimated \$20,000 for claims administration costs (¶2); and
- \$7,500 (75% of \$10,000) to the LWDA for a PAGA payment (¶24).
- Employer taxes (¶51).

No claims process. No Reversion.

Checks will be valid for 180 days from issuance. After that, the funds from uncashed checks will be pooled and redistributed pro rata to class members who cashed their checks. Any uncashed checks remaining after the second disbursement will be sent to the Unclaimed Wages Fund. (¶83)

III. *Dunk* Factors

It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to the proposed class settlement.  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case.  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable.  *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1165-1166;  *Wershba*, supra, 91 Cal.App.4th at 245. There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *Manual for Complex Litigation* (Third) §30.42.

*3 Maximum potential damages for the rest break violations was computed at \$1,416,960; proving this would be difficult considering lack of records, and the fact that workers in fact took breaks. The lunch break violation was also valued at \$1,416,960.  Labor Code §§ 201 and 202 could give rise to penalties of \$279,850 for the 79 former employees. (Declaration of Alan Harris ISO Preliminary Approval, ¶18.)

The wage statement violation was valued at \$512,000 (128 class members x \$4,000 – the maximum for liquidated damages provided by  Labor Code section 226). The total potential PAGA penalty was valued at \$312,000. As for the reimbursement cause of action, Defendants produced evidence that many of the allegedly unreimbursed expenses were actually reimbursed and reflected in the wage statements. Therefore, Plaintiff deeply discounted the possible recovery under this cause of action. Class Counsel presently estimates that the total possible recovery is well under \$128,000. (Supplemental Declaration of Alan Harris ISO Preliminary Approval, ¶7)

$$\$1,416,960 + \$1,416,960 + \$279,850 + \$512,000 + \$312,000 = \$3,937,770$$

Because Defendant is a privately held Idaho corporation, collection of a multi-million dollar judgment could be difficult, making the \$350,000 settlement reasonable. (Harris Declaration ISO Preliminary Approval, ¶8.)

The risk, expense, complexity and likely duration of further litigation.

Had this case not settled, there would have been additional risks and expenses associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

The risk of maintaining class action status through trial.

There is always a risk of decertification. [Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).]

The amount offered in settlement

As part of the Court's analysis of this factor, the Court should take into consideration the admonition in Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133. In Kullar, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

Defendant has agreed to settle for the non-reversionary amount of \$350,000. After taking the requested deductions, approximately \$200,000 will remain to be distributed to participating class members.

The extent of discovery completed and the stage of the proceedings

*4 The parties have engaged in formal and informal discovery. Class Counsel analyzed time and wage records and prepared damage analysis. (Harris Declaration ISO Preliminary Approval, ¶6.) Class Counsel also interviewed potential witnesses and putative class members. (Id. at ¶¶ 6, 7.) Settlement was reached after arms'-length negotiations at mediation before Michael Dickstein. (Id. at ¶6.)

Experience and views of counsel

Class Counsel has experience with wage and hour class action litigation. (Harris Declaration ISO Preliminary Approval, ¶¶ 1-4.) He is of the opinion that this settlement is fair, reasonable, and adequate. (Id. at 118.)

Presence of a governmental participant

Not applicable.

Reaction of the class members to the proposed class settlement

The class reacted positively in that no class member objected and one class member opted out. (Kratz Decl., ¶¶10-12.) The 137 participating class members represent 99.27% of the 138 settlement class members.

Conclusion on Dunk factors

On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final approval is warranted.

IV. Attorney's Fees, Costs, and Incentive Payments

Attorneys' Fees

Class counsel requests attorney fees of \$116,666.

The Court employs the lodestar method in awarding fees, as opposed to a “percentage of the common fund” method. This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's efforts. In true common fund cases, the Court may utilize the percentage method, as cross-checked by the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.)

Here, fees are sought pursuant to the percentage method.

The \$116,666 fee request constitutes 1/3 of the potential recovery of \$350,000, which is within the average range. The determination of what constitutes an appropriate percentage “is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award.” [In re Ikon Office Solutions, Inc., Securities Litigation (E.D. Pa. 2000) 194 F.R.D. 166, 193.]

These factors favor the \$116,666 award. As for the first factor, private contingency fee agreements are routinely 30% to 40% of the recovery. [Id. at 194.] As for the second factor, although the median percentage of attorney fees in class actions is 25%, “most fees appear to fall in the range of nineteen to forty-five percent.” [Id.] As for the third factor, Class Counsel has experience in class actions, including wage and hour related actions. Most importantly, Class Counsel achieved good results for the class as evidenced by the class members' reaction to the settlement. As for the fourth factor, Class Counsel negotiated a settlement agreement in which Settlement Agreement provides for a financial benefit in which approximately \$200,000 is distributed to 137 class members, with an average payout of approximately \$1,547.85. (Kratz Decl., ¶11.)

The lodestar cross-check supports the fee request as well. Class Counsel has presented evidence from which the lodestar may be calculated. (Declaration of Alan Harris ISO Final Approval, ¶8)

<i>Timekeeper</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Total Lodestar</i>
A. Harris	*5 75.6	\$800	\$60,480
D. Garrett	93.1	\$675	\$62,842.50
C. Nordsten	1	\$375	\$375
Clerks/Paralegals	4.7	\$210	\$987

R. Lee	01	\$375	375
TOTAL	175.4		\$125,059.50

hourly rate for class counsel and the hours spent appear to be reasonable. Accordingly, the total lodestar calculation is \$125,059.50. Class Counsel's fee request of \$116,666 requires no multiplier. It appears that Class Counsel utilized skill in litigating this case, and by all accounts, have good reputations in the legal community; at the very least, there is no evidence before the Court to indicate that the attorneys have negative reputations in the legal community. It also appears that Class Counsel spent appreciable time on the case, which time could have been spent on other meritorious fee-generating cases.

For the foregoing reasons, the fee request of \$16,666 is granted. The Court notes that the notice advised class members of the maximum fee request of \$166,666 and not a single class member objected to it.

Costs

Class Counsel requests costs in the amount of \$10,552.68, which is below the settlement cap of \$20,000. As of August 18, 2017, Class Counsel has incurred costs in the amount of \$10,552.68. Class Counsel's actual costs consist of filing fees (\$1,886), research (\$662.50), travel (\$958.52), and mediation (\$6,450). (Id. at Exhibit 1)

These costs appear reasonable and necessary to the conduct of the litigation. Further, as with the fee requests, the maximum cost request was disclosed to class members and deemed unobjectionable. For these reasons, the cost request is granted in the amount of \$10,552.68.

Cost of Administration

Claims administrator Dahl requests administration costs of \$7,928. (Kratz Decl., ¶12.) The Settlement Agreement estimated claims administration costs would be \$20,000. (¶2.) Based upon the work performed and yet to be performed, this amount appears to be reasonable. The Court therefore awards the requested amount in full.

Incentive Payment

Finally, Class Counsel seeks an incentive payment of \$5,000 to the class representative.

The Court considers the following factors, among others, in determining whether to pay an incentive or enhancement award to a class representative:

Whether an incentive was necessary to induce the class representative to participate In the case;

- Actions, if any, taken by the class representative to protect the interests of the class;
- The degree to which the class benefited from those actions;
- The amount of time and effort the class representative expended in pursuing the litigation;
- The risk to the class representative in commencing suit, both financial and otherwise;
- The notoriety and personal difficulties encountered by the class representative;
- The duration of the litigation; and

• The personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012) (citing  Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804;  Bell v. Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726; In re Cellphone Fee Termination Cases (2010) 186 Cal.App.4th 1380, 1394; Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412).

*6 Plaintiff Martin Marine worked for Defendant as a truck driver In 2014. His interest in prosecuting this lawsuit is to secure compensation for all of the members of the class on account of Defendant's failure to comply with California state labor laws. He spent considerable time conferring with his attorneys, providing factual background and support, analyzing and providing date, and consulting with his attorneys before, during, and after the mediation in San Francisco. He aided with the preparation of the initial complaint and with informal discovery. He has reviewed the settlement agreement and believes the terms are fair, adequate, and reasonable to the class. (Declaration of Martin Marine, ¶2-10.)

The Court grants a \$5,000 incentive for the following reasons:

Plaintiff took action in protection of the class and devoted a significant amount of time to this litigation;

The class benefitted from this action;

Plaintiff appears to have taken his duties as a class representative seriously and willingly undertook all associated risks.

The general release he signed

2017 WL 2840618 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Danielle MICELI, individually and on behalf of herself and all others similarly situated, Plaintiff,

v.

INTERNATIONAL COFFEE & TEA, LLC, a Delaware limited
liability company; and Does 1 through 300, inclusive, Defendants.

No. BC557239.

May 31, 2017.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Dept.: 307

Date: May 31, 2017

Time: 10:00

I. BACKGROUND

This class action lawsuit alleges wage and hour violations against Defendant International Coffee & Tea, LLC (Coffee Bean). Plaintiff, a former employee, alleges that Defendant failed to provide meal periods, failed to pay all wages dues upon ending employment, and failed to provide accurate itemized wage statements. The operative complaint also contains claims for unfair competition and seeks PAGA penalties.

The parties were able to resolve this matter at mediation. On December 15, 2016, this Court granted preliminary approval of the settlement agreement. Subsequently, the parties sought to amend the settlement so as to exclude General Managers from the class. A joint stipulation to amend the settlement agreement and to continue the fairness hearing was signed by the Court in March, 2017.

Now before the Court is Plaintiffs motion for final approval.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

Class Member means, “all persons who, during the Class Period, have worked for International Coffee & Tea, LLC in its California retail stores in any non-exempt position other than General Manager. For any person who worked as both a General Manager and in another non-exempt position during the Class Period, that person is only considered a Class Member for the time during which any such person worked in a non-exempt position other than General Manager.” (§6, as amended.).

Settlement Class Member means a Class Member who does not opt out. (§32)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms of the Settlement Agreement are as follows:

- The Total Settlement Amount is \$2,375,000, non-reversionary. (§35, as amended)
 - Defendant will pay employer taxes in addition. (§§ 35, 51)
- The Net Settlement Amount (\$1,472,084) is the Total minus the following:
 - Up to \$791,666 (1/3) for attorney fees (§5, as amended);
 - Up to \$25,000 for attorney costs (§5);
 - Up to \$15,000 for an incentive award (§17);
 - Estimated \$52,500 for claims administration costs (§2); and
 - \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA (§21).
- There is no claims process.
- The Exclusion and Objection Deadlines are 60 days. (§§ 14, 20)
 - If more than 3% of the class opts out, Defendant has the right to reject this agreement. (§83)
- Each Settlement Class Member will be entitled to a Percentage Share of the Net. The Percentage Share will be calculated by dividing each Settlement Class Member's total Gross Wages by the Total Gross Wages of the class combined. (§57)
- For tax purposes, payments to participating class members will be allocated 1/3 to wages and 2/3 to interest and penalties. (§58)
- Checks will be valid for 180 days from the date of mailing; thereafter, the funds will be sent to the California Department of Industrial Relations Unpaid Wages Fund. (§79)
- Plaintiff and all Settlement Class Members will be deemed to have released the Released Claims upon the Effective Date, even if they later discover additional or different facts thereafter. (§49)
 - *2 • Released Claims means all claims, “whether known or unknown, arising from the same set of operative facts as those set forth in the First Amended Class Action Complaint for Damages (the ‘Settled Claims’), including all claims for the failure to provide meal periods ... and the following claims: all claims for the failure to timely pay wages during employment and/or upon termination...; all claims for improperly itemized wage statements ...; all claims for unfair competition ...; all claims for violation of the Private Attorney General Act... The Settled Claims are limited to those that accrued from September 10, 2010 through the date of Preliminary Approval or December 15, 2016, whichever comes earlier. **For any Class Member who worked in the position of General Manager at any time during the Class Period, the Released Claims**

shall not include any claims that accrued during the time during which the Class Member worked in the position of General Manager.” (§26, bolded material added by amendment.)

- Plaintiff will provide a general release and CC §1542 waiver. (§§37, 69)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.”  CRC 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.”  CRC 3.769(h).

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See  *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal quotation marks omitted).

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However a presumption of fairness exists 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.” See *Wershba* at 245 (citing  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”  *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba* at 245.

*3 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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.’” *Id.* at 250.

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. The parties engaged in adversarial negotiations while mediating before Hon. Michael D. Marcus (Ret.) on September 12, 2016. (Declaration of Scott B. Cooper, ¶23.) The mediator was able to provide neutral analysis, which was useful in guiding the parties to settlement. (Ibid.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. In preparation for a motion for class certification, the parties engaged in extensive written discovery. (Id. at ¶20.) Defendant produced thousands of pages of documents including its meal period policies, contact information for putative class members, time and payroll records for a 20% sample of the class, and Plaintiff's personnel file. Defendant also took Plaintiff's deposition and Plaintiff took the deposition of Defendant's person most knowledgeable. (Ibid.)

c. *Is counsel experienced in similar litigation?* Yes. (Id. at ¶¶ 3-14; Declaration of Jeffrey Hogue, ¶¶1-6,8; Declaration of Marc H. Phelp, ¶¶ 3-10; Declaration of Roger Carter, ¶¶ 2, 7-12.)

d. *What percentage of the class has objected?* There were zero objections submitted. (Supplemental Declaration of Tin Nguyen, ¶5.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiffs' case.* "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." See  *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Class Counsel provided information regarding the strength of the class claims at the time of preliminary approval. (Cooper Declaration ISO Preliminary Approval, ¶¶ 28-30.) The meal period claim for shifts longer than 6 hours was valued at \$2.8 million; this was considered the strongest claim because this meal period cannot be waived. While potential liability for meal break violations for 5 to 6 hour shifts is \$13.8 million, liability would be difficult to establish because these meal breaks may be waived. Additionally, Counsel took into consideration the fact that the trial court in this action previously denied certification on the meal period claim. Plaintiff understood that the unfair competition could also face challenges due to the holding of  *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138.

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. See  *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").

*4 d. *Amount offered in settlement.* As indicated above, Defendant has agreed to settle for the modified amount of \$2,375,000. This constitutes 85% of the value of the strongest meal period claim, which is within the ballpark of reasonableness. If deductions are taken in the amounts outlined above, the Net would be \$ 1,472,084, which will be automatically disbursed to class members who do not opt out. According to the claims administrator, the average settlement payment is \$113.03. (Supplemental Nguyen Declaration, ¶8.)

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	12,986
Number of notices mailed:	12,986
Number of undeliverable notices:	217
Number of opt-outs:	5 (0.04%)
Number of objections:	0
	12,980

Number of participating class members:

There is one class member whose request to opt out was deficient. (Supplemental Nguyen Declaration, ¶7.) Defendant advised at oral argument that the deficiency is expected to be corrected within fifteen days, and if so corrected, will be accepted.

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel, Hogue & Belong, The Cooper Law Firm, The Phelps Law Group, and The Carter Law Group, request \$791,666 for attorney fees and \$19,880.07 for costs.

Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.) In a common fund case such as this a percentage calculation is permitted. If sufficient information is provided the reasonableness of the percentage may be cross-checked with a “lodestar” analysis. (Laffitte v. Robert Half Int’l, Inc. (2016) 1 Cal.5th 480, 503.)

Here, Plaintiff seeks fees pursuant to the percentage method. The \$791,666 fee request is 1/3 of the \$2,375,000 settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, FN13: “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”)

Class Counsel has presented some evidence from which the lodestar may be calculated. Hogue & Belong has a lodestar of \$389,420. (Hogue Declaration, ¶¶ 9-12, and Exhibit B thereto.) The Cooper Law Firm has a lodestar of \$185,213. (Cooper Declaration, ¶¶ 34-38, and lodged Cooper billing records.) The Phelps Law Group has a lodestar of \$120,500. (Phelps Declaration, ¶¶ 17-20, and Exhibit B thereto.) The Carter Law Firm has a lodestar of \$100,207.50. (Carter Declaration, ¶¶

18-24, and Exhibit A thereto.) Based on a review of the timekeeping records, the hours spent on the tasks performed appear to be reasonable for this case. The hourly rates charged are represented to be in line with those in the community. This information is scarce. However, based on the hourly rates presented the combined lodestar for all class counsel is \$795,340.50. [\$389,420 + \$185,213 + \$120,500 + \$100,207.50 = \$795,340.50]

*5 The \$791,666 fee request is less than the \$795,340.50 lodestar.

Because the fee request represents a reasonable percentage of the non-reversionary settlement amount and is supported by a preliminary lodestar “cross-check,” and because the class was provided with notice of the fee request and none objected, the Court awards fees in the amount requested.

Plaintiff has provided written consent to a fee-splitting agreement, pursuant to which any fee award will be divided as follows: 48% to Hogue & Belong, 25% to The Cooper Law Firm, 14.5% to The Phelps Law Group, and 12.5% to The Carter Law Firm. (Cooper Declaration, ¶41.)

As for costs, Class Counsel request \$19,880.07. Hogue & Belong have incurred costs of \$8,991.69. (Hogue Declaration, ¶12, and Exhibit B thereto.) The Cooper Law Firm has incurred costs of \$6,466.87. (Cooper Declaration, ¶39, and Exhibit D thereto.) The Phelps Law Group has incurred costs in the amount of \$2,727.18. (Phelps Declaration, ¶13 and Exhibit A thereto.) The Carter Law Firm has incurred costs of \$1,694.33. (Carter Declaration, ¶25, and Exhibit B thereto.) The costs appear to be reasonable and necessary to the litigation and are reasonable in amount. The class was given notice that litigation costs could be as high as \$25,000, and none objected. For all of the foregoing reasons, the costs are approved in the amount requested.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]”)

Here, the named Plaintiff requests an incentive award of \$15,000. Danielle Miceli was employed by Defendant from October, 2011 through June, 2014. (Declaration of Danielle Miceli, ¶3.) Miceli retained counsel in order to pursue class claim based on meal break violations. (Id. at ¶¶ 5, 6.) Miceli has claims that are typical of the class and has no interest that is antagonistic to the class. (Id. at ¶¶ 7, 8.) Miceli has devoted approximately 90 hours to this litigation, performing the following tasks: having multiple conversations with her attorney, responding to discovery, locating and providing to her attorneys hundreds of pages of documents, appearing for deposition, making herself available by phone during mediation, and reviewing settlement documents. (Id. at ¶¶ 9, 12-15, 20.) Miceli also agreed to a delayed recovery, and accepted what she perceived as a possibility that she will lose job opportunities as a result of having been a class representative in this action. (Id. at ¶¶ 9, 17, 18, 22.) She notes that given the size of the class and the possibility that some class members may be in management positions with other similar companies in the future there is the potential that she will not be able to secure other work in the same industry but she provides no evidence that this has occurred to date. (Id. at ¶¶ 17, 18).

*6 In light of the above as well as the benefits obtained on behalf of the class, \$10,000 appears to be a reasonable inducement for her participation in this case. The requested incentive award is approved in this amount.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator CPT Group, Inc. requests \$57,500. (Nguyen Declaration, ¶12.) This is \$5,000 more than the amount estimated at the time of preliminary approval, and is due to the delay in mailing notice packets and the cost of re-printing notice after the settlement agreement was revised. The class was provided with notice of the \$57,500 amount, and none objected. Given the tasks performed (and still to be performed), this amount appears to be reasonable.

III. CONCLUSION AND ORDER

A. RULING

The Court hereby:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards \$791,666 in attorney fees and \$19,880.07 in costs to class counsel;
- (4) Awards \$10,000 as an incentive award to class representative Danielle Miceli;
- (5) Awards \$57,500 in claims administration costs to CPT Group, Inc.;
- (6) Approves \$18,750 PAGA penalty payment to the LWDA;
- (7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, release language, and the names of all class members who opted out, by June 19, 2017;
- (8) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and
- (9) Sets a Non-Appeal Case Review re: Final Report re: Distribution of Settlement Funds is set for January 5, 2018 at 8:30 a.m. A Final Report is to be filed by December 22, 2017.

Dated: May 31, 2017

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2017 WL 6452647 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Penelope MUNYAN; individually, and on behalf of other members of the general public similarly situated;
Monique Taylor, individually, and on behalf of other members of the general public similarly situated;
and Kelly Foster, individually, and on behalf of other members of the general public similarly situated and
on behalf of other aggrieved employees pursuant to California Private Attorneys General Act, Plaintiffs,

v.

NATIONWIDE MEDICAL, INC., a California corporation; and Does 1 through 100, inclusive, Defendants.

No. BC579015.
October 12, 2017.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

***1 Date: October 12, 2017**

Time: 10:00 a.m.

Dept.: 307

I. BACKGROUND

Defendant is a supplier of continuous positive and bilevel positive airway pressure (“CPAP/BiLevel”) supplies and support, specializing in providing both machines and facemasks as well as therapy visits and follow ups. From its location in Agoura Hills, California, Defendant provides CPAP/BiLevel services and supplies to patients across the nation.

Plaintiff Penelope Munyan is a former employee of Defendant, who commenced this putative wage-and-hour class action against Defendant on April 16, 2015, individually, and on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from April 16, 2011 to final judgment. Plaintiff Munyan's lawsuit was filed in the Superior Court of California for the County of Los Angeles, Case No. BC579015.

Plaintiff Kelly Foster is a former employee of Defendant, who commenced a separate lawsuit, against Defendant on May 20, 2016, in the Superior Court for the State of California for the County of Los Angeles, Case No. BC62 12-95. Plaintiff Foster's lawsuit alleged a sole cause of action for violation of the California Private Attorneys' General Act, California Labor Code § 2698, et seq. (“PAGA”).

On October 5, 2015, pursuant to the parties' stipulation and the Court's order granting said stipulation, Plaintiff Munyan filed a First Amended Class Action Complaint for Damages.

On March 30, 2016, pursuant to the parties' stipulation and the Court's order granting said stipulation, Plaintiff Munyan filed a Second Amended Class Action Complaint for Damages which, among other things, added Monique Taylor as a named Plaintiff.

On September 12, 2016 pursuant to the parties' stipulation and the Court's order granting said stipulation, Plaintiffs Munyan and Taylor filed a Third Amended Class Action Complaint for Damages, which added Plaintiff Kelley Foster as a named Plaintiff, and consolidated the claims asserted in Plaintiff Munyan's and Plaintiff Foster's respective actions, for the purposes of settlement ("Third Amended Complaint"). The Third Amended Class Action Complaint alleged eleven causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, et seq.; (11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004).

*2 Following mediation conducted by Paul Grossman, Esq. on June 14, 2017, the parties entered into the *Joint Stipulation of Class Action Settlement* ("Settlement Agreement"). The Court granted preliminary approval on April 25, 2017.

Now before the court is the motion for final approval of the settlement agreement.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

"Class" is defined as, "all non-exempt employees who have been employed by Defendants in the State of California between April 16, 2011 through the Preliminary Approval Order Date." (Settlement Agreement, pg. 3 lines 2-3)

Class Period means the time period of April 16, 2011 through the Preliminary Approval Order Date. (pg. 3 lines 7-8)

The parties stipulate to certification for purposes of this settlement. (¶D.1)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Total Settlement Amount is \$400,000, reversionary. (pg. 6 lines 13-14; ¶D.6)
- The Net Settlement Amount (\$196,250) is the Settlement Fund less:
 - Up to \$ 140,000 (35%) for attorney fees (¶D.4);
 - Up to \$25,000 for attorney costs (*Ibid.*);
 - Up to \$15,000 for service awards to the 3 class representatives (\$5,000 each) (¶D.3);
 - Up to \$20,000 for claims administration costs (¶C.2); and
 - \$3,750 (75% of \$5,000 PAGA penalty) to the LWDA (¶D.2).

- To receive a settlement payment, class members must complete and sign a claim form and timely submit it to the claims administrator. (§C.4)
- Each class member's settlement payment will be based on a ratio of the class member's Individual Workweeks to the Total Workweeks. The Individual Settlement Payment will be calculated by dividing the class member's Individual Workweeks by the Total Workweeks, and multiplying by the Net Settlement Amount. (§D.5)
- Under no circumstance will Defendant pay less than 50% of the Net Settlement Amount to class members who submit claims. In the event that less than 50% of the Net Settlement Amount is claimed, then the difference between the 50% of the Net Settlement Amount and the amount of the Net Settlement Amount actually claimed will be paid to all class members who submitted a claim proportionally with the value of the Individual Settlement Payment. (§D.6)
 - Defendant will maintain a reversionary interest in any unclaimed portion of the Net Settlement Amount, subject to the 50% floor. (*Ibid.*)
 - The minimum payment to the class is \$98,125 (Joint Supplemental Brief ISO Preliminary Approval, 7:16-20)
- The objection/exclusion/claim form Deadline is 45 calendar days. (pg. 6 lines 1-6)
 - For re-mailed notice packets, the deadline is extended 15 days. (*Ibid.*)
 - If 3% or more opt out, Defendant may rescind the settlement. (§E)
- For tax purposes, payments will be allocated 1/3 to wages, 1/3 to penalties, and 1/3 to interest. (§D.8)
 - The Parties agree that only the Claimant's share of taxes and withholdings that are due under state and federal law will be deducted with respect to the portion of the Individual Settlement Payment that is designated as wages, and will be subject to W-2 reporting.
 - Defendant will be solely responsible for reporting and paying taxes and contributions, if any, to any State or Federal authority for its portion of the employer taxes and contributions with respect to the wage portion of the Individual Settlement Payment.
 - *3 • The Parties further agree that the Settlement amounts for interest and penalties shall not be subject to withholdings or reduced for taxes, and will be reported on an IRS Form 1099.
- Checks must be cashed within 180 days of issuance; thereafter, funds will be paid to the State of California, Department of Labor Standards and Enforcement, Unclaimed Wages Fund. (§D.11)
- The settlement administrator is CPT Group, Inc. (pg. 6 lines 7-8)
- Upon approval of the Settlement at the Final Approval hearing, each class member, except those who have validly opted-out will release and discharge the Released Parties from all Released Claims. Released Claims are, “any and all claims for remedies, including all claims for liquidated damages, restitution, disgorgement, conversion, unjust enrichment, penalties, interest, and attorneys' fees and

costs, contingent or accrued, against the Released Parties, that could have been pled, or were pled, based on the factual allegations in the Complaint, including but not limited to claims for unpaid overtime, failure to pay minimum wage, failure to provide meal or rest breaks or pay one hour's wages in lieu thereof, failure to indemnify for all work related expenditures and losses, failure to pay wages upon termination of employment in a timely manner, failure to provide accurate itemized pay stubs, failure to keep requisite payroll records, failure to pay wages during employment, violations of the Private Attorney General Act under California Labor Code section 2698, et seq., violations of Business and Professions Code Section 17000 and § 17200 et seq. for Unfair Business Practices limited to the aforementioned Labor Code violations and the relevant Wage Orders issued by the Industrial Welfare Commission, arising during the Class Period. (pg. 5, lines 10-22)

- Plaintiff will provide a general release as well as a CC§1542 waiver. (¶D.3)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” (Cal. Rules of Court, rule 3.769(h).)

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”) [Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”] [internal quotation marks omitted].)

*4 “The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” (See *Wershba, supra*, 91 Cal.App.4th at pg. 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. (“*Dunk*”)].) Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not exclusive and the

court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (¶ Wershba *supra*, 91 Cal.App.4th at pg. 245.)

Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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, *supra*, 91 Cal.App.4th at pg. 250.)

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. The parties participated in a full day of mediation with Paul Grossman, Esq. (Declaration of Edwin Aiwazian ISO Preliminary Approval, ¶11.) With the aid of the mediator's evaluation, the parties reached (he proposed settlement described herein to resolve all of the claims alleged in the lawsuit. (*Ibid.*)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. Prior to engaging in mediation, the parties conducted a significant amount of formal discovery and also informally exchanged information and class-wide data in preparation for the mediation. Class Counsel interviewed and obtained information, including and not limited to, the names of potential witnesses, from Plaintiffs and putative class members, reviewed and analyzed a volume of documents and data produced by Defendant and obtained through other sources, researched applicable law, undertook evaluation of the allegations and claims (including but not limited to, damages/valuation calculations), and propounded and responded to several sets of written discovery in various forms. The data and documents that Class Counsel reviewed and analyzed included, and were not limited to, Plaintiffs' employment records, a sampling of Class Members' time and payroll records, data regarding Class Members' dates of employment and rates of pay, various job descriptions, multiple versions of Defendant's Employee Policy and Benefit Guide, various checklists, agreements, and acknowledgements, and numerous documents regarding Defendant's operations and employment policies, practices, and procedures, among other information and documents. (*Id.* at ¶12)

c. *Is counsel experienced in similar litigation?* Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (*Id.* at ¶¶5-7)

d. *What percentage of the class has objected?* Zero. (Declaration of Carole Thompson, ¶15.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

2. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiff's case.* “The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement.” (¶ Kullar, *supra*, 168 Cal.App.4th at pg. 130.)

***5 • Failure to Pay Overtime and Minimum Wages:** Plaintiffs alleged causes of action for unpaid overtime and minimum wages. Plaintiffs contended that Defendant's uniform policies, practices, and procedures required its non-exempt employees to perform work during meal and rest periods, and before clocking-in and after clocking-out. (Supplemental Declaration of Edwin Aiwazian ISO Preliminary Approval, ¶¶7-12)

• Assuming that one hour of unpaid overtime could be proven per workweek during the relevant time period, Plaintiffs' reasonable estimate of the potential value of this claim was **\$522,356.75**. (*Ibid.*)

- Assuming that one hour of unpaid minimum wages could be proven for each workweek during the entire time period at issue, Plaintiffs' reasonable estimate of the potential value of this claim was **\$348,145.95**. (*Ibid.*)

- **Failure to Provide Compliant Meal Periods and Associated Premiums:** Plaintiffs' theory of liability was also based on Defendant's failure to provide timely, full, and/or uninterrupted meal periods. (*Id.* at ¶¶13-17)

- It was determined that, assuming that two meal period violations could be proven for every workweek during the relevant time period, the potential value of this claim was **\$696,291.90**. (*Ibid.*)

- **Failure to Provide Compliant Rest Periods and Associated Premiums:** Plaintiffs' theory of liability was also based on Defendant's failure to provide its employees with timely, full, and/or uninterrupted rest periods. (*Id.* at ¶¶18-22)

- It was determined that, assuming that one rest period violation could be proven for every workweek, the potential value of this claim was **\$348,145.95**. (*Ibid.*)

- **Waiting-Time Penalties for Failure to Timely Provide Wages During Employment and Upon Termination:** Plaintiffs alleged that Defendant intentionally and willfully failed to pay Plaintiffs and the putative class members all wages due to them while they were employed by Defendant, within the time period permissible under California law. (*Id.* at ¶¶23-30)

- It was estimated that approximately 195 putative class members had been terminated during the time period beginning from three years prior to the commencement of this lawsuit (i.e., April 16, 2012) to approximately June 14, 2016. Assuming that these individuals were not timely paid all wages due to them upon termination, waiting time penalties would potentially be **\$591,084** collectively. (*Ibid.*)

- **Wage Statement Violations:** Plaintiffs also alleged a cause of action under  California Labor Code section 226(a). (*Id.* at ¶¶31 -33)

- it was estimated that approximately 201 putative class members worked during the time period commencing from one year prior to the filing of the action (i.e., April 16, 2014) to approximately June 14, 2016, and that these putative class members worked an average of 27.3 pay periods. Assuming that a violation could be proven for each of these putative class members, for 28 pay periods, the total potential recovery was calculated to be **\$552,750**. (*Ibid.*)

- **Failure to Maintain Requisite Payroll Records:** Plaintiffs alleged that Defendant had intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiffs and the putative class members. (*Id.* at ¶¶34-38)

- As of the time of the mediation, if Plaintiffs proved that Defendant willfully failed to maintain complete and accurate payroll records of 319 putative class members, the penalties for said violations would amount to **\$159,500**. (*Ibid.*)

- ***6 • Unreimbursed Business Expenses:** Plaintiffs contended that Defendant had failed to reimburse Plaintiffs and the other putative class members for necessary business expenses, including, but not limited to, the cost of using their personal cellphones for work-related purposes and the cost of purchasing office supplies. (*Id.* at ¶¶39-43)

- By Plaintiffs' calculation, if Plaintiffs proved that Defendant willfully failed to reimburse necessary business-related expenses for each of 319 putative class members in the amount of \$3 per workweek for the cost of using their cellphones and \$2 per workweek for the cost of purchasing office supplies during the relevant time period, the potential value of this claim would be **\$137,825**. (*Ibid.*)

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification.

( *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

d. *Amount offered in settlement.* As indicated above, Defendants have agreed to settle for the reversionary sum of \$400,000. Assuming that the Court approves all of the maximum requested deductions, approximately \$207,622.33 will be available for distribution for the class members who submitted claim forms. The 113 class members who submitted claim forms have claimed approximately \$93,817.40, which represents approximately 45.18% of the net. (Thompson Decl., ¶18[adjusted to account for decreased attorney cost request.] The Settlement agreement provides that at least 50% of the net be distributed to claimants (¶D.6); thus, an additional \$9,993.72 will be distributed to participating class members. Payments to participating class members will average **\$918.68**. [\$103,811.12 minimum payout ÷ 113 participating class members = \$918.68]

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	309
Number of notices mailed:	309
Number of undeliverable notices:	3
Number of opt-outs:	2
Number of objections:	0
Number of participating class members:	113

(Thompson Decl., ¶¶5-14.)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel requests **\$140,000** for attorney fees and **\$18,627.77** for costs.

In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. ( *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in

common fund cases. (📁 *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (📁 *Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

*7 In the instant case, fees are sought pursuant to the percentage method. (Declaration of Edwin Aiwazian ISO Final Approval, ¶9.) With respect to the requested attorneys fee amount of \$140,000, which is unopposed by the defendant, several considerations are relevant.

The California Supreme Court's decision in 📁 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503, expressly states that the decision does not address the appropriateness of using a percentage of recovery method to determine class counsel's fees when there is not a true common fund settlement. In this case, there is not a true common fund settlement, but rather a claims made settlement.

Nevertheless, the principles articulated in *Laffitte* for award of fees on a percentage basis are relevant to this case.

- The Supreme Court states that there should be an “alignment of incentives between counsel and the class.” (*Ibid.*) Thus, it is appropriate for counsel to bear the risk with the class when there is an asserted inability of defendant to pay.
- For the same reason, fee calculation in a claims-made settlement should incentivize counsel to encourage maximum class member participation.
- Use of a percentage of recovery yardstick for considering the reasonableness of class fees should be applied in such a way as to provide counsel with an incentive “to seek an early settlement and avoid unnecessarily prolonging the litigation.” (*Id.*) Thus a lodestar should be considered but should not reward “overworking” a case that is of low value to the class for whatever reason, unless the “overworking” is due to unavoidable defendant tactics.
- In addition, the percentage of recovery methodology should reflect actual value to the class. (See Principles of the Law of Aggregate Litigation (ALI)('Analysis of Award of Fees in Class Action Settlements'))

Applying these principles, several facts are relevant:

- Class counsel achieved participation by 36.57% of eligible class members. (Thompson Decl., ¶17.) These 113 Class Members who submitted claim forms have claimed approximately \$93,817.40, which represents 45.18% of the net settlement, if requested deductions are taken in full. (See Thompson Decl., ¶¶16-18.)
- If \$140,000 in fees are awarded, the amount to be paid to the class is \$103,811.12 (\$93,817.40 claimed by class members + \$9,993.72 to meet payment floor of 50% of net of \$207,622.33). The aggregate payment to all 113 participating class members would therefore be substantially less than the fee awarded to class counsel.
- Using \$103,811.12 as the payout to the class, and adding to that the other amounts defendant will pay in settlement of this litigation (attorney costs, incentive award, settlement administration costs and PAGA penalties), the total benefit to the class of this settlement is approximately \$156,188.89. Based on this measure of benefit to the class, a percentage fee of one-third would be approximately \$52,062.54.

- With regards to the lodestar, Class Counsel worked 369 hours on this case at a rate of \$500 per hour. (Declaration of Edwin Aiwazian ISO Final Approval, ¶¶11-12 and Exhibit A thereto.) This amounts to a total lodestar of \$184,500.
 - The number of hours worked, over the 2.5 years of this litigation, is in the high-average range. Moreover, a reasonable hourly rate depends on the market for legal services in which counsel operates. Class Counsel practices almost exclusively in wage and hour class actions, which do not bill clients on an hourly basis. Measuring the prevailing rate for such work in the legal community is difficult in these circumstances.
- *8 • Counsel took this case on a contingency, and should share in the risk with the class as to available recovery. In contingency work, sometimes counsel is unable to recover for his or her expenditure of resources and sometimes counsel is able to recover more than the resources expended. It is the nature of the risk undertaken.
- Class counsel who agrees to recommend a settlement on a claims-made basis should be incentivized to take all possible action to encourage class members to submit claims. If counsel receives an award based on the total *potential* benefit to the class, there is no such incentive.

Based on all of the above factors, the court determines that an award of \$100,000 in attorneys' fees is appropriate. This amount exceeds a one-third percentage based on actual benefit to the class, but it recognizes, based on the lodestar, the effort expended by counsel to produce benefit for the class in this case. It also recognizes the fairly low percentage participation by eligible class members.

As for costs, Class Counsel requests \$18,627.77, which is less than the \$25,000 maximum provided in the settlement agreement. (¶D.4.) To date, Class Counsel has incurred actual costs in the amount of \$18,627.77. (Aiwazian Decl. ISO Final Approval, ¶19.) The costs to date include mediation (\$6,000), expert fee (\$2,750), court reporter (\$1,104.13), complex fee (\$1,000), and photocopies (\$2,146.50). (*Id.* at Exhibit B.)

The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, costs of \$ 18,627.77 are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (Citations.)”].)

Here, the class representatives, Penelope Munyan, Monique Taylor and Kelly Foster, each request a \$5,000 service award (\$15,000 total). All have filed declarations describing their contributions to this litigation.

Plaintiff Penelope Munyan worked for Defendant as a non-exempt, hourly paid employee from approximately March 2007 to February 2013. (Declaration of Penelope Munyan, ¶2.) She estimates that she devoted approximately 43 hours to activities relating to this litigation. (*Id.* at ¶¶2-5.) These activities include researching and initially contacting Class Counsel regarding her potential case, gathering relevant documents, identifying potential witnesses, reviewing discovery requests and reviewing the settlement agreement. (*Ibid.*)

Plaintiff Monique Taylor worked for Defendant as a non-exempt, hourly paid employee from approximately August 2010 - October 2014. (Declaration of Monique Taylor, ¶2.) She estimates that she devoted approximately 36 hours to activities relating to this litigation. (*Id.* at ¶¶2-5.) These activities include meeting with Class Counsel, gathering relevant documents, identifying potential witnesses, reviewing discovery requests and reviewing the settlement agreement. (*Ibid.*)

*9 Plaintiff Kelly Foster worked for Defendant as a non-exempt, hourly paid employee from approximately March 2011 - June 2015. (Declaration of Kelly Foster, ¶2.) She estimates that she devoted approximately 41 hours to activities relating to this litigation. (*Id.* at ¶¶2-5.) These activities include meeting with Class Counsel, gathering relevant documents, identifying potential witnesses, reviewing discovery requests and reviewing the settlement agreement. (*Ibid.*)

In light of the above, as well as the benefits obtained on behalf of the class, \$5,000 per Class Representative (\$15,000 total) appears to be a reasonable inducement for Plaintiffs' participation in this case. Incentive awards in the amount of \$5,000 for each of the three class representatives are approved.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator, CPT Group, Inc., requests \$15,000 in compensation for its work in administering this case. (Thompson Decl., ¶20.) At the time of preliminary approval, costs for settlement administration were estimated to be \$20,000. (Settlement Agreement, ¶C.2.) This amount was also disclosed to class members and deemed unobjectionable.

Accordingly, claims administration costs are approved in the amount of \$15,000.

III. CONCLUSION AND ORDER

A. RULING

The Court hereby:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards \$100,000 in attorney fees to Lawyers for Justice, PC;
- (4) Awards \$18,627.77 in litigation costs to Lawyers for Justice, PC;
- (5) Awards \$15,000 in Class Representative Service Awards to Penelope Munyon (\$5,000), Monique Taylor (\$5,000) and Kelly Foster (\$5,000);
- (6) Awards \$ 15,000 in claims administration costs to CPT Group, Inc.;
- (7) Approves payment of \$3,750 (75% of \$5,000 PAGA penalty) to the LWDA;

- (8) Finds good cause is shown for payment of residual funds to the Unclaimed Wage Fund as it provides the best opportunity for class members to recover the wages alleged to be due to them;
- (9). Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, release language, and the names of all class members who opted out, by 10/20, 2017;
- (10) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and
- (11) A Non-Appearence Case Review re: Final Report re: Distribution of Settlement Funds is set for 8/24/18, at 8:30 am. Final Report is to be filed by 8/17/18.

Dated: 10/12/17

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

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2011 WL 1807946 (Cal.Superior) (Trial Order)
Superior Court of California.
Los Angeles County

Melissa MURRAY and Brant Feldman, on behalf of themselves and all
others similarly situated, and on behalf of the general public, Plaintiffs,

v.

SELECT MEDIA SERVICES, LLC, a Georgia limited liability company, and Does through 50, inclusive, Defendants.

No. BC424506.
January 31, 2011.

Order Granting Final Approval of Class Action Settlement and Judgment Thereon

Michelle R. Rosenblatt, Judge of the Superior Court.

Department 40

CLASS ACTION

Time: 8:30 A.M.

Dept.: 40

Complaint Filed: October 22, 2009

Trial Date: None Set

In September, 2010, Plaintiffs MELISSA MURRAY and BRANT FELDMAN (“Plaintiffs”), individually and on behalf of the Settlement Class, and Defendant SELECT MEDIA SERVICES, LLC (“Defendant”) (collectively, the “Parties”) entered into a class action settlement (the “Settlement”), the terms and conditions of which are set forth in the parties’ Stipulation of Settlement and Release between Plaintiffs and Defendant (the “Stipulation”). This matter having come before the Court on January 31, 2011 for the Final Approval Hearing on Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and Plaintiffs’ Unopposed Application for Approval of Attorneys’ Fees and Costs, Claims Administration Fees, and Class Representatives’ Service Payment, due and adequate notice having been given to Class Members as required by the Court’s Preliminary Approval Order dated October 22, 2010, and the Court, having considered all the papers filed and proceedings herein, having received considered one objection to the Settlement, having determined that the Settlement is fair, adequate and reasonable, and otherwise being fully informed, hereby ORDERS as follows:

1. All terms used herein shall have the same meaning as given them in the Stipulation.
2. The Court has jurisdiction over the subject matter of this proceeding and over all Parties to this proceeding, including all Class Members.
3. The Court hereby unconditionally certifies the Settlement Class, as set forth in the Stipulation, for purposes of this Settlement only.

4. Distribution of the Notice, Claim Form, and Request for Exclusion Form directed to the Class Members as set forth in the October 22, 2010 Order granting preliminary approval has been completed in conformity with the Preliminary Approval Order, including individual notice to all Class Members who could be identified through reasonable effort, and the best notice practicable under the circumstances. The Notice provided due and adequate notice of the proceedings and of the matters set forth in the Preliminary Approval Order, including the proposed Settlement as set forth in the Stipulation. The *Notice provided* adequate and appropriate notice to all persons entitled to such notice, and therefore fully satisfied the requirements of due process. Except for the twelve (12) Class Members that have filed timely and accepted requests for exclusion, all Class Members and all Released Claims are covered by and included within the Settlement and within this Final Approval Order.

5. The Court finds that the Settlement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations and the Settlement was entered into in good faith. The Court further finds that the Settlement is fair, reasonable, and adequate, and that Plaintiffs have satisfied the standards and applicable requirements for final approval of this class action Settlement under California law.

6. The Court hereby approves the Settlement as set forth in the Stipulation and directs the parties to effectuate the Settlement according to the terms set forth in the Stipulation. In granting final approval of the Stipulation, the Court considered the nature of the claims, the amounts and kinds of benefits paid in settlement, the allocation of settlement proceeds among the Settlement Class Members, and the fact that a settlement represents a compromise of the parties' respective positions rather than the result of a finding of liability at trial. Additionally, the Court finds that the terms of the Stipulation have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member.

7. As of the date of this Final Approval Order, except as to such rights or claims that may be created by the Settlement, each and every Released Claim of each Class Member who did not timely submit a valid request for exclusion is and shall be deemed to be conclusively released as against the Released Parties (as those terms are defined in the Stipulation),

8. Neither the Settlement nor any of the terms set forth in the Stipulation constitute an admission by Defendant, or any of the other Released Parties, of liability to the named Plaintiffs or any Class Member, nor does this Final Approval Order constitute a finding by the Court of the validity of any of the claims alleged in the Lawsuit, or of any liability of Defendant or any of the other Released Parties.

9. The Court hereby finds the \$450,000 Maximum Payment provided for in the Stipulation to be fair, reasonable and adequate.

10. The Court hereby confirms Kenneth S. Gaines and Daniel F. Gaines of Gaines & Gaines, A Professional Law Corporation, Scott A. Miller of Law Offices of Scott A. Miller, A.P.C. and Steven L. Miller of Steven L. Miller, A Professional Law Corporation as Class Counsel.

11. Pursuant to the terms of the Stipulation, and the authorities, evidence, and argument set forth in Class Counsel's application, an award of attorneys' fees in the amount of \$135,000.00 and for costs and expenses in the amount of \$9,606.24, as final payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel is hereby granted. The Court finds that Class Counsel's request falls within the range of reasonableness and that the result achieved justifies the award. The payment of fees and costs to Class Counsel shall be made in accordance with the terms of the Stipulation.

12. The Court also hereby approves Plaintiffs Melissa Murray and Brant Feldman as Class Representatives and orders payment to Plaintiffs for their service as Class Representative the sum of each. The payment of the Class Representatives' service payments shall be made in accordance with the terms of the Stipulation.

13. The Court approves the settlement of the PAGA claims alleged in the Lawsuit and the allocation of \$20,000.00 to the California Labor and Workforce Development Agency to settle those claims.

14. The Court hereby finds the Net Settlement Proceeds as provided in the Stipulation to be fair, reasonable and adequate. The Court hereby authorizes and directs the Settlement Administrator, The Garden City Group, Inc., to calculate and pay the Individual Payment Amounts of all Settlement Class Members who submit timely and valid claims in accordance with the terms of the Stipulation.

15. The Court further approves the payment of up to \$20,000 to The Garden City Group, Inc. from the Maximum Payment for the costs of administering the Settlement as set forth in the Stipulation. The payment authorized by this paragraph shall be made in accordance with the terms of the Stipulation.

16. The objection to the Settlement submitted by Class Member Elizabeth Landon is OVERRULED. After consideration of its merits and following review of the argument submitted by Plaintiffs, the Court finds that the objection should not impede the Court's final approval of the Settlement.

17. If the Settlement does not become final and effective in accordance with the terms of the Stipulation, this Final Approval Order and all orders entered in connection herewith, including the Judgment on this Order, shall be vacated and shall have no further force or effect.

18. Pursuant to  California Rules of Court, rule 3.769(h), the Court hereby enters Judgment in this action; provided, however, that without affecting the finality of the Settlement or the judgment entered herein, this Court shall retain exclusive and continuing jurisdiction over the Lawsuit and the Parties, including all Class Members, for purposes of enforcing and interpreting this Order, the Settlement and the claims process established therein.

IT IS SO ORDERED.

Dated: 1-31-11

<<signature>>

JUDGE OF THE SUPERIOR COURT

MICHELLE R. ROSENBLATT

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2018 WL 11275564 (Cal.Super.) (Trial Order)
Superior Court of California,
Spring Street Courthouse.
Los Angeles County

Juan RIOS, an Individual, on behalf of himself and all others similarly situated, Plaintiffs,

v.

LAURMARK ENTERPRISES INC., a Texas corporation, dba
Bak Industries; and Does 1 through 100, Inclusive, Defendants.

No. BC650323.

October 3, 2018.

***1 CLASS ACTION**

DATE: September 13, 2018

PLACE: SSC Ctrm. 17

Complaint filed: February 10, 2017

Judgment

Bruce Kokozyan, Esq. (#195723), Kokozyan Law Firm, APC, 9440 South Santa Monica Boulevard, Suite 510, Beverly Hills, CA 90210, Telephone (323) 857-5900, for plaintiffs, Juan Rios, individually and on behalf of others similarly situated.

Honorable Maren E. Nelson, Judge.

1. On September 13, 2018, the Court entered an Order Granting Motion for Final Approval of Class Action Settlement On Conditions ("Final Approval Order") in which the Court granted final approval of the class action settlement ("Settlement Agreement") between Plaintiff Juan Rios ("Plaintiff"), individually, on behalf of all others similarly situated, and Defendant LAURMARK ENTERPRISES INC., dba BAK INDUSTRIES ("Defendant") on conditions which conditioned were met in are Addendum to Joint Stipulation and Settlement of Class Actions claims filed 9/28/18. A true and correct copy of the Final Approval Order is attached hereto as "Exhibit A." As set forth in the Court's Final Approval Order, the Class Members include "[A]ll current and former non-exempt, hourly-paid employees who worked for Defendant in California during the Class Period except those who participated in Defendant's Direct Settlement Program." The Class Period is from February 10, 2013 through and including Preliminary Approval Date of April 30, 2018. All Class Members, except those who have submitted a timely and valid opt out request, are now hereby bound by the Final Approval Order and the terms of the Settlement Agreement. No one opted out of the settlement.

3. As set forth in the Final Approval Order, upon the date that the Court grants final approval of the Settlement, Plaintiff and all other Class Members (the "Settlement Class Members") release Defendant LAURMARK ENTERPRISES, INC. DBA BAK INDUSTRIES, and their successors in interest, past, present, or future parents, subsidiaries and related or affiliated corporations, and their past, present, or future officers, directors, shareholders, employees, agents, principals, heirs, joint employers, representatives, accountants, auditors, attorneys, consultants, insurers, and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and each of their company-sponsored employee benefit plans, and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents, and any individual or entity which could reasonably be determined to be jointly liable with Defendant, or any of them ("Released Parties") from all claims, rights, demands, liabilities, damages, attorneys' fees, costs, and causes of action of every nature and description, whether known or unknown, arising from or related to any and all claims which were asserted in the Action or could have been asserted based on the facts alleged in the Action, including statutory, constitutional or common law claims for wages, damages,

unpaid costs, penalties, interest, attorneys' fees, litigation costs, restitution, equitable relief, or other relief under  California Business & Professions Code § 17200, et seq. or the federal Fair Labor Standards Act, based on the following categories of allegations as set forth in the operative complaint: (a) all claims for unpaid wages (including any and all claims for, among other things, alleged failure to pay overtime or properly calculate the overtime rate, improper rounding, or off-the-clock work); (b) all claims for failure to provide meal periods (including claims for late or short meal periods); (c) all claims for failure to authorize and permit rest periods; (d) all claims for the failure to promptly pay all wages due and owing at the time of an employee's termination or discharge; (e) all claims for the failure to issue properly itemized wage statements; (f) all related claims for Unfair Competition or Business Practices under California's Business and Professions Code or similar laws related to the alleged claims; (g) all claims for any and all penalties pursuant to the California Labor Code and/or the Private Attorneys General Act of 2004. Additionally, any Participating Class Member who cashes his or her settlement check (and, in so doing, becomes a FLSA Settlement Class Member) will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and, as to those FLSA Settlement Class Members, the Released Claims include any and all claims the FLSA Settlement Class Members may have under the Fair Labor Standards Act,  29 U.S.C. §§ 201, et seq. arising during the Class Period relating to the alleged claims. Only those Participating Class Members who cash their settlement check will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and thereby released and waived any of their claims under the Fair Labor Standards Act relating to the alleged claims ("Released Claims").

*2 4. The Total Settlement Amount ("TSA") is \$612,000, non reversionary. This includes \$127,000 that Defendant has already paid as a part of its Direct Settlement Program plus \$485,000 to be paid by Defendant into the Qualified Settlement Fund plus the employer's side share of payroll taxes as provided in the Settlement Agreement and the allocations set forth in the Final Approval Order.

5. Neither the making of the Settlement Agreement nor the entry into the Settlement Agreement constitutes an admission by Defendant, nor is this Judgment a finding of the validity of any of the claims in this action or any other wrongdoing. Further, the Settlement Agreement is not a concession, and shall not be used as an admission of any wrongdoing, fault or omission of any entity or person; nor may any action taken to carry out the terms of the Settlement Agreement be construed as an admission or concession by or against Defendant or any related person or entity.

6. The Court hereby enters final judgment in accordance with the terms of the Settlement Agreement, the Final Approval Order, the Addendum to Joint [illegible text] to Settlement and the Court's Order Granting Motion for Preliminary Approval of Class Action Settlement.

7. Pursuant to California Code of Civil Procedure Section 664.6 and  Rule 3.769(h) of the California Rules of Court, this Court reserves exclusive and continuing jurisdiction over this action, the Representative / Named Plaintiff, Class Members, and Defendant, for the purposes of:

(a) supervising the implementation, enforcement, construction, and interpretation of the Stipulation, the Preliminary Approval Order, the plan of allocation, the Final Approval Order, and the Judgment; and

(b) supervising distribution of amounts paid under this Settlement.

IT IS SO ORDERED.

Dated: 10/ 3 /18

<<signature>>

Honorable Maren E. Nelson

Judge of the Superior Court

ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT ON CONDITIONS

1. BACKGROUND

Plaintiff Juan Rios sues his former employer, Defendant Laurmark Enterprises, Inc. dba Bak Industries, for alleged wage and hour violations. Defendant is a manufacturer of tonneau cover products for trucks. Plaintiff seeks to represent a class of Defendant's current and former non-exempt, hourly employees.

On February 10, 2017, Plaintiff Rios filed his initial class action complaint in the Los Angeles Superior Court. On May 22, 2017, Plaintiff filed a First Amended Complaint ("FAC"), which asserts the following causes of action: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods or Compensation in Lieu of; (4) Failure to Provide Paid Rest Periods; (5) Failure to Timely Furnish Accurate Itemized Wage Statements; (6) Violation of Labor Code §203; (7) Unfair Business Practices; and (8) Penalties Pursuant to Labor Code §2698, et seq.

In October 2017, Plaintiff's counsel was informed that Defendant had ceased all operations in California and was entering into individual settlement agreements with putative class members. Defendant ultimately paid \$127,000 to approximately 224 putative class members.

On December 18, 2017, the parties participated in a mediation session with Rob Kaplan. On February 14, 2018, after numerous additional discussions between representatives of the parties, the parties executed their *Joint Stipulation and Settlement of Class Action Claims* ("Settlement Agreement").

*3 As part of settlement negotiations, the Parties agreed that Plaintiff would file a Second Amended Complaint ("SAC") to add a cause of action for unpaid wages under the Federal Labor Standards Act ("FLSA"). The SAC was filed on May 11, 2018.

Following supplemental briefing and revisions to the Settlement, the Court granted preliminary approval of the Settlement Agreement, as amended, on April 30, 2018. Now before the Court is Plaintiffs motion for final approval of the settlement.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

Under the terms of the Amended Settlement Agreement "Class" and "Class Member" are defined as "a member of the class conditionally certified for settlement purposes only during the applicable Class Period, consisting of all current and former non-exempt, hourly-paid employees who worked for Defendant in California during the Class Period except those who participated in Defendant's Direct Settlement Program. (Settlement Agreement, ¶1.7.)

The Class Period is from February 10, 2013 through and including the Preliminary Approval Date [April 30, 2018]. (¶I.10)

There are 364 class members who did not participate in Defendant's Direct Settlement Program and are therefore eligible to participate in this class settlement. (Declaration of Abigail Schwartz ¶16 [attached to the Declaration of Bruce Kokozyan ISO Final Approval as Exhibit 1].)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Total Settlement Amount (“TSA”) is **\$612,000, non-reversionary**, (¶I.39, as amended.)
 - This includes **\$127,000** that Defendant has already paid as a part of its Direct Settlement Program plus **\$485,000** to be paid by Defendant into the Qualified Settlement Account. (*Ibid.*)
- The Net Settlement Amount (“NSA”) (**\$231,000**) is the TSA minus:
 - Up to **\$204,000** (33 and 1/3% of TSA *including* Direct Settlement Payments) for attorney fees (¶I.4);
 - Up to **\$13,000** for attorney costs (*Ibid.*);
 - Up to \$5,000 for a service award to the class representative (¶I.37);
 - Estimated **\$17,000** for claims administration costs (¶III.9);
 - **\$15,000** (75% of **\$20,000 PAGA penalty**) payable to the LWDA (¶I.28); and
 - **\$127,000** already paid to 224 putative class members as a part of Defendant's Direct Settlement Program, (¶¶ I.15, I.39)

Defendant's Direct Settlement Program provided a flat payment of \$500 per person for individuals who worked for Defendant for five years or less. Individuals who had worked for Defendant for more than five years were paid an additional \$100 for each additional year. The payments were made in exchange for a general release of all claims and a CC §1542 waiver. (Supp. Kokozyan Decl. ISO Prelim ¶3.)
- Defendants will pay employer taxes in addition to the TSA. (¶I.39)
- There is no claims process. Class members will receive a settlement payment unless they opt-out. (¶III.13.b)
- The Objection/Exclusion Deadline is 60 days from the initial mailing of the Notice Packets. (¶I.27) Those Class Members who receive re-mailed Notice shall have their deadline for submitting an objection to and/or request for exclusion from the Settlement, or challenging their Total Workweeks, extended 5 business days from the post mark date of re-mailing. (¶III.13.d)
- Defendant has the right to rescind if opt-outs equal or exceed 4% of the settlement class. (¶III.17)
- *4 • Individual Settlement Payments Formula: The Claims Administrator will calculate the Aggregate Workweek Number by adding the sum of all of the Participating Class Members' Total Workweeks, then dividing the Net Settlement Amount by the Aggregate Workweek Number to calculate the Weekly Settlement Amount. The Claims Administrator will then calculate each Class Member's Individual Settlement Award by multiplying his or her Total Workweeks by the Weekly Settlement Amount. (¶III.12)

- Individual Settlement Payments will be allocated as follows: 25% wages and 75% interest and penalties. (¶III.12.f)
- Any checks issued by the Class Administrator to Participating Class Members shall be negotiable for 180 calendar days. Those funds represented by Settlement checks returned as undeliverable and those Settlement checks remaining uncashed for more than 180 days after issuance (collectively, “Voided Settlement Checks”) will be transmitted as follows: 25% to the Trial Court Improvement and Modernization Fund; 25% to the Equal Access Fund of the Judicial Branch; and 50% to the State Bar Justice Gap Fund. (¶III.15.d). This provision does not comply with Cal Code of Civ. Pro. §384, as amended effective June 27, 2018.
- Neither Class Counsel nor Defendant's Counsel have any involvement with, or interest in, the State Bar Justice Gap Fund. (Supp. Kokoian Decl., ¶ 8.)
- Rust Consulting, Inc. will perform settlement administration. (Kokoian Decl., ¶20.)
- Release as to All Participating Class Members: As for the Class Period as defined in ¶I.10, the Participating Class Members, including the Named Plaintiff, release the Released Parties, as defined in ¶I.36, for the Released Claims as defined in ¶I.35. (¶III.2)
 - “Released Claims” is defined as follows: Participating Class Members shall fully and finally release and discharge the Released Parties of all claims, rights, demands, liabilities, damages, attorneys' fees, costs, and causes of action of every nature and description, whether known or unknown arising from or related to any and all claims which were asserted in the Action or could have been asserted based on the facts alleged in the Action including statutory, constitutional or common law claims for wages, damages, unpaid costs, penalties, interest, attorneys' fees, litigation costs, restitution, equitable relief, or other relief under  California Business & Professions Code § 17200, et seq. or the federal Fair Labor Standards Act, based on the following categories of allegations as set forth in the operative complaint: (a) all claims for unpaid wages (including any and all claims for, among other things, alleged failure to pay overtime or properly calculate the overtime rate, improper rounding, or off-the-clock work); (b) all claims for failure to provide meal periods (including claims for late or short meal periods); (c) all claims for failure to authorize and permit rest periods; (d) all claims for the failure to ‘promptly pay all wages due and owing at the time of an employee's termination or discharge; (e) all claims for the failure to issue properly itemized wage statements; (f) all related claims for Unfair Competition or Business Practices under California's Business and Professions Code or similar laws related to the alleged claims; and (g) all claims for any and all penalties pursuant to the California Labor Code and/or the Private Attorneys General Act of 2004. Additionally, any Participating Class Member who cashes his or her settlement check (and, in so doing, becomes a FLSA Settlement Class Member) will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and, as to those FLSA Settlement Class Members, the Released Claims include any and all claims the FLSA Settlement Class Members may have under the Fair Labor Standards Act,  29 U.S.C. §§ 201, et seq. arising during the Class Period relating to the alleged claims. Only those Participating Class Members who cash their settlement check will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and thereby releases and waived any of their claims under the Fair Labor Standards Act relating to the alleged claims. (¶I.35.)

*5 • FLSA Settlement Class Opt-In Language: Each Participating Class Member's Individual Settlement Payment check will include language indicating that by cashing or depositing the Individual Settlement Payment Check the Class Member is opting into the Action for purposes of the FLSA. (§III.15.g)

• “Released Parties” means, and refers to, Defendant Laurmark Enterprises Inc. dba Bak Industries, and their successors in interest, past, present, or future parents, subsidiaries and related or affiliated corporations, and their past, present, or future officers, directors, shareholders, employees, agents, principals, heirs, joint employers, representatives, accountants, auditors, attorneys, consultants, insurers, and reinsurers, and their respective successors and predecessors in interest subsidiaries, affiliates, parents, and each of their company-sponsored employee benefit plans, and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents, and an individual or entity which could reasonably be determined to be jointly liable with Defendant, or any of them. (§I.36)

• The Class Representative will provide a general release and § 1542 waiver. (§III.3)C.

ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (📌 Cal. Rules of Court, rule 3.769(g).) “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” (📌 Cal. Rules of Court, rule 3.769(h).)

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (See 📌 *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also 📌 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”) [Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”] [internal quotation marks omitted].)

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” (See 📌 *Wershba, supra*, 91 Cal.App.4th at pg. 245 [citing 📌 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. (“*Dunk*”)].) Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” (See 📌 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of

further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (Id. at 128.) “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (Wershba *supra*, 91 Cal.App.4th at pg. 245.)

*6 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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, *supra*, 91 Cal.App.4th at pg. 250.)

2. Does a presumption of fairness exist?

a. Was the settlement reached through arm's-length bargaining? Yes. The Parties participated in a mediation session with Rob Kaplan on December 18, 2017. Plaintiff's counsel also retained an expert to review timekeeping records and payroll records and to assist in the preparation of a damage analysis in this litigation. Class Counsel represents that, on February 14, 2018, after numerous additional discussions between representatives of the Parties, the parties were able to fully resolve the matter, subject to Court approval, with the execution of their Joint Stipulation and Settlement of Class Action Claims. (Declaration of Bruce Kokozyan ISO Prelim Approval ¶7)

b. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel asserts that he has conducted sufficient investigation and discovery, including pre-litigation investigation, the propounding of written discovery by Plaintiff and Defendant including Form Interrogatories, Requests for Production, and Special Interrogatories, the deposition of Class Representative, survey of class members, the production of documents by Defendant, including Defendant's employee handbooks, policies and procedures regarding the payment of wages, time keeping, overtime, meal and rest periods and the production of class-wide payroll and time punch data by Defendant in response to informal requests for information for the purpose of mediation. (Id. at ¶6.)

c. Is counsel experienced in similar litigation? Yes. Class Counsel has prior experience in wage and hour class action litigation. (Id. at ¶¶ 12-17.)

d. What percentage of the class has objected? Zero objectors. (Schwartz Decl., ¶12.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

2. Is the settlement fair, adequate, and reasonable?

a. Strength of Plaintiffs case. “The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement.” (Kullar, *supra*, 168 Cal.App.4th at pg. 130.)

Class Counsel has provided detailed information regarding the strengths, weaknesses and estimated values of the class claims. The values below reflect Defendant's exposure on the alleged claims, only as to the Class Members who did not participate in Defendant's Direct Settlement Program and who are therefore eligible to recover as part of the class settlement. (Supp. Kokozyan Decl., ¶4.)

Cause of Action	Maximum Exposure	Realistic Exposure
Rounding Claim	\$58,000.00	\$36,540
Meal Period Violations	\$1,833,407.00	\$275,011
Rest Period Claims	\$1,898,000.00	\$37,960
Wage Statement Claims	\$726,000.00	\$98,010
Waiting Time Penalties	\$814,000.00	\$109,890
Total	\$5,329,407.00	\$557,411

(Kokoian Decl. ISO Prelim Approval ¶9.)

In total, Class Counsel estimated Defendant's maximum exposure at approximately \$5,329,407 and its realistic exposure at approximately \$557,411. Class Counsel obtained a gross settlement valued at \$485,000 (or \$612,000 if including the amount paid out in individual settlement). The \$485,000 secured on behalf of Class Members who did not sign individual releases represents 9% of Defendant's maximum potential exposure and 87% of its realistic exposure to Class Members eligible to participate in the class settlement. These percentages are both within the “ballpark of reasonableness.”

*7 a. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

b. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (🚩 *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

c. Amount offered in settlement. As indicated above, the Total Settlement Amount is \$612,000, including the \$127,000 Defendant paid as part of its Direct Settlement Program. Defendant will pay an additional \$485,000 to the Class Members who did not enter into individual settlements with Defendant. Assuming that the Court approves all of the requested deductions, approximately \$231,000 will be available for automatic distribution to participating class members. The average settlement share to the 364 participating class members will be approximately \$634.62. [$\$231,000 \text{ Net} \div 364 \text{ participating class members} = \$634.62$]

d. Extent of discovery completed and stage of the proceedings. As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

e. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage

and hour cases. Class Counsel believes that the settlement is fair, reasonable and adequate for each participating Class Member. (Settlement Agreement, ¶¶II.C.)

f. Presence of a governmental participant. This factor is not applicable here.

g. Reaction of the class members to the proposed settlement.

Number of class members:	364
Number of notices mailed:	364
Number of undeliverable notices:	12
Number of opt-outs:	0
Number of objections:	0
Number of participating class members:	364

(Schwartz Decl., ¶¶7-14.)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.” The Court finds that the notice was adequate and conforms to due process requirements.

D. ATTORNEY FEES AND COSTS

Class Counsel requests **\$204,000** for attorney fees and **\$13,000** for costs. (Declaration of Bruce Kokozyan ISO Final ¶¶ 17-18.)

In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

In the instant case, fees are sought pursuant to the percentage method. (Kokozyan Decl. ISO Final ¶ 17.) The \$204,000 fee request is 33.33% of the Total Settlement Amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) However, as discussed, the TSA includes \$127,000 Defendant paid to Class Members as part of its Direct Settlement Program; these Class Members are not eligible to recover as a part of the class settlement. (See Settlement Agreement ¶I.7; Supplemental Declaration of Bruce Kokozyan ISO Preliminary Approval ¶3.) The requested fee represents 42.1% of the \$485,000 Defendant will pay pursuant to the class settlement, which is well above average.

*8 Class Counsel has also provided information from which the Court may conduct a lodestar cross-check. Counsel indicates that as of August 22, 2018, the date on which this motion was filed, he had devoted 245.4 hours to this case at his “standard hourly rate” of \$800, for a total unadjusted lodestar of \$196,320. (Kokozyan Decl. ISO Final Approval ¶19 and Exhib. 3.)

The number of hours worked appears reasonable. However, a reasonable hourly rate depends on the market for legal services in which counsel operates. Class Counsel works almost exclusively in wage and hour class actions. He provides survey data

regarding what he believes defense firms doing wage and hour work charge. However, the firms in question are not limited to wage and hour litigators and it is unknown if the hourly rates apply to that practice area. Further, the rates of Kokozyan are not market-tested.

Class Members were advised of, and did not object to Class Counsel's fee request (Schwartz Decl. ¶12 and Exhib. A). Further, it appears that the payments to individual class members came about because of the filing of this action. In these circumstances, it is reasonable to award attorney's fees based on the Total Settlement Amount, including \$127,000 paid in individual settlements. Accordingly, the Court awards fees in the amount of **\$204,000**. This amount also closely approximates Class Counsel's claimed lodestar as of the date this motion was filed.

As for costs, Class Counsel requests **\$13,000**. (Kokozyan Decl. ISO Final Approval ¶18.) This is equal to the \$13,000.00 cap provided in the settlement agreement, (¶14.) The notice expressly advised class members of the cost request, and there were no objections. (Schwartz Decl., ¶12 and Exhibit A.) Class Counsel incurred actual costs in the amount of \$13,293.17. (Kokozyan Decl. ISO Final Approval ¶18.) The costs include mediation (\$7,695.00), expert costs (\$1,550.00), and court fees (\$1,765.00). (*Id.* at ¶18 and Exhib. 2.)

The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, costs of **\$13,000** are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (Citations.)”].)

Here, Class Representative Juan Rios requests an enhancement award of **\$5,000** (Kokozyan Decl. ISO Final Approval ¶26.)

Plaintiff Rios worked for Defendant as a non-exempt, hourly-paid employee during the Class Period. (Declaration of Juan Rios ¶2 [attached to the Kokozyan Decl. ISO Final Approval as Exhibit 5].) Mr. Rios estimates that he has devoted approximately 65 hours to activities relating to this litigation. (*Id.* at ¶7.) Plaintiff's contributions to this action include meetings with Class Counsel, providing Class Counsel with all relevant documents in his possession, reviewing documents provided by Defendant, being deposed by Defendant, and attending mediation. (*Id.* at ¶¶4-7.)

*9 In light of the above, as well as the benefits obtained on behalf of the class, a **\$5,000** award for Mr. Rios appears to be reasonable inducement for Plaintiff's participation in the case. Accordingly, an enhancement in the amount requested is approved.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator, Rust Consulting, Inc. requests **\$17,000** in compensation for its work in administering this case. (Schwartz Decl. ¶16.) At the time of preliminary approval, costs of settlement administration were estimated at \$17,000. (Settlement

Agreement ¶III.9.) Class Members were provided with notice of this amount and did not object. (Schwartz Decl. ¶12 and Exhibit A.)

Accordingly, claims administration costs are approved in the amount of **\$17,000**.

III. CONCLUSION AND ORDER

Contingent upon counsel amending the Settlement Agreement to comply with Cal. Code of Civ. Pro. § 384 and filing the amendment with the Court and serving it on the LWDA no later than September 28, 2018, or showing that section 384 has no applicability here, the Court hereby:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards **\$204,000** in attorney fees to Class Counsel, Kokozyan Law Firm, APC;
- (4) Awards **\$13,000** in litigation costs to Class Counsel;
- (5) Approves payment of **\$15,000** (75% of \$20,000 PAGA penalty) to the LWDA;
- (6) Awards **\$5,000** as a Class Representative Service Award to Plaintiff Juan Rios;
- (7) Awards **\$17,000** in claims administration costs to Rust Consulting, Inc.;
- (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition and the full release language by 10/3, 2018;
- (9) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and
- (10) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds is set for Aug. 16, 2019 at 8:0 am. Final Report is to be filed by Aug. 9, 2014.

Dated: 9/13/18

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

2018 WL 3222585 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Michael A. ROBINS, Jr., et al.,

v.

VERSA LOGISTICS, LLC, et al.

Nos. BC644321, BC662231.

March 26, 2018.

Order Granting Final Approval of Class Action Settlement and Attorneys' Fees and Costs

Craig J. Ackermann (SBN 229832), Ackermann & Tilajef, P.C., 1180 South Beverly Drive, Suite 610, Los Angeles, California 90035, Telephone: (310) 277-0614, Facsimile: (310) 277-0635; Jonathan Melmed (SBN 290218), Melmed Law Group P.C., 1180 South Beverly Drive, Suite 610, Los Angeles, California 90035, Telephone: (310) 824-3828, Facsimile: (310) 862-6851, jm@melmedlaw.com, for plaintiffs Michael A. Robins, Jr., Eugene Crutchfield and the Putative Class.

Alvin Gomez (SBN 137818), Gomez Law Group, 2725 Jefferson Street, Suite 7, Carlsbad, California 92208, Telephone: (858) 552-0000, Facsimile: (760) 720-5217, alvingomez@thegomezlawgroup.com, for plaintiff Elmer Arevalo and the Putative Class.

Eric A. Schneider (SBN 94574), Anderson, McPharlin & Conners LLP, 707 Wilshire Boulevard, Suite 4000, Los Angeles, California 90017, Telephone: (213) 688-0080, Facsimile: (213) 622-7594, for defendants, Cathay Logistics, LLC and Versa Logistic, LLC.

Carolyn B. Kuhl, Judge.

*1 Date: March 26, 2018

Time: 1:45 p.m.

Dept.: 309

On March 26, 2018, the Court held a hearing on Plaintiffs' Motion for Final Approval of Class Action Settlement and Attorneys' Fees and Costs. Craig J. Ackermann of Ackermann & Tilajef, P.C. and Jonathan Melmed of Melmed Law Group P.C. appeared on behalf of Plaintiffs, and Eric A. Schneider of Anderson, McPharlin & Conners LLP appeared on behalf of Defendants.

The Court has reviewed the Class Notice and related forms and the notice procedures that the parties implemented in accordance with the Court's Order on Plaintiff's motion for preliminary approval of the class action settlement. The Court finds that Class Members have duly been given notice of the Settlement, to participate in the settlement by doing nothing, to contest the number of weeks-worked specified on their Share Forms, exclude themselves from the Settlement, and comment on or object to the Settlement or any of its terms. Having read and considered the Settlement, the papers filed in support of Plaintiff's unopposed motion, the Court GRANTS final approval of the Settlement and ORDERS AND MAKES THE FOLLOWING FINDINGS AND DETERMINATIONS:

1. All terms used in this Order Confirming Certification of Class Action and Granting Final Approval of Class Action Settlement (the "Order") shall have the same meanings given as those terms are used and/or defined in the parties' Settlement Agreement

(the “Settlement” or “Agreement”). A copy of the Agreement is attached as Exhibit 1 to the Declaration of Craig Ackermann in Support of the Motion for Preliminary Approval of Class Settlement and is made a part of this Order.

2. The Court is satisfied that CPT Group, Inc., which functioned as the Settlement Administrator, completed the distribution of Class Notice and Share Form to the Class in a manner that comports with California Rule of Court 3.766. The Class Notice informed 270 of the Class Members of the Settlement terms, their rights to do nothing and receive their settlement share, their rights to submit a Request for Exclusion, their rights to comment on or object to the Settlement, and their rights to appear at the Final Approval Hearing, and be heard regarding approval of the Settlement.¹ Adequate periods of time to respond and to act were provided by each of these procedures. No Class Members filed written objections to the Settlement as part of this notice process, and no Class Members filed a written statement of intention to appear at the Final Approval Hearing.

3. For settlement purposes only, the Court finally certifies the Class, as defined in the Agreement and as follows:

Plaintiffs and all other California residents who worked as truck drivers and who are or have been classified as independent contractors by Defendants in California from December 16, 2012 through December 1, 2017.

*2 4. The Court deems this definition sufficient for the purpose of California Rule of Court 3.765(a), and solely for the purpose of effectuating the Settlement.

5. The Court appoints Class Representatives Michael A. Robins, Jr., Eugene Crutchfield and Elmer Arevalo as Class Representatives.

6. The court appoints Craig J. Ackermann of Ackermann & Tilajef, P.C., Jonathan Melmed of Melmed Law Group P.C., and Alvin Gomez of Gomez Law Group as adequate class counsel.

7. The terms of the Agreement, including the revised Gross settlement amount of \$1,036,307.05 and the individual Settlement Shares, are fair, adequate, and reasonable to the Class and to each Class Member, and the Courts grants final approval of the Settlement set forth in the Agreement. The Court orders the Parties to comply with and carry out all terms and provisions of the Settlement, to the extent that the terms thereunder do not contradict or conflict with this Order, in which case the provisions of this Order shall take precedence and supersede the Settlement. Defendants shall pay out the amount claimed.

8. The \$10,750.00 designated for payment to CPT Group, Inc., the Settlement Administrator, is fair and reasonable. The Court grants final approval of, and orders the Parties to make the payment to the Settlement Administrator in accordance with the Agreement.

9. The \$310,892.12 amount requested by Plaintiffs and Class Counsel for the Class Counsel's attorneys' fees is fair reasonable. Although the amount exceeds the lodestar it is reasonable in light of the benefit obtained for the class. The Court grants final approval of, awards, and orders the Class Counsel Fees Payment to be made in accordance with the Agreement.

10. The \$11,000.00 amount requested by Plaintiffs and Class Counsel for the Class Counsel's reimbursement of expenses is fair and reasonable. The Court grants final approval of, and orders the Class Counsel Litigation Expenses Payment to be made in accordance with the Agreement.

11. The \$7,500.00 to each Plaintiff (for a total of \$22,500) requested by Plaintiffs for the Class Representative Payments are fair and reasonable in light of the efforts expended on behalf of the class. The court grants final approval of, and orders the Class Representative Payments to be made in accordance with the Agreement.

12. The Court approves of the \$2,500.00 allocation assigned for claims under the Private Attorney General Act (PAGA), and orders 75% thereof (i.e., \$1,875) to be paid to the California Labor and Workforce Development Agency (LWDA) in accordance with the terms of the Settlement Agreement.

13. Nothing in the Settlement or this Order purports to extinguish or waive Defendants rights to continue to oppose the merits of the claims in this Action or class treatment of these claims in this case if the Settlement fails to become Final or effective, or in any other case without limitation. The Settlement is not an admission by Defendants, nor is this Order or the subsequent Judgment that Plaintiffs have asked the Court to enter based on this Order a finding of the validity of any allegations against Defendants in the Court proceeding or any wrongdoing by Defendants. Neither the Settlement nor this Order or the subsequent Court Judgment is a finding that certification of the Class is proper for any purpose or proceeding other than for settlement purposes.

*3 14. All Class Members shall be bound by the Settlement and this Order, including the release of claims in favor of Defendants and the other Released Parties² as set forth in the Agreement, and are permanently barred from prosecuting against Defendants and the other Released Parties any and all of Class Members' Released Claims as defined in the Agreement.³ The six individuals that opted out are Carl Stanley Heine, Carl Vaughan Heine, Anthony J. King, Walter Ruben Flores Guevara, Mark Jones, and Mario Albert Martinez Sr. Those individuals will not be bound by this order or by the final judgment. They will not be bound by the terms of the Settlement Agreement or the Release contained therein.

15. Class Representatives Michael A. Robins, Jr., Eugene Crutchfield and Elmer Arevalo are bound to the general release of claims against Defendants and the other Released Parties as set forth in the Agreement, and is permanently barred from prosecuting against Defendants and the other Released Parties any and all of Plaintiffs' Released Claims as defined in the Agreement.

16. The Parties shall bear his, its or their own respective attorneys' fees and costs except as otherwise provided in the Settlement Agreement

17. Pursuant to  California Rule of Court 3.769(h), the Court retains jurisdiction solely for purposes of enforcing the Agreement, addressing settlement administration matters, and addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

18. The Court orders that the Administrator file a final accounting by September 5, 2018. A non-appearance case review is set for Sept. 11, 2018.

IT IS SO ORDERED.

DATED: Mar. 26, 2018

<<signature>>

HON. CAROLYN B. KUHL

JUDGE OF THE LOS ANGELES COUNTY SUPERIOR COURT

Footnotes

- 1 Notice was sent to all 270 Class Members, but the administrator reports that despite skip-tracing, a National Change of Address Search, and re-mailing, six notice packets remained undeliverable.
- 2 Pursuant to the Settlement Agreement, the Released Parties are defined as “Versa Logistics, LLC and Cathay Logistics, LLC; all of their companies, affiliates, divisions, subsidiaries, sister companies, parent companies, holding companies, shareholders, owners, officers, directors, agents, managing agents, employees, insurers, reinsurers, representatives, attorneys, successors, and assigns.”
- 3 The Released Claims are defined as “all claims in the operative Class Action Complaint including claims under  Labor Code sections 201- 203, 226.2,  226(a),  226.7, 226.8, 512.1194, 1194.2, 2802, 2698, et seq., 558, IWC Wage Order No. 9, sections 11 and 12, and claims under  Business and Professions Code sections 17200-17204 based on the foregoing, and without limiting the foregoing, including any and all claims that could have been brought by the Labor Workforce Development Agency (LWDA), the Department of Industrial Relations (DIR) or the Division of Labor Standards Enforcement (DLSE) based on the allegations and Claims asserted in the Action.”

2013 WL 7231686 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Iljin SANO and Emily Pariclas as individuals on behalf of all themselves and all employees similarly situated, Plaintiffs,
v.
SOUTHLAND MANAGEMENT GROUP, INC., a California Corporation; and Does 1 through 50, inclusive, Defendants.

No. BC489112.
December 2, 2013.

**Order Granting Final Approval of Class Action Settlement,
Class Representative Enhancements, Attorneys' Fees and Costs**

Joseph Antonelli, Esq. (SBN 137039), jantonelli@antonellilaw.com, Janelle Carney, Esq. (SBN 201570), jcarney@antonellilaw.com, Jason Hatcher, Esq. (SBN 285481), jhatcher@antonellilaw.com, Law Office of Joseph Antonelli, 14758 Pipeline Ave., Suite E, 2nd Floor, Chino Hills, CA 91709, Tel.: (909) 393-0223, Fax: (909) 393-0471, Attorneys for Plaintiffs Iljin Sano and Emily Pariclas as an individual and on behalf of all employees similarly situated.

Hon. William F. Highberger.

*1 Date: December 2, 2013

Time: 9:00 a.m.

Dept.: 307

Action Filed: July 27, 2012

This matter came on for hearing on December 2, 2013, at 9:00 a.m. in Department 307 of the above-captioned Court on Plaintiffs' Motion for Final Approval of Class Action Settlement, for approval of class representative enhancement payments, for approval of attorneys' fees, attorneys' costs, and claims administration costs. On July 25, 2013, this Court preliminarily approved the parties' proposed class action settlement ("Settlement Agreement"). The parties appeared through their attorneys of record. Upon the pending motion for final approval, this Court, having read, heard, and considered all papers, pleadings, arguments, and evidence submitted, and good cause appearing therefore, now finds and orders as follows:

In accordance with the Preliminary Approval Order, Class Members were given notice of the terms of the Settlement and particularly of the fact that each Class Member would be paid their proportionate share of the settlement proceeds, unless they submitted a valid and timely request for exclusion from the class. Class Members were given ample opportunity to submit a request for exclusion and/or comment upon or object to the settlement or any of the terms of the settlement. Having received and considered the proposed Settlement, the supporting papers filed by the Parties, and the evidence and argument received by the Court in conjunction with the Motion for Preliminary Approval of Class Action Settlement heard on July 25, 2013, the Court grants final approval of the Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:**

1. Pursuant to the Order Granting Plaintiff's Motion for Conditional Certification and Preliminary Approval of Class Action Settlement filed July 25, 2013, a Notice describing the settlement was mailed to each of the 153 class members via first-class U.S. Mail. The Notice informed the Class of the terms of the Settlement, their right to receive their proportional share of the Settlement by doing nothing, of their right to request exclusion, of their right to comment upon or object to the Settlement,

and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time were provided for each of these procedures. As a part of this notice process, only two (2) Members requested exclusion and no objections or notices of intention to appear at the final approval hearing were filed and/or served on Counsel for the Parties.

2. The Court finds and determines that this notice procedure afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding approval of the Settlement based on the response of the Class. The Court finds and determines that the notice to the class as was provided in this case was the best notice practicable, which satisfied the requirements of law and due process.

3. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate to the Class and that the Settlement is ordered finally approved, and that all terms and provisions of the Settlement should be and hereby are ordered to be consummated.

*2 4. The Court finds and determines that Settlement payments to be paid to all members of the Class who did not file a valid and timely request for exclusion as provided for by the Settlement are fair and reasonable. The Court hereby grants final approval to and orders the payment of those amounts to the participating Class Members in accordance with the terms of the Settlement Agreement.

5. The Court finds and determines that the payment to be paid to the California Labor and Workforce Development Agency to satisfy alleged Labor Code violations pursuant to the California Labor Code's Private Attorneys General Act of 2004 ("PAGA") in the sum of \$1,125.00 is fair and reasonable. The Court hereby grants final approval to and orders the payment to Labor and Workforce Development Agency in accordance with the terms of the Settlement Agreement.

6. The Court determines that the service award payment to Plaintiffs Iljin Sano and Emily Pariclas in the sum of \$15,000 each is fair and reasonable. The Court hereby grants final approval to and orders payment of the service award be allocated as follows: (a) Ten Thousand Dollars (\$10,000) each as consideration in exchange for Mr. Sano and Ms. Pariclas' full release and waiver of all Civil Code § 1542 claims; and (b) Five Thousand Dollars (\$5,000) each as the enhancement portion.

7. Plaintiff's Motion for an Award of Reasonable Attorneys' Fees, Costs, and Expenses is hereby GRANTED. Plaintiff's efforts have resulted in the creation of a common fund in the amount of \$250,000.00 and therefore awarding attorneys' fees on a percentage basis is appropriate. Plaintiff seeks 25% of the common fund, which is considered the benchmark in the Ninth Circuit. This case presents no special circumstances that would warrant a departure from the benchmark. Moreover, the result obtained by Plaintiff is favorable. The average settlement award is approximately \$901.77, and the highest payment is estimated at \$7,156.59. In view of the monetary benefit conferred on the settlement class, the Court finds the requested fee of 25%, or \$62,500.00, to be fair and reasonable.

The Court finds that Class Counsel, having conferred a benefit on absent Class Members and having expended efforts to secure a benefit to the Class, is entitled to a fee and accordingly, the Court approves the application of Class Counsel for \$62,500 for their attorneys' fees, and up to \$13,000.00 for their litigation expenses.

8. Cross-checking the \$62,500.00 amount against Class Counsel's lodestar confirms the reasonableness of the fee award. Class Counsel's collective lodestar is \$119,685.00, at the time of filing the final approval papers. The hourly rates used to arrive at this figure are consistent with market rates and reasonable in light of the Class Counsel's skill, experience, and expertise. The Court is further satisfied that the number of hours expended on the litigation is reasonable. Dividing the requested fee by Class Counsel's current lodestar yields a negative multiplier of 52.

9. Accordingly, Plaintiffs shall recover, from the common fund established by the Stipulation and Settlement of Class Action Claims, \$62,500 in and for attorneys' fees and \$13,000 in costs and expenses. Those amounts shall be paid by the Claims Administrator to Class Counsel.

10. The Court further approves payment of the fees and costs of the appointed claims administrator Dahl Administration, Inc., of \$3,600 for services rendered and to be rendered in connection with the completion of its duties pursuant to the terms of the Settlement.

*3 11. Defendant shall deliver the Maximum Settlement Amount of \$250,000, fifteen (15) days of the Effective Date, as awarded by the Court (pursuant to the Settlement Agreement), for Individual Settlement Payments, the Class Representative service award, attorneys' fees and litigation costs, the claims administration costs, and the PAGA Payment to the Labor and Workforce Development Agency are due to be paid.

12. The Court further directs Defendant to pay the Gross Settlement Amount of \$250,000 within fifteen (15) days of entry of this Order to the Claims Administrator (Joint Stipulation ¶2.1) The Claims Administrator is ordered to distribute all funds to class members, attorneys, and the class representatives within twenty-five (25) calendar days after the entry of this Order (Joint Stip. ¶4). The sums to be distributed to those persons and entities referenced below, in the manner set forth, the following sums:

a. Individual Settlement Payment checks in accordance with the Settlement Agreement to those members of the Class who submitted a timely and valid claim form by U.S. First Class Mail, as calculated and approved by Dahl Administration, LLC;

b. Class Representative Service Award to Plaintiff Iljin Sano, \$15,000.00 by check mailed to Class Counsel;

c. Class Representative Service Award to Plaintiff Emily Pariclas, \$15,000 by check mailed to Class Counsel;

d. Attorneys' fees to Class Counsel, \$62,500 by wire transfer, as directed by Class Counsel;

e. Litigation expenses to Class Counsel, of \$ 13,000.00 by wire transfer, as directed by Class Counsel;

f. PAGA Payment to the State of California Labor Workforce & Development Agency ("LWDA"), \$1,125,00, by check to Counsel for Defendant for transmittal to the LWDA;

g. Claims Administration services to Dahl Administration, Inc., in the sum of \$3,600.00 for services rendered in connection with its duties and responsibilities to process claims and to disburse payments, respond to continuing inquiries from the class and the Parties in order to conclude its duties and responsibilities pursuant to the settlement.

13. The Court retains jurisdiction over the administration and effectuation of the Settlement including, but not limited to, the ultimate disbursement to the participating Class Members, payment of attorneys' fees and costs, the enhancement award to the Class Representative, and the claims administration expenses and other issues related to this Settlement.

14. Without affecting the finality of this order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Order and the Settlement.

15. Nothing in this order shall preclude any action to enforce the Parties' obligations under the Settlement or under this Order, including the requirement that Defendant make payments to participating Class Members in accordance with the Settlement.

16. Upon satisfaction of all payments and obligations under the Settlement Agreement and under this Order, all Class Members who did not opt out are permanently barred from prosecuting against Defendant Southland Management Group, Inc. and its past, present, or future parents, subsidiaries and affiliated corporations, and their past, present, or future officers, directors,

employees, partners, members, shareholders and agents, staffing agencies, joint employers, and any other successors, assigns or legal representatives, any of the class claims released as set forth in the Settlement Agreement.

*4 17. Upon satisfaction of all payments and obligations under the Settlement Agreement and under this Order, every person in the Settlement Class who did not opt out of the Settlement shall be bound by the Settlement and its Release, which, as defined in the Settlement Agreement, releases and discharges the Defendant from any and all causes of action, claims, rights damages, punitive or statutory damages, penalties, liabilities, expenses, and losses and issues, that any of the Releasing Parties have or could have made against any of the Released Parties regarding the claims as alleged in this action, under federal law or the law of any state or locality, common law, statutory law, regulations or California Industrial Welfare Commission Wage Orders, as well as any claims, causes of action, damages, wages, expenses, penalties, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law or equity, arising from (1) the Action and any claims arising out of the facts alleged in the Action, including without limitation all claims under the California Labor Code, Industrial Welfare Commission Wage Orders and the California Business and Professions Code, claims for restitution and other equitable relief, and (2) any wage and hour violations as alleged in this action, whether premised on statute, contract, tort or other theory of liability under state, federal or local law, arising out of the facts, incidents, transactions, events, occurrences, disclosures, statements, acts, or omissions in law or in equity, asserted from the facts alleged in the Action by any Class Member against the Released Parties up to the Preliminary Approval Date, June 18, 2013 (collectively, the "Released Claims"). The Released Claims do not include claims unrelated to alleged wage-hour violations or unpaid compensation, including claims for unlawful employment discrimination, or claims for workers' compensation or wrongful termination. The Released Claims do, however, include claims under PAGA. Judgment in this matter, subject to the terms and conditions herein, constitutes a binding judgment under principles of *res judicata*.

18. Excluded from the Settlement and its Releases are the two (2) persons who have submitted valid and timely Requests for Exclusion. A true and correct copy of the list of persons who have submitted a timely Request for Exclusion is attached hereto as **Exhibit 1**.

19. The Court hereby enters final judgment in this case accordance with the terms of the Settlement Agreement, Order Granting Preliminary Approval of Class Action Settlement, and this Order Granting Final Approval of the class action Settlement.

20. The Parties are hereby ordered to comply with the terms of the Settlement.

21. [illegible text]

22. [illegible text]

Dated: 12/2, 2013

<<signature>>

Judge of the Sueprior Court The Honorable William F. Highberger

2010 WL 8032671 (Cal.Superior) (Trial Order)

Superior Court of California.

Los Angeles County

Dennis SCHRADER, Erick Capellino, Nitin Patel, and Candice Littlefield, on behalf of themselves and all others similarly situated, and on behalf of the general public, Plaintiffs,

v.

ADIDAS PROMOTIONAL RETAIL OPERATIONS, INC., an
Oregon corporation, and Does 1 through 50, inclusive, Defendants.

No. BC414168.

August 27, 2010.

Order Granting Final Approval of Class Action Settlement and Judgment Thereon

Honorable Kevin C Brazile.

Department 20

CLASS ACTION

ate: August 27, 2010

Time: 8:45 a.m.

Dept.: 20

Complaint Filed: May 20, 2009

Trial Date: None Set

In December 2009, Plaintiffs DENNIS SCHRADER, ERICK CAPELLINO, NITIN PATEL, and CANDICE LITTLEFIELD ("Plaintiffs"), individually and on behalf of the Settlement Class, and Defendant adidas PROMOTIONAL RETAIL OPERATIONS, INC. ("Defendant") (collectively, the "Parties") entered into a class action settlement (the "Settlement"), the terms and conditions of which are set forth in the parties' Joint Stipulation of Settlement of Class Action (the "Stipulation"). This matter having come before the Court on August 27, 2010 for the Final Approval Hearing on Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Plaintiffs' Unopposed Application for Approval of Attorneys' Fees and Costs, Claims Administration Fees, and Class Representatives' Service Payment and General Release Payment, due and adequate notice having been given to Class Members as required by the Court's Preliminary Approval Order dated June 4, 2010, and the Court, having considered all the papers filed and proceedings herein, having received no objections to the Settlement, having determined that the Settlement is fair, adequate and reasonable, and otherwise being fully informed, hereby ORDERS as follows:

1. All terms used herein shall have the same meaning as given them in the Stipulation.
2. The Court has jurisdiction over the subject matter of this proceeding and over all Parties to this proceeding, including all Class Members.

3. The Court hereby unconditionally certifies the Settlement Class, as set forth in the Stipulation, for purposes of this Settlement only.

4. Distribution of the Notice, Claim Form, and Request for Exclusion Form directed to the Class Members as set forth in the June 4, 2010 Order granting preliminary approval has been completed in conformity with the Preliminary Approval Order, including individual notice to all Class Members who could be identified through reasonable effort, and the best notice practicable under the circumstances. The Notice provided due and adequate notice of the proceedings and of the matters set forth in the Preliminary Approval Order, including the proposed Settlement as set forth in the Stipulation. The Notice provided adequate and appropriate notice to all persons entitled to such notice, and therefore fully satisfied the requirements of due process. All Class Members and all Released Claims are covered by and included within the Settlement and within this Final Approval Order.

5. The Court finds that the Settlement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations and the Settlement was entered into in good faith. The Court further finds that the Settlement is fair, reasonable, and adequate, and that Plaintiffs have satisfied the standards and applicable requirements for final approval of this class action Settlement under California law.

6. The Court hereby approves the Settlement as set forth in the Stipulation and directs the parties to effectuate the Settlement according to the terms set forth in the Stipulation. In granting final approval of the Stipulation, the Court considered the nature of the claims, the amounts and kinds of benefits paid in settlement, the allocation of settlement proceeds among the Settlement Class Members, and the fact that a settlement represents a compromise of the parties' respective positions rather than the result of a finding of liability at trial. Additionally, the Court finds that the terms of the Stipulation have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member.

7. As of the date of this Final Approval Order, except as to such rights or claims that may be created by the Settlement, each and every Released Claim of each Class Member shall be deemed to be conclusively released as against the Released Parties (as those terms are defined in the Stipulation).

8. Neither the Settlement nor any of the terms set forth in the Stipulation constitute an admission by Defendant, or any of the other Released Parties, of liability to the named Plaintiffs or any Class Member, nor does this Final Approval Order constitute a finding by the Court of the validity of any of the claims alleged in the Lawsuit, or of any liability of Defendant or any of the other Released Parties.

9. The Court hereby finds the \$525,000 Gross Settlement Amount provided for in the Stipulation to be fair, reasonable and adequate.

10. The Court hereby confirms Gaines & Gaines, A Professional Law Corporation, Law Offices of Scott A. Miller, A.P.C. and Steven L. Miller, A Professional Law Corporation as Class Counsel.

11. Pursuant to the terms of the Stipulation, and the authorities, evidence, and argument set forth in Class Counsel's application, an award of attorneys' fees in the amount of \$175,000.00 and for costs and expenses in the amount of \$6,190.28, as final payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel is hereby granted. The Court finds that Class Counsel's request falls within the range of reasonableness and that the result achieved justifies the award. The payment of fees and costs to Class Counsel shall be made in accordance with the terms of the Stipulation.

12. The Court also hereby approves Plaintiffs Dennis Schrader, Erick Capellino, Nitin Patel, and Candice Littlefield as Class Representatives and orders payment to Plaintiffs for their service as Class Representative the sum of \$2,500.00 each. The Court further approves the general release payments of \$2,500 to Plaintiffs Erick Capellino, Nitin Patel and Candice Littlefield, and \$5,000 to Plaintiff Dennis Schrader. The payment of the Class Representatives' service payments and general release payments shall be made in accordance with the terms of the Stipulation.

13. The Court approves the settlement of the PAGA claims alleged in the Lawsuit and the allocation of \$5,000.00 to the California Labor and Workforce Development Agency to settle those claims.

14. The Court hereby finds the Net Settlement Amount as provided in the Stipulation to be fair, reasonable and adequate. The Court hereby authorizes and directs the Settlement Administrator, CPT Group, Inc., to calculate and pay the Individual Settlement Payments of all Settlement Class Members who submit timely and valid claims in accordance with the terms of the Stipulation.

15. The Court further approves the payment of \$7,500.00 to CPT Group, Inc. from the Gross Settlement Amount for the costs of administering the Settlement as set forth in the Stipulation. The payment authorized by this paragraph shall be made in accordance with the terms of the Stipulation.

16. If the Settlement does not become final and effective in accordance with the terms of the Stipulation, this Final Approval Order and all orders entered in connection herewith, including the Judgment on this Order, shall be vacated and shall have no further force or effect.

17. Pursuant to  California Rules of Court, rule 3.769(h), the Court hereby enters Judgment in this action; provided, however, that without affecting the finality of the Settlement or the judgment entered herein, this Court shall retain exclusive and continuing jurisdiction over the Lawsuit and the Parties, including all Class Members, for purposes of enforcing and interpreting this Order, the Settlement and the claims process established therein.

IT IS SO ORDERED.

Dated: August 27, 2010

<<signature>>

JUDGE OF THE SUPERIOR COURT

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2017 WL 4325952 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Liliana SOUS, et al., Plaintiffs,
v.
RUDY'S HOLLYWOOD, LLC, et al., Defendants.

No. BC610643.
May 23, 2017.

Order

Mel Red Recana, Judge.

*1 Action Filed: December 17, 2015

Trial Date: July 3, 2017

Hearing Date: May 23, 2017

Moving Party: Plaintiff, Liliana Solis

Responding Party: *None*

(1) Plaintiff's Motion for Approval of Attorney's Fees, Costs, and Fees; and

(2) Plaintiff's Motion for Final Approval of Class Action Settlement.

The Court considered the moving papers. No opposition was filed.

The motions are GRANTED in accordance with the terms identified below. The proposed orders shall be signed and filed. A proposed judgment in accordance with the terms of this settlement shall be filed for review forthwith.

A. Background

This is a putative wage and hour class action by Plaintiff Liliana Solis, acting on behalf of similarly-situated current and former employees of Defendant Rudy's Hollywood, LLC.

Plaintiff commenced this action on December 17, 2015. Her operative second amended complaint, filed on July 17, 2016, asserts nine causes of action against Defendant for: (1) failure to provide meal periods [Lab. Code, §§ 226.7, 512, 558]; (2) failure to pay overtime wages [Lab. Code, §§ 510, 558, 1194, 1198; IWC Wage Order 4-2001, etc.]; (3) failure to pay minimum wages for all hours worked [Lab. Code, §§ 1194, 1197, 1197.1, 1198; 29 U.S.C., § 206]; (4) failure to provide accurate wage statements [Lab. Code, § 226]; (5) failure to reimburse for necessary expenditures [Lab. Code, §

2802; IWC Wage Order 4-2001]; (6) illegal mandatory wage tip-outs [Lab. Code, § 351]; (7) illegal wage deductions [Lab. Code, § 221]; (8) unfair business practices [Bus. & Prof. Code, § 17200 et seq.]; and (9) penalties under Private Attorney General Act [Lab. Code, § 2699]. Trial is set for June 5, 2017.

On January 27, 2017, the Court granted preliminary approval of a class action settlement in the gross amount of \$310,000. After expenses, fees, and costs, the net amount to be distributed among the approximately 300 class members was set at \$190,666.67.

B. Discussion

Plaintiff seeks final approval of the class settlement effected in this case pursuant to the preliminary approval granted by the Court. Defendant provides that out of 269 class members that were identified, only three chose to voluntarily opt-out of the class settlement. The breakdown of intended payments is provided as follows:

\$310,000	Gross Settlement Amount
-\$102,031.82	Attorneys' Fees and Costs
-\$2,500	Class Representative Service Award
-\$11,000	Settlement Administration Costs
-\$7,500	PAGA Penalties Payable to LWDA
\$186,968.18	Net Settlement Amount

Compared to the preliminary approval by the Court, the amount of attorney's fees and costs is \$1,301.51 less than original amount approved by the Court, but with an additional \$5,000 allocated toward payment to the LWDA. This equates to a net settlement amount for the potential class that is \$3,698.49 less than the net settlement amount approved by the Court.

1. Standards for Final Fairness Determination

In evaluating the fairness of the settlement, courts should not “reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue.’ (Citation omitted.)” (See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.

*2 In *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, however, the Second District Court of Appeal held that the trial court erred in granting final approval of a settlement where “the trial court lacked sufficient information to make an informed evaluation of the fairness of the settlement.” (See *Id.* at 790.) The *Clark* court reiterated at length the principles applicable to a court's final approval of a class settlement as follows:

“The trial court must determine whether a class action settlement is fair and reasonable, and has broad discretion to do so. That discretion is to be exercised through the application of several well-recognized factors. The list, which “is not exhaustive and should be tailored to each case,” includes “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a

governmental participant, and the reaction of the class members to the proposed settlement.' (Citations omitted.) " ' "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." ' " (Citation omitted.) While the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," " it "must eschew any rubber stamp approval in favor of an independent evaluation." (Ibid.)

In  *Dunk* [v. *Ford Motor Co.* (1996) 48 Cal.App.4th 1794], the court observed that "a presumption of fairness exists 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." (Citation omitted.) But  *Kullar* [v. *Foot Locker Retail, Inc.* (2008) 168 Cal. App.4th 116] makes clear that this is only an initial presumption. The point is cogently made in *Kullar*, where the trial court's approval of a class action settlement was vacated because the court "[was] not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (Citation omitted.) (Emphasis added.)

In *Kullar*, the court pointed out that "neither *Dunk* ... nor any other case suggests that the court may determine the adequacy of a class action settlement without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (Citation omitted.) *Kullar* continues: "The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, *in the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.* 'The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.'" (Citation omitted.) (Italics in original.)

*3 *Kullar* further explains that, while there is usually an initial presumption of fairness when a proposed class action settlement was negotiated at arm's length by counsel for the class, "to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished." (Citation omitted.) To make that determination, "the factual record before the ... court must be sufficiently developed," " and the initial presumption to which *Dunk* refers "must then withstand the test of the plaintiffs' likelihood of success." (Ibid.) Again, " ' "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." ' " (Ibid.) In *Kullar*, because the trial court was not presented with data permitting it to review class counsel's evaluation of the sufficiency of the settlement, the order approving the settlement was vacated. (Citation omitted.) As we shall see, the same result is required here.

Kullar points out that, while *Dunk* asserts there is a presumption of fairness where the four factors it identifies are established, in fact *Dunk* is fully consistent with "this recognition of the court's responsibility"; there was a "voluminous record" before the *Dunk* trial court, which "was made aware of the maximum damages that each class member had sustained and the value of the coupons that each

class member would receive under the settlement, as well as of the particular issues that the plaintiffs needed to overcome in order to prevail in the litigation.” (Citation omitted.)

“Whatever information may have been exchanged during the mediation, there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see. The record fails to establish in any meaningful way what investigation counsel conducted or what information they reviewed on which they based their assessment of the strength of the class members' claims, much less does the record contain information sufficient for the court to intelligently evaluate the adequacy of the settlement. Assuming that there is a ‘presumption’ such as *Dunk* asserts, its invocation is not justified by the present record.” (Citation omitted.) (See *Id* at 799-800.)

In finding that the trial court abused its discretion in approving the settlement before it, the *Clark* court emphasized that “an informed evaluation of a proposed settlement cannot be made without an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. (Citation omitted.)” (See *Id* at 801.) The court also emphasized that “it is the trial court's duty, whether or not there are objectors, to employ those [*Dunk* presumption of fairness] factors to evaluate independently the fairness of a proposed settlement.” (See *Id*.) The Court must have data before it to make such an independent assessment. (See *Id*.)

2. *Clark* Factors in Evaluating the Fairness, Adequacy, and Reasonableness of the Settlement Agreement

a. Strength of Plaintiffs Case and Risks of Further Litigation

In the case at hand, Defendant is alleged to have committed various wage and hour violations, including failing to pay minimum and overtime wages, and failure to furnish accurate wage statements. Although Plaintiff's claims and the similar claims from the representative class appear to be well-supported, the risks of decertification to the class present substantial risks to the value of the Plaintiff's and class members' claims. (See Miller Decl. ¶¶ 18-25.) Indeed, Plaintiff's counsel provides that if Defendant were able to successfully challenge the certification of the class members, the overall value of each of the individual members' claims would be drastically reduced given the high-costs associated with individualized litigation, and the relatively small amount of value on each individual's claim. (*Id*.) Given these considerations, both Plaintiff's counsel and the Court find that the terms of the settlement are fair and reasonable.

b. Responses and Objections to Notice of Class Settlement

*4 The class members' responses are set forth in the declaration of Nathalie Hernandez of ILYM Group, Inc., the Claims Administrator:

Number of settlement class members:	269
Number of undeliverable notices:	12
Number of objections:	0
Number of opt-outs:	3
Number of participating class members:	266 (99.56%)

Given the lack of any objections to the proposed settlement amount, which equates to approximately \$702.89 per class member, and in addition, the low number of opt-outs from the class settlement, the Court finds that these figures evidence that a good and fair settlement was reached. The near-100% participation rate indicates that the potential class members view this settlement agreement as a good result for the class.

3. Attorneys' Fees and Costs

Whether an attorney fee is fair, the primary factor for determination is whether the fee bears a reasonable relationship to the value of the attorney's work. (Robbins v. Alibrandi (2005) 127 Cal.App.4th 438, 451.) Courts have adopted a practice of cross-checking the lodestar against the value of the class recovery because the award is then anchored in the time spent by counsel. (Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 45, fn. 12.)

Based upon the proposed order and accompanying motion for attorney's fees and costs, Plaintiff's counsel seeks \$102,031.82 in attorneys' fees and costs for having to prosecute this action. Class counsel provides that it has spent approximately 208.85 hours litigating this case since the complaint was filed on December 17, 2015. (Miller Decl., Exs., E & F.) Counsel provides that nearly 100% of his practice is devoted to employment litigation and that this case has taken considerable time away from other work. (Id. ¶¶ 25-26.) Plaintiff's counsel seeks \$650 per hour for partner time and \$450 per hour for associate time, including \$45.00 per hour for paralegal work. (Id. ¶ 27.) Given the significant risks associated with contingency work, as well as Plaintiff's counsel's level of experience, the Court finds that these amounts are fair and reasonable.

4. Incentive Award/Enhancement Fee to Named Plaintiff

In *Clark, supra*, the court stated as follows with respect to an additional fee award for the named Plaintiff:

“[A]n incentive award is appropriate “if it is necessary to induce an individual to participate in the suit,” and have noted ‘relevant factors’ to consider in deciding whether such an award is warranted.

(Cook v. Niedert (7th Cir.1998) 142 F.3d 1004, 1016 (Cook).) Those factors include “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.”

The trial court is not bound to, and should not, accept conclusory statements about “potential stigma” and “potential risk,” in the absence of supporting evidence or reasoned argument explaining why, under the particular circumstances, an actual-not a negligible-risk existed, or why it might be difficult to get plaintiffs to come forward to prosecute a particular case.” (See Clark, *supra*, 175 Cal.App.4th at 804, 807.)

*5 The Named Plaintiff in this action seeks an incentive award of \$2,500 to recognize the time and efforts that Plaintiff Liliana Solis spent on behalf of the class. Plaintiff Solis provides that she sought legal assistance to help her fellow employees and provided significant assistance to Plaintiff's counsel in investigating the claims, as well as settlement negotiations. (Solis Decl. ¶¶ 1-5.) The Court finds that the Plaintiff's request for an additional fee award is justified given her assistance in the prosecution of the case.

5. Costs of Claims Administration

The settlement also seeks to award \$11,000 in costs for the administration of the claims procedure. Upon review of Nathalie Hernandez, the Court finds that these costs are reasonable. The Claims Administrator effected service to the vast majority of

the potential class members, worked diligently to ascertain updated information for 44 potential class members whose notices were returned as undeliverable, and succeeded in reducing the total amount of undeliverable mailings to 12. (Hernandez Decl. ¶¶ 5-12.) These efforts warrant the costs requested from the total gross settlement amount.

Based upon the foregoing analysis, the Court GRANTS the Plaintiff's motion for final approval of the attorneys' fees and costs, as well as the motion for final approval of the class settlement.

It is so Ordered.

Date: May 23, 2017

<<signature>>

MEL RED RECANA

Judge of the Superior Court

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2017 WL 3951949 (Cal.Super.) (Trial Order)

Superior Court of California.

Los Angeles County

Nelson Mauricio Turush TESPAN,

v.

PREFERRED FREEZER SERVICES OF LOS ANGELES.

No. BC552083.

July 6, 2017.

Trial Order

Kenneth R. Freeman, Judge.

NATURE OF PROCEEDINGS:

*1 NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF ATTORNEYS' FEES AND COSTS;

The Courts tentative ruling was issued via posting on the Los Angeles Superior Court's website under Civil "Tentative Rulings" on July 5, 2017.

The parties submit to the Court's tentative ruling via posting on the Case Anywhere message board this date.

The matter is not called for hearing.

No Objectors appear this date in Court.

The Court now adopts its tentative ruling as the final order of the court. Said ruling is filed this date and is incorporated into the case file.

The above entitled motion is GRANTED.

The Order Granting Final Approval of Class Action Settlement and Judgment are signed and filed this date.

The Court sets a Non-Appearance (Case Review) Re: Distribution on April 13, 2018 in Department 310.

The parties are ordered to file a Declaration Re: Distribution by NOON on April 11, 2018 and to provide a copy thereof DIRECTLY in Department 310.

If Declaration is NOT filed by said time and date an Order to Show Cause hearing will be set.

The Judicial Assistant is to give notice.

CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6

I, the below named Executive Officer/Clerk of the above entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of this Minute Order entered herein, on July 6, 2017, upon each party or counsel of record in the above entitled action, by electronically serving the document on the Case Anywhere website on July 6, 2017 from my place of business, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los Angeles, California 90005 in accordance with standard court practices.

Dated: July 6, 2017

Sherri R. Carter, Executive Officer/Clerk

<<signature>>

By: R. ARRAIGA, Deputy Clerk

**MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND MOTION FOR FEES, COSTS, AND INCENTIVE PAYMENT**

Grant final approval, finding that the settlement is fair, reasonable, and adequate. Award \$150,000 for fees and \$12,000 for costs to class counsel, \$5,000 for a service award to the class representative, and \$7,500 for administrative costs to the claims administrator. Approve payment of \$11,250 in PAGA penalties to the LWDA.

DISCUSSION

I. Background

This is a wage and hour class action against Preferred Freezer Services of Los Angeles, LLC. Plaintiff alleges that he worked overtime on each weekday shift. He alleges that daily overtime could go as long as 10 hours (meaning the entire shift lasted 18 hours), that he regularly worked weekend shifts on a Saturday and/or Sunday, and that he worked all shifts alongside other lumpers and thus believes that this schedule is typical. Plaintiff also alleges that Defendant failed to pay him and other lumpers minimum wage. "Lumpers", according to Defendant's PMK, "perform the task of unloading shipping containers, loading shipping containers, building up pallets." (Exhibit C to the Declaration of Eric B Kingsley, pgs. 23-24, lines 23-2)

*2 The Complaint, filed July 18, 2014, sets forth the following causes of action:

1. Failure to pay minimum wage and overtime under  Labor Code §§ 510 and  1194;
2. Failure to provide legal meal and rest breaks under  Labor Code §§ 226.7 and  512;
3. Misclassification of workers under Labor Code § 226.8;
4. Failure to provide legal wage statements under  Labor Code § 226(a);
5. Waiting time penalties under  Labor Code § 203; and
6. A violation of California's Unfair Competition Law,  Business and Professions Code § 17200.

On August 25, 2014, Plaintiff amended the Complaint to add a cause of action for penalties under PAGA (Labor Code § 2699). On January 9, 2016, Plaintiff filed a Second Amended Complaint dismissing his cause of action or misclassification of workers under Labor Code § 226.8. This was done pursuant to the parties' meet-and-confer discussions about whether this section gives rise to a private right of action.

Following mediation, a global settlement was reached. The Court granted preliminary approval of the settlement on February 22, 2017. Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

II. Notice and Claims Process

In California, the [illegible text] must have “a reasonable chance of reaching a substantial percentage of the class members.”

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 251 (emphasis added). Importantly, however, the plaintiff need not demonstrate that each member of the class has received notice. As long as the notice had a “reasonable chance” of reaching a substantial percentage of class members, it should be found effective.

CPT Group, Inc. is providing settlement administration services for this settlement. Declaration of [illegible text], ¶1.) On April 6, 2017, CPT received the class list from defense counsel; it contained 40 class members. (Id. at ¶5.) On April 7, 2017, CPT conducted a search of the NCOA to update the addresses and mailed notice packets to all class members. (Id. at ¶¶ 6-7.) In addition, on or before April 7, 2017, CPT caused a toll-free number to be established that class members could call for further information regarding the settlement. (Id. at ¶7.)

As of June 5, 2017, 8 notice packets have been returned by the post office, none had a forwarding address. (Id. at ¶8.) CPT performed a skip-trace on all the returned mail. (Ibid.) As a result of skip traces or re-mail requests from class members, CPT has re-mailed 5 notice packets. (Id. at ¶9.) Ultimately 3 notice packets were determined to be undeliverable. (Ibid.)

The deadline for responding was May 22, 2017. As of June 5, 2017:

3 notices are undeliverable;

0 objections were received;

0 requests for exclusion were received;

0 outstanding disputes.

(Id. at ¶¶6-11)

III. *Dunk* Factors

It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to

the proposed class settlement.  Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case.  Wershba v. Apple Computer, Inc. (2001.) 91 Cal.App.4th 224, 244-245.

*3 The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable.  7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1165-116  Wershba, supra, 91 Cal.App.4 at 245. There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert Conte, Newburg on Class Actions §11.41 at 11-88 (3d ed. 1992); Manual for Complex Litigation (Third) §30.42.

Strength of the plaintiff's case

	\$589,452.05
Maximum amount of overtime damages	
	\$320,661.92
Maximum amount of minimum wage damages	
	\$117,890.41
Full value of meal period claim	
	\$117,890.41
Full value of rest period claim	
	\$255,750.00
Full value of waiting time penalties	
	\$188,624.66
Discounted value of wage statement claim	

Assuming a complete win on liability and a full award of all penalties, the full value of the claims was approximately \$1,993,405.56. (Declaration of Eric Kingsley ISO Preliminary Approval, ¶47). The core overtime, minimum wage, meal and rest break claims are valued at \$841,263.83. (Ibid.)

The risk, expense, complexity and likely duration of further litigation.

Had this case not settled, there would have been additional risks and expenses associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

The risk of maintaining class action status through trial.

There is always a risk of decertification. [Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).]

The amount offered in settlement

As part of the Court's analysis of this factor, the Court should take into consideration the admonition in Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133. In Kullar, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an informed evaluation could [illegible text] be made without an understating of the amount in controversy and the realistic range of outcomes of the litigation.

Defendant has agreed to a non-reversionary \$450,000 settlement. This constitutes approximately 23% of the realistic value of the claims and is thus within the ball park of reasonableness. If deductions are taken in the requested amounts, there would be a net of \$264,250. The average settlement payment is estimated to be \$6,606.25 ($\$264,250 / 40 = \$6,606.25$).

The extent of discovery completed and the stage of the proceedings

*4 After settling the pleadings, the parties engaged in formal discovery, including written discovery. After a discovery dispute, the court ordered Defendant to produce payroll data and the class list, and to supplement its discovery responses regarding the availability of class timekeeping data. Defendant's counsel took the deposition of the named Plaintiff and Plaintiff's counsel took the deposition of Defendant's PMK. (Kingsley Declaration ISO Preliminary Approval, ¶¶ 8-12)

Experience and views of counsel

Class Counsel has sufficient experience with wage and hour class action litigation. (Id. at ¶¶49-51.)

Presence of a governmental participant

Not applicable.

Reaction of the class members to the proposed class settlement

The class reacted positively in that no class member objected or opted out. (Dancy Decl., ¶¶11-12.) The 40 participating class members represent 100% of the 40 settlement class members.

Conclusion on Dunk factors

On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final approval is warranted.

IV. Attorney's Fees, Costs, and Incentive Payments

Attorneys' Fees

Class counsel requests attorney fees of \$150,000.

The Court employs the lodestar method in awarding fees, as opposed to a “percentage of the common fund” method. This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's efforts. In true common fund cases, the Court may utilize the percentage method, as cross-checked by the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.)

Here, fees are sought pursuant to the percentage method.

The \$150,000 fee request constitutes 1/3 of the potential recovery of \$450,000, which is within, the average range. The determination of what constitutes an appropriate percentage “is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award.” (In re Ikon Office Solutions, Inc., Securities Litigation (E.D. Pa. 2000) 194 F.R.D. 166, 193.]

These factors favor the \$150,000 award. As for the first factor, private contingency fee agreements are routinely 30% to 40% of the recovery. (Id. at 194.) As for the second factor, although the median percentage of attorney fees in class actions is 25%, “most fees appear to fall in the range of nineteen to forty-five percent.” [Id.] As for the third factor, Class Counsel has experience in class actions, including wage and hour related actions. Most importantly, Class Counsel achieved good results for the class as evidenced by the class members' reaction to the settlement. As for the fourth factor, Class Counsel negotiated a settlement agreement in which Settlement Agreement provides for a financial benefit in which approximately \$264,250 is distributed to 40 class members, with an average payout of approximately \$6,606.25.

The lodestar cross-check supports the fee request as well.

Class Counsel has presented evidence from which the lodestar may be calculated. Attorney Eric Kingsley spent 45 hours on this matter with a billing rate of \$725 per hour. Attorney Liane Katzenstein Ly spent 57 hours on this matter with a billing rate of \$460 per hour. Attorney Kelsey Szamet spent 11.1 hours on this matter with a billing rate of \$460 per hour. Attorney Ari Stiller spent 101.2 hours on this matter with a billing rate of \$350 per hour. Attorney Allison Callaghan spent 10.6 hours on this matter with a billing rate of \$300 per hour. Attorney David Winston spent 13.4 hours on this matter with a billing rate of \$300 per hour. (Declaration of Eric Kingsley ISO Final Approval, ¶75.) In total, Class Counsel will have spent 238 hours on this matter and anticipate spending another 15 hours to finalize the settlement. (Ibid.)

*5 The hourly rate for class counsel and the hours spent appear to be reasonable. Accordingly, the total lodestar calculation is \$113,696. (Ibid.). Class Counsel's fee request of \$150,000 represents application of a lodestar multiplier of approximately 1.32. It appears that Class Counsel utilized skill in litigating this case, and by all accounts, have good reputations in the legal

community; at the very least, there is no evidence before the Court to indicate that the attorneys have negative reputations in the legal community. It also appears that Class Counsel spent appreciable time on the case, which time could have been spent on other meritorious fee-generating cases.

For the foregoing reasons, the fee request of \$150,000 is granted. The Court notes that the notice advised class members of the maximum fee request of \$150,000 and not a single class member objected to it.

Costs

Class Counsel requests costs in the amount of \$12,573.34, which is slightly above the \$12,000 settlement cap. (Id. at ¶80 and Exhibit F thereto.) Class Counsel's actual costs consist of filing fees (\$1,831.80), Case Anywhere fees (\$265), court reporter fees (\$1,359.20), JAMS costs (\$3,525) and other miscellaneous items.

These costs appear reasonable and necessary to the conduct the litigation. Further, as with the fee requests, the maximum cost request was disclosed to class members and deemed unobjectionable. For these reasons, the cost request is granted in the amount of \$12,000.

Cost of Administration

Claims administrator CPT requests administration costs of \$7,500. (Dancy Declaration, ¶17.) The Settlement Agreement estimated claims administration costs to be \$7,500. (¶31.) Based upon the work performed and yet to be performed, this amount appears to be reasonable. The Court therefore awards the requested amount in full.

Incentive Payment

Finally, Class Counsel seeks an incentive payment of \$5,000 to the class representative.

The Court considers the following factors, among others, in determining whether to pay an incentive or enhancement award to a class representative:

Whether an incentive was necessary to induce the class representative to participate in the case;

- Actions, if any, taken by the class representative to protect the interests of the class;
- The degree to which the class benefited from those actions;
- The amount of time and effort the class representative expended in pursuing the litigation;
- The risk to the class representative in commencing suit, both financial and otherwise;
- The notoriety and personal difficulties encountered by the class representative;
- The duration of the litigation; and
- The personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil Procedure Before Trial, 1114:146.10 (The Rutter Group 2012) (citing  Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804;  Bell v. Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726; In re Cellphone Fee

Termination Cases (2010) 186 Cal.App.4th 1380, 1394; Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412).

Plaintiff Nelson Tespan worked for Defendant from December 2012 to April 2014. (Declaration of Nelson Tespan, ¶2.) Plaintiff helped with the investigation and gather information for the case. (Id. at ¶7.) He maintained regular contact with his attorneys. (Id. at ¶8.) Around February 2016 Mr. Tespan had his deposition taken and around April 2016 he attended the full-day mediation. (Id. at ¶¶9-12.)

The Court grants a \$5,000 incentive for the following reasons:

Plaintiff took action in protection of the class and devoted a significant amount of time to this litigation;

*6 # The class benefitted from this action;

Plaintiff appears to have taken his duties as a class representative seriously and willingly undertook all associated risks.

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2018 WL 3656550 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Alexandria Jones THARPE and Nasondra Benson on behalf of themselves
and all others similarly situated and the general public, Plaintiffs,

v.

SPRINT CORPORATION, a Sprint Communications Company, L.P., a Delaware Corporation; Sprint/
United Management Co., a Kansas Corporation; and DOES 1 through 20, inclusive, Defendants.

No. BC 644645.
April 11, 2018.

Order Granting Final Approval; and Judgment

Dennis F. Moss, State Bar No. 77512, Moss Bollinger, LLP, 15300 Ventura Boulevard, Suite 207, Sherman Oaks, California 91403, Tel.: (310) 982-2984, Fax: (818) 963-5954, dennis@mossbollinger.com; Emil Davtyan, State Bar No. 299363, Daytyan Professional Law Corporation, 21900 Burbank Blvd., Suite 300, Woodland Hills, CA 91367-7418, Tel.: (818) 992-2935, emil@davtyanlaw.com, for plaintiffs,, Alexandria Jones Tharpe and Nasondra Benson on behalf of themselves and all, others similarly situated and the general public.

Hon. Carolyn Kuhl, Judge.

*1 Date: April 11, 2018

Time: 10:30 a.m.

Dept.: 309

On April 11, 2018, the Court heard Plaintiff Alexandria Jones Tharpe's and Plaintiff Nasondra Benson's ("Plaintiffs") unopposed Motion for Final Approval of Class Action Settlement. The Court, having considered whether to order final approval of the settlement of the above-captioned action under Joint Stipulation and Settlement Agreement ("Settlement Agreement"), filed as Exhibit 1 to the Declaration of Dennis F. Moss in Support of Motion for Final Approval of Class Action Settlement in this matter, having read and considered all of the papers of the parties and their counsel, having granted preliminary approval on December 22, 2017 and directed that notice be given to all Class Members of the preliminary approval of the Settlement Agreement, and having received no objections or opposition to the settlement, and good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

Recital

1. On December 22, 2017, the Court granted Preliminary Approval of the Settlement Agreement after the Parties acceded to requests for modification directed by the Court ("December 22, 2017 Order"). A copy of the Settlement Agreement is attached as Exhibit "1" to the Declaration of Dennis F. Moss in support of Final Approval of Class Action Settlement.

2. In preliminarily approving the Settlement, the court approved the mailing of the agreed to Notice to the class.

3. Terms used in this order have the meaning assigned to them in the Settlement Agreement.

4. The Court hereby makes final the conditional class certification as provided in the Settlement Agreement, which was approved by the Court in the December 22, 2017 Order, and thus makes final for purposes of the Settlement Agreement the certification of the class defined as:

All persons who are or have been employed by Defendant [Sprint/United Management Company (“Defendant”)] as a non-exempt retail employee in one of Defendant's California Radio Shack “Store Within A Store” (SWAS) stores and in a non-exempt position in a job code ending in “-STARS” at any time from February 25, 2016 through April 17, 2017.

(collectively referred to herein as “Class Members”).

5. The Court appoints as Class Counsel for the purposes of settlement Dennis F. Moss, the law firm of Moss Bollinger, LLP, and Emil Davtyan.

Findings

6. The Court hereby finds that the notice of settlement (“Class Notice”), as approved for mailing, and subsequently mailed to Class Members, fairly and adequately described the terms of the proposed settlement and the manner in which Class Members could participate in, opt out of, or object to the settlement.

7. The Court hereby finds that the Class Notice and mailing of the Notice was the best practicable notice under the circumstances, was valid and sufficient notice to all Class Members, complied fully with  Rule of Court 3.769, due process, and all other applicable laws.

8. The Court further finds that a full and fair opportunity has been afforded to the Class Members to participate in the proceedings convened to determine whether the proposed Settlement Agreement should be given final approval.

*2 9. The Court also finds that no Class Member objected to the Settlement Agreement, and no class Member opted out of the Settlement.

10. Therefore, based on the aforementioned findings, the Court enters the following Order:

Order

11. The Court hereby determines and orders that all Class Members who did not file timely a proper request to be excluded from the settlement are bound by this final order.

12. The Court hereby determines and orders that the Settlement Agreement is fair, reasonable, and adequate as to the Class, Plaintiffs, and Defendant, and is the product of good-faith, arm's-length negotiations between the parties, and further that the Settlement Agreement is consistent with public policy, and fully complies with all applicable provisions of law. Accordingly, the Court hereby finally and unconditionally approves the Settlement Agreement, finds it is consistent with public policy, fully complies with all applicable provisions of law, and specifically:

a. Approves the Settlement Amount of four hundred nine thousand four hundred eleven dollars (\$409,411.00);

b. Approves the appointment of Alexandria Jones Tharpe and Nasondra Benson as Class Representatives;

c. Approves a class representative enhancement to Alexandria Jones Tharpe in the amount of \$ 10,000.00, and a class representative enhancement to Nasondra Benson in the amount of \$ 7,500.00.

d. Approves Class Counsel's fees in the amount of \$136,470.33. The fees are reasonable in light of benefit obtained for the class.

e. Approves repayment of costs to Class counsel in the amount of \$11,000.82

g. Approves payment to the California Labor & Workforce Development Agency of \$7500 (75% of the \$ 10,000 allocated to PAGA); and

h. Approves payment to the Settlement Administrator of \$15,000

13. The Court hereby determines and orders that the releases contained in the Settlement Agreement are consistent with law and appropriate in resolving this lawsuit.

14. The Court orders, that pursuant to the Settlement Agreement, given that there were no Objections, within 15 days of the entry of the Judgment herein, Defendant shall fund the settlement by depositing four hundred nine thousand four hundred eleven dollars (\$409,411.00) with the Third Party Administrator, and if the administrator timely provides the necessary calculations, Defendant shall also fund the amounts required to fund the employer's payroll burdens on the wage portion of the Individual Settlement Payments to the Individual Class Members. If those calculations have not been made in time for Defendant to make the payment within the fifteen-day window, then Defendant shall fund the amounts necessary for those payments within 5 days of receiving the necessary calculations from the Third-Party Administrator.

15. After funding, the Third-Party Administrator shall expeditiously calculate the Individual Settlement Payments to be made and make all payments pursuant to the terms of the Settlement Agreement.

16. The Court orders that the Settlement Agreement shall not be construed as an admission or evidence of liability, as set forth in the Settlement Agreement.

17. The Parties are Ordered to provide the court, on or before 10/25 2018, with a Declaration from the Third-Party Administrator advising the Court of the administration of the payment terms of the Settlement Agreement, including the number and total amount of checks that remain uncashed as of the date of that declaration.

***3** Based on the foregoing Order the Court enters the following Judgment:

Judgment

18. Judgment is hereby entered pursuant to  California Rules of Court, Rule 3.769(h). Without effecting the finality of this Order and further pursuant to  Rule 3.769(h), the Court retains exclusive and continuing jurisdiction over the litigation for purposes of supervising, implementing, interpreting, and enforcing this order and the Settlement Agreement, and in order to monitor final compliance with distribution procedures.

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: April 11, 2018

Honorable Carolyn Kuhl

Judge of the Superior Court County of Los Angeles

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2018 WL 1751693 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Adeshola THOMAS, on behalf of herself and all others similarly situated, Plaintiff,

v.

UNIVERSAL HOME CARE, INC., a California corporation; and Does 1 through 100, inclusive Defendants.

No. BC600623.
January 11, 2018.

Order Granting Motion for Final Approval of Class Action Settlement

Maren E. Nelson, Judge.

*1 Date: January 11, 2018

Time: 9:00 a.m.

Dept.: 307

I. BACKGROUND

In this wage and hour class action lawsuit, Plaintiff Adeshola Thomas sues her former employer, Universal Home Care, Inc., a provider of in-home care services to patients residing in Los Angeles, Ventura, and Orange Counties.

On November 9, 2015, Plaintiff filed her class action complaint in the Superior Court for the State of California, County of Los Angeles. The initial complaint asserted the following causes of action: (1) Failure to Pay Overtime Wages at the Appropriate Rate; (2) Waiting Time Penalties (🚩 Labor Code §203); (3) Fraud; (4) Unfair Business Practices (🚩 Bus. & Prof. Code §§17200, et seq.); and (5) Declaratory Relief.

As a part of settlement negotiations, the parties stipulated to the filing of a First Amended Complaint (FAC), which names additional defendants Igor Greenberg and Marina Greenberg and adds claims for Failure to Provide All Meal Periods; Failure to Authorize and Permit All Paid Rest Periods; Failure to Fully Reimburse Work Expenses; Failure to Timely Furnish Accurate Itemized Wage Statements; and PAGA (🚩 Labor Code §§2699, et seq.)

The parties participated in a full day mediation session with retired Judge Carl West (ret) on April 18, 2017. At the conclusion of the mediation, the parties were able to reach an agreement regarding terms of settlement. They subsequently memorialized their agreement in their *Stipulation of Settlement and Release*, an amended version of which was preliminarily approved by the Court on September 8, 2017.

Now before the Court is the motion for final approval of the settlement agreement.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

“Covered Position” or “Class Members” means all persons employed by Defendant as LVNs in the State of California during the Settlement Period. (Settlement Agreement, ¶5.)

The “Covered Time Frame” for the settlement (i.e. “Class Period”) is from November 9, 2011 through July 20, 2017. (¶4)

Defendant stipulates to class certification for settlement purposes only. (¶11)

There are 193 putative class members. (Declaration of Abigail Schwartz, ¶7.)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Total Settlement Amount is **\$500,000**, non-reversionary, paid in installments. (¶¶12.a, 12.c, 12.j.)
\$250,000 will be paid within 30 days of final approval and \$250,000 within 15 months of final approval.
 - If the total number of overtime hours worked during the Settlement Period exceeds 92,240.89 by more than 5% the Total Settlement Amount will be increased by the percentage of the difference, or Defendant may elect to nullify the settlement. (¶12.1)
- The Net Settlement Amount (**\$295,584**) is the Total minus:
 - Up to **\$166,666** (1/3) for attorney fees (¶12.f);
 - Up to **\$10,000** for attorney costs (¶12.f);
 - Up to **\$10,000** for a service award (¶12.e);
 - Estimated **\$17,000** for claims administration costs (¶12.g);¹ and
- *2 • **\$750** (75% of \$1,000 PAGA penalty) to the LWDA (¶12.d).
- There is no claim requirement.
- The response deadline is 60 calendar days from the original mailing of the notice. (¶20-21, as amended)
- Individual settlement payments will be calculated based on the number of overtime hours worked in a three-step process, as follows: (1) the total number of overtime hours worked by all Class Members during the Covered Time Frame according to the Defendant's payroll records (“Overtime Hours Worked”), will be added together, and the sum of the Overtime Hours Worked is referred to as the “Total Overtime Hours Worked;” (2) the Individual Overtime Hours Worked of each Class Member will be divided by the Total Overtime Hours Worked, and the result is referred to as the Class Member's “Percentage Share;” and (3) the Net Settlement Proceeds shall be multiplied by each Class Member's Percentage Share. The result of this three-step calculation process is the Class Member's Individual Settlement Payment. (Class Notice, pg. 3.)

• For tax purposes, payments will be allocated 50% to interest and 50% to penalties. Class members will be issued 1099 forms and no taxes will be withheld. (¶12.h.) Class Counsel opines that this is proper as it reimburses employees for items required for the job, travel mileage and expenses, personal use of cell phone, use of internet, food and drink, use of cooling devices, and use of personal property at work, among others. Defendant alleges these were actual expenses that LVNs incurred on the job. Moreover, Defendant argues that, even if the reimbursement pay that Universal provided its employees was in excess of the actual expenses they incurred, the law is clear that only the excess — not the whole expense payment — is calculated into the regular rate of pay for overtime purposes. (29 C.F.R. 778.217(c) [“If the amount paid as ‘reimbursement’ is disproportionately large, the excess amount will be included in the regular rate.”]). If credit is given to putative class members for a substantial portion of the expenses they incurred, then the value of the overtime claim would be greatly diminished. However, were this to occur, the value of the penalties would arguably remain the same, as even a minor change in the regular rate of pay could give rise to various penalties. Substantial interest would have also accrued on these penalties. Thus, it is appropriate to allocate the settlement to penalties and interest. (See pgs. 2-3 and the Supplemental Declaration of Kevin Barnes ISO Preliminary Approval.)

• Checks must be cashed within 180 days of issuance; thereafter, funds escheat to the State of California unclaimed property fund. (¶23, as amended)

• The settlement administrator is Rust Consulting, Inc. (¶12.g)

• A copy of the proposed settlement has been submitted to the LWDA in compliance with  Labor Code section 2699(1)(2). (Supplemental Declaration of Kevin T. Barnes ISO Preliminary Approval, ¶8 and Exhibit 7.)

• Release of Claims: Upon final payment by Defendant of all money owed, all class members who have not opted out will release Defendant Universal Home Care, Inc. and all other named defendants (and related persons and entities) from “any and all wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, related to failure to pay overtime at the correct rate, failure to provide meal and rest periods and failure to pay a premium for any such meal or rest period violation, wage statement violations, waiting time penalties, failure to reimburse employees for all business expenses, violation of the California Unfair Competition Act,  California Bus. & Prof. Code §§ 17200, *et seq.* only as related to the claims in the operative First Amended Complaint; violation of California Labor Code §§2698, *et seq.* (PAGA) only as related to the claims in the operative First Amended Complaint; fraud; and statutory and/or civil penalties related to any of the foregoing categories of claims, including  Labor Code Sections 450,  510,  512,  226, 226.3,  226.7, 256,  1194, 1194.2, 1194.3,  1197.1,  201, 202,  203,  204,  218.5, 218.6, 558,  558.1, and 2901, Wage Order 5, Title 8 of the California Code of Regulations only as related to the claims in the operative First Amended Complaint, Code of Civil Procedure Section 1021.5, and  Civil Code Section 3287, ('Class Members' Released Claims'), arising during the period from November 9, 2011 to July 20, 2017 ('Class Member Released Period'). (¶14, as amended)

*3 • The class release is appropriately tied to the pleadings.

• Plaintiff will execute a settlement agreement and general release including a CC§ 1542 waiver in connection with the receipt of a service award. (¶12.e)

• Plaintiff's broader release is acceptable as she was represented by counsel when this term was negotiated.

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” (Cal. Rules of Court, rule 3.769(h).)

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”) [Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”] [internal quotation marks omitted].)

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists 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.’” (See *Wershba, supra*, 91 Cal.App.4th at pg. 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. (“*Dunk*”)].) Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

*4 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, 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, supra*, 91 Cal.App.4th at pg. 250.)

2. Does a presumption of fairness exist?

a. *Was the settlement reached through arm's-length bargaining?* Yes. The settlement agreement is the product of a full-day mediation with Judge Carl West (Ret.) of JAMS. (Declaration of Kevin T. Barnes ISO Preliminary Approval, ¶6.)

b. *Were investigation and discovery sufficient to allow counsel and the court to act intelligently?* Yes. Class Counsel conducted a thorough investigation into the facts of the lawsuit, including formal and informal discovery and exchange of information. (Settlement Agreement, ¶9.)

c. *Is counsel experienced in similar litigation?* Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Barnes Decl. ISO Preliminary Approval, ¶¶38-39.)

d. *What percentage of the class has objected?* Zero. (Schwartz Decl., ¶13.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

2. Is the settlement fair, adequate, and reasonable?

a. *Strength of Plaintiff's case.* “The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement.” (Kullar, *supra*, 168 Cal.App.4th at pg. 130.)

The central allegation of this case concerns Defendant's manner of paying its LVN employees. When Plaintiff began working for Defendant she was paid \$20/hour but later, her pay was reduced to \$18/hour, of which \$13 was straight time and \$5 was for expense reimbursement even though Plaintiff, as an LVN, had no expenses. Plaintiff has never been taxed on the reimbursement portion and her overtime pay has been calculated pursuant to an artificially low rate of \$13/hour. Plaintiff alleges that the \$5/hour expense reimbursement was made fraudulently in order to enable Defendant to lessen its expenditures on overtime pay. (Barnes Decl. ISO Preliminary Approval, ¶10.)

Based on data produced by Defendant, Class Counsel has calculated that the overtime claim may be worth \$583,875. The waiting time claim was valued at \$108,864. The fraud claim was not assessed any value as Class Counsel was of the opinion there was little chance of prevailing. Plaintiff did not initially allege meal or rest break claims; these claims were subsequently added in the FAC so that Defendant may “buy its peace.” The wage statement claim was considered to have a potential value of \$216,750 but a settlement value of \$97,537.50. This claim was not originally pled since Plaintiff did not work for Defendant within one year of filing the lawsuit and it was therefore time-barred. However, the FAC adds such claim so that Defendant may settle it. The reimbursement claim did not add any value to the case. The PAGA exposure is \$433,500, but this claim was not considered to be of value as courts have discretion to reduce these penalties. Additionally, Defendant's financial condition is such that a court may not impose PAGA penalties. In addition, Defendant has defenses that, if believed by the trier of fact, could limit or even bar Plaintiff's recovery.

*5 Thus, Defendant's estimated maximum exposure on the alleged claims is \$1,342,989. Class Counsel has obtained a Total Settlement Amount of \$500,000. This is 37% of Defendant's estimated maximum exposure on the alleged claims, which appears to be within the ballpark of reasonableness, especially given Defendants' limited ability to pay.

b. *Risk, expense, complexity and likely duration of further litigation.* Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. *Risk of maintaining class action status through trial.* Even if a class is certified, there is always a risk of decertification. (Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

d. *Amount offered in settlement.* As indicated above, Defendant has agreed to settle for the non-reversionary sum of \$500,000, paid in two installments. Assuming the Court approves all of the maximum requested deductions, and approves an enhancement of \$7,500 (see *infra*), approximately \$287,789.18 will be available for automatic distribution to participating class members. The average settlement share will be approximately **\$1,511.97**. [\$290,298.18 net ÷ 192 participating Class members = \$1,511.97]. The highest Settlement Share to be paid is approximately \$13,894.75. (Schwartz Decl., ¶15)

e. *Extent of discovery completed and stage of the proceedings.* As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. *Experience and views of counsel.* The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. *Presence of a governmental participant.* This factor is not applicable here.

h. *Reaction of the class members to the proposed settlement.*

Number of class members:	193
Number of notices mailed:	193
Number of undeliverable notices:	2
Number of opt-outs:	1
Number of objections:	0
Number of participating class members:	192

(Schwartz Decl., ¶¶7-13.)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.” The Court finds that the notice was adequate and conforms to due process requirements.

D. ATTORNEY FEES AND COSTS

Class Counsel requests **\$166,666** for attorney fees and **\$8,645.82** for costs. (Barnes Decl. ISO Final Approval at ¶¶14-15.)

In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

In the instant case, fees are sought pursuant to the percentage method. (Barnes Decl. ISO Final Approval, ¶11.) The \$166,666 fee request is 1/3 of the \$500,000 gross settlement amount, which is average. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

*6 Here, the \$166,666 fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request, and no one objected. (See Schwartz Decl., ¶13 and Exhibit A.) Accordingly, the Court awards fees in the amount of **\$166,666**.

As for costs, Class Counsel requests \$8,645.82. (Barnes Decl. ISO Final Approval, ¶14.) This less than the \$10,000 maximum provided for in the Settlement Agreement. (¶12.f) To date, the Law Offices of Kevin T Barnes has incurred actual costs in the amount of \$7,904.69. (Barnes Decl. ISO Final Approval, ¶14 and Exhibit 2.) The Law Offices of Raphael Katri has incurred actual costs in the amount of \$741.13. (Declaration of Raphael Katri, ¶7 and Exhibit 2.) Thus, Class Counsel has combined actual costs in the amount of \$8,645.81 [$\$7,904.69 + \$741.13 = \$8,645.81$]. The costs to date include mediation (\$4,200), filing fees/court fees (\$4,277.93), and scanning/postage (\$85.96). (Katri Decl. at Exhibit B; Barnes Decl. ISO Final Approval at Exhibit 2.)

The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, costs of **\$8,645.82** are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (See  *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (Citations.)”].)

Here, Class Representative Adeshola Thomas requests an incentive award of **\$10,000**. (Declaration of Adeshola Thomas, ¶8.)

Plaintiff Thomas worked for Defendant Universal Home Care as an LVN from approximately 2007 to May 11, 2013. (*Id.* at ¶2.) She estimates that she has spent approximately 50 hours on duties relating to this case. (*Id.* at ¶9.) This includes the initial time spent investigating the claims, meeting with Class Counsel, preparing for mediation, attending the full day mediation, and all follow-up work with Class Counsel. (*Ibid.*)

The contributions described by Ms. Thomas do not extend beyond the basic duties expected of all litigants in all cases. However, Ms. Thomas's efforts did lead Defendant to change its policy for expense reimbursement (*Id.* at ¶14), and resulted in a settlement for which class members will receive an average payment of \$1,511.97. Accordingly, **\$7,500** appears to be a reasonable inducement for Ms. Thomas's participation in this case.

F. CLAIMS ADMINISTRATION COSTS

Claims administrator, Rust Consulting, Inc., requests \$26,140 in compensation for its work in administering this case. (Schwartz Decl., ¶16.) At the time of preliminary approval, costs for settlement administration were estimated to be \$17,000. (Settlement Agreement, ¶12.g.) However, the Notice advised Class Members that costs of settlement administration would be capped at \$26,140 (Schwartz Decl. at Exhibit A, pg.2); Class Members deemed this amount unobjectionable (Schwartz Decl., ¶13).

*7 Accordingly, claims administration costs are approved in the amount of **\$26,140**.

III. CONCLUSION AND ORDER

A. RULING

The Court hereby:

(1) Grants class certification for purposes of settlement;

(2) Grants final approval of the settlement as fair, adequate, and reasonable;

(3) Awards \$166,666 in attorney fees to the Law Offices of Kevin T. Barnes and the Law Offices of Raphael A. Katri;

(4) Awards \$8,645.82 in litigation costs to the Law Offices of Kevin T. Barnes and the Law Offices of Raphael A. Katri;

(5) Awards \$ 7,500 as a Class Representative Service Award to Plaintiff Adeshola Thomas;

(6) Awards \$26,140 in claims administration costs to Rust Consulting, Inc.;

(7) Approves payment of \$750 (75% of \$1,000 PAGA penalty) to the LWDA;

(8) Finds good cause is shown for payment of residual funds to the Unclaimed Wage Fund as it provides the best opportunity for class members to recover the wages alleged to be due to them;

(9) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, release language, and name of the Class Member who opted out of the settlement by 1/16, 2018;

(10) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(11) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds is set for 7/26/19, at 8:30.

Final Report is to be filed by 7/19/19.

Dated: 1/11/18

<<signature>>

MAREN E. NELSON

Judge of the Superior Court

Footnotes

- 1 The Settlement Agreement, and supporting documents submitted to the Court for preliminary approval, indicated that costs of claim administration were estimated at \$ 17,000. However, the Notice advised Class Members of an estimated

cost of \$26,140 for administration. (See Exhibit A to the Declaration of Abigail Schwartz.) The settlement administrator has requested compensation of \$26,140 for its work on this case.

End of Document

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2017 WL 3334657 (Cal.Super.) (Trial Order)
Superior Court of California.
Los Angeles County

Talina TORRES,
v.
BETHS KITCHEN INC et al.

No. BC488455.
July 18, 2017.

Trial Order

Matthew J. Matern, Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, CA. 90266.

Kenneth R. Freeman, Judge.

NATURE OF PROCEEDINGS:

***1 PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

The Court's tentative ruling is issued via the Los Angeles Superior Court's website under Civil "Tentative Rulings" on July 14, 2017.

The matter is not called for hearing.

The parties submit on the Court's modified tentative ruling via the Case Anywhere message board this date.

No objectors appear this date.

The Court's tentative ruling is modified by interlineation and is adopted as the Final Order of the Court. Said ruling is filed this date and incorporated herein by reference to the case file.

The Motion for Final Approval of Class Action Settlement is GRANTED.

The amended order is signed and filed this date.

The moving party is to prepare a [proposed] judgment for the Court's signature forthwith.

The Court sets a Non-Appearance (Case Review) Re Distribution on April 20, 2018 in Department 310.

The parties are ordered to post AND file a Declaration Re Distribution by 12:00 NOON on April 18, 2018, in Department 310.

Counsel for Plaintiff is to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the 7/18/17 Minute Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: July 20, 2017

Sherri R. Carter, Executive Officer/Clerk

By: <<signature>>

V. SOLIS, DEPUTY CLERK

MATERN LAW GROUP, PC

Matthew J. Matern

1230 Rosecrans Avenue

Suite 200

Manhattan Beach, CA. 90266

DEPARTMENT 310 - LAW AND MOTION RULINGS

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR FEES, COSTS, AND INCENTIVE PAYMENT

Final Order

Grant final approval, finding that the settlement is fair, reasonable, and adequate. Award \$133,333.33 for fees and \$27,500 for costs to class counsel, \$5,000 for a service award to the class representative, and \$24,900 for administrative costs to the claims administrator. **Approve payment of \$3,750 in PAGA penalties to the LWDA.**

DISCUSSION

I. Background

This is a wage and hour class action by Plaintiff Talina Torres against Defendants Beth's Kitchen, Inc., dba Campus Kitchen, Inc., Campus Kitchen, Inc., Freshlunches, Inc., Employers Resource, and Elizabeth Kimball, an individual

The Complaint, filed July 16, 2012, sets forth the following causes of action:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages

4. Failure to Pay Minimum Wage
5. Failure to Pay All Wages Due to Discharged or Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Provide Accurate Itemized Statement
8. Failure to Indemnify Employees for Necessary Expenditures
- *2 9. Unlawful Deductions from Wages
10. Unfair and Unlawful Business Practices
11. Representative Action for PAGA penalties.

Defendant Freshlunches was added in March, 2014; its motion for summary judgment was denied in October, 2015.

Following mediation, Plaintiff and Defendants entered into a written settlement agreement. On January 30, 2017, the parties executed an amended settlement agreement. On February 24, 2017, the Court granted preliminary approval of the settlement. Now before the Court is Plaintiff's Motion for Final Approval.

II. Notice and Claims Process

In California, the notice must have “a reasonable chance of reaching a substantial percentage of the class members.”  Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 251 (emphasis added). Importantly, however, the plaintiff need not demonstrate that each member of the class has received notice. As long as the notice had a “reasonable chance” of reaching a substantial percentage of class members, it should be found effective.

Rust Consulting, Inc. (“Rust”) is providing settlement administration services for this settlement. (Declaration of Abigail Schwartz, ¶3.) On March 6, 2017, Rust received the class list from defense counsel; it contained 274 class members. (Id. at ¶6.) Rust conducted a search of the NCOA to update the addresses and mailed notice packets to all class members on March 20, 2017. (Id. at ¶7.)

As of June 16, 2017, 62 notice packets have been returned as undeliverable, none with a forwarding address. (Id. at ¶¶9-10.) Of the 62, Rust performed address traces on notice packets returned as undeliverable for the first time. (Ibid.) Of the 53 traces performed, 39 more current addresses were obtained and notice packets were promptly remailed to those class members. (Ibid.) Ultimately 22 notice packets were determined to be undeliverable. (Ibid.)

The deadline for responding was May 19, 2017. (Id. at ¶8.) As of June 16, 2017:

0 objections were received;

0 requests for exclusion were received;

0 outstanding disputes.

(Id. at ¶¶11-13)

III. *Dunk* Factors

It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to the proposed class settlement.  *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case.  *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

*3 The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable.  7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1165-1166;  *Wershba*, supra, 91 Cal.App.4th at 245. There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *Manual for Complex Litigation* (Third) §30.42. D

Strength of the plaintiff's case

Meal break (BKI)	\$436,608.99
Meal break (CKI)	\$237,076.57
Rest break (BKI)	\$897,630.53
Rest break (CKI)	\$496,691.91
Off the clock (BKI)	\$16,025.86
Off the dock (CKI)	\$983.01
Reimburse (BKI)	\$59,724.00
<i>Reimburse (CKI)</i>	<i>\$31,015.50</i>
Total	
	\$2,175,756.37 [\$1,417,637.02 (BKI) and \$758,119.35 (CKI)]

(Declaration of Matthew Matern ISO Final Approval, ¶18.)

The risk, expense, complexity and likely duration of further litigation.

Had this case not settled, there would have been additional risks and expenses associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

The risk of maintaining class action status through trial.

There is always a risk of decertification. [Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).]

The amount offered in settlement

As part of the Court's analysis of this factor, the Court should take into consideration the admonition in Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133. In Kullar, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

Defendant has agreed to a non-reversionary \$400,000 settlement. This constitutes approximately 18% of the realistic value of the claims and is thus within the ball park of reasonableness. If deductions are taken in the requested amounts, there would be a net of \$210,416.67. The average settlement payment is estimated to be \$767.94 ($\$210,416.67 / 274 = \$767.94$).

The extent of discovery completed and the stage of the proceedings

This case has been heavily litigated in the four years since it was filed. Class Counsel has examined over 5,000 pages of documents and has taken sworn testimony of witnesses. (Matern Declaration ISO Preliminary Approval, 1110.) Class Counsel retained an expert statistician to analyze the time and payroll records and develop a damage model. (Id. at ¶11.)

Experience and views of counsel

*4 Class Counsel is very experienced. (Id. at ¶¶ 29-34.) He believes this settlement is in the best interest of the class. (Id. at 1120.)

Presence of a governmental participant

Not applicable.

Reaction of the class members to the proposed class settlement

The class reacted positively in that no class member objected or opted out. (Schwartz Decl., ¶¶12-13.) The 274 participating class members represent 100% of the 274 settlement class members.

Conclusion on Dunk factors

On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final approval is warranted.

IV. Attorney's Fees, Costs, and Incentive Payments

Attorneys' Fees

Class counsel requests attorney fees of \$133,333.33.

The Court employs the lodestar method in awarding fees, as opposed to a “percentage of the common fund” method. This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's efforts. In true common fund cases, the Court may utilize the percentage method, as cross-checked by the lodestar. ( *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.)

Here, fees are sought pursuant to the percentage method.

The \$133,333.33 fee request constitutes 1/3 of the potential recovery of \$400,000, which is within the average range. The determination of what constitutes an appropriate percentage “is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award.” ( *In re Ikon Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.]

These factors favor the \$133,333.33 award. As for the first factor, private contingency fee agreements are routinely 30% to 40% of the recovery. ( *Id.* at 194.) As for the second factor, although the median percentage of attorney fees in class actions is 25%, “most fees appear to fall in the range of nineteen to forty-five percent.” [*Id.*] As for the third factor, Class Counsel has experience in class actions, including wage and hour related actions. Most importantly, Class Counsel achieved good results for the class as evidenced by the class members' reaction to the settlement. As for the fourth factor, Class Counsel negotiated a settlement agreement in which Settlement Agreement provides for a financial benefit in which approximately \$210,416.67 is distributed to 274 class members, with an average payout of approximately \$767.94.

The lodestar cross-check supports the fee request as well.

Class Counsel has presented evidence from which the lodestar may be calculated. Attorney Matthew Matern spent 38 hours on this matter with a billing rate of \$850 per hour. Attorney Launa Adolf spent 3.4 hours on this matter with a billing rate of \$700 per hour. Attorney Dalia Khalili spent 70.8 hours on this matter with a billing rate of \$625 per hour. Attorney Deanna Leifer spent 8.3 hours on this matter with a billing rate of \$575 per hour. Attorney Jennifer Newman spent 93.6 hours on this matter with a billing rate of \$575 per hour. Attorney Shayna Dickstein spent 215.1 hours on this matter with a billing rate of \$475 per hour. Attorney Daniel Bass spent 7.5 hours on this matter with a billing rate of \$475 per hour. Attorney Serena Patel spent 22.9 hours on this matter with a billing rate of \$450 per hour. Attorney Emma Steiner spent 16.7 hours on this matter with a billing rate of \$450 per hour. Attorney Sharon Han spent 5.5 hours on this matter with a billing rate of \$450 per hour. Attorney Leanne Nguyen spent 21.1 hours on this matter with a billing rate of \$450 per hour. Attorney Nakissa Akhavan spent 8.4 hours on this matter with a billing rate of \$475 per hour. (Declaration of Matthew Matern ISO Final Approval, ¶30.) In total, Class Counsel will have spent approximately 511.3 hours on this matter and anticipates spending another 40 hours to finalize the settlement. (*Id.* at ¶¶30-31)

*5 The hourly rate for class counsel and the hours spent appear to be reasonable. Accordingly, the total lodestar calculation is \$277,037.50. (Id. at 1130) Class Counsel's fee request of \$133,333.33 requires no multiplier. It appears that Class Counsel utilized skill in litigating this case, and by all accounts, have good reputations in the legal community; at the very least, there is no evidence before the Court to indicate that the attorneys have negative reputations in the legal community. It also appears that Class Counsel spent appreciable time on the case, which time could have been spent on other meritorious fee-generating cases.

For the foregoing reasons, the fee request of \$133,333.33 is granted. The Court notes that the notice advised class members of the maximum fee request of \$133,333.33 and not a single class member objected to it.

Costs

Class Counsel requests costs in the amount of \$27,500, which matches the \$27,500 settlement cap. (Settlement Agreement at ¶10.) Class Counsel's actual costs consist of copying and faxing (\$6,409.57), court reporter fees (\$3,562.96), document service costs (\$4,130.15), mediation (5,600.33) and other miscellaneous items.

These costs appear reasonable and necessary to the conduct of the litigation. Further, as with the fee requests, the maximum cost request was disclosed to class members and deemed unobjectionable. For these reasons, the cost request is granted in the amount of \$27,500.

Cost of Administration

Claims administrator Rust requests administration costs of \$24,900. (Schwartz Declaration, ¶16.) The Settlement Agreement estimated claims administration costs to be \$20,000. (¶15.) Based upon the work performed and yet to be performed, this amount appears to be reasonable. The Court therefore awards the requested amount in full.

Incentive Payment

Finally, Class Counsel seeks an incentive payment of \$5,000 to the class representative.

The Court considers the following factors, among others, in determining whether to pay an incentive or enhancement award to a class representative:

Whether an incentive was necessary to induce the class representative to participate in the case;

- Actions, if any, taken by the class representative to protect the interests of the class;
- The degree to which the class benefited from those actions;
- The amount of time and effort the class representative expended in pursuing the litigation;
- The risk to the class representative in commencing suit, both financial and otherwise;
- The notoriety and personal difficulties encountered by the class representative;
- The duration of the litigation; and

• The personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012) (citing  Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804;  Bell v. Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726; In re Cellphone Fee Termination Cases (2010) 186 Cal.App.4th 1380, 1394; Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412).

Plaintiff Talina Torres worked for Defendant Beth's Kitchen, Inc. and Defendant Campus Kitchen, Inc. from September 2009 to June 2011. She has submitted declarations, searched for and produced relevant documents, and responded to discovery. She is releasing her individual wage and hour claims and waiving her under CCP section 1542. She estimates she spent approximately 50 hours on this case. (Declaration of Talina Torres, ¶¶3-8.)

The Court grants a \$5,000 incentive for the following reasons:

Plaintiff took action in protection of the class and devoted a significant amount of time to this litigation;

*6 # The class benefitted from this action;

Plaintiff appears to have taken her duties as a class representative seriously and willingly undertook all associated risks.

The general release she signed

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Facsimile: (310) 395-2088

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

DARLENE TORRES, LEANNA RUVALCABA,
and MARCELLA BERNAL, individuals, on their
own behalf and on behalf of all similarly
aggrieved employees,

Plaintiffs,

v.

MONETARY MANAGEMENT OF
CALIFORNIA, INC., a foreign corporation; DFC
GLOBAL CORP., a foreign corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV09917

*[Assigned for all purposes to the Hon. Terry
Green, Dept. 14]*

**DECLARATION OF MARCELLA BERNAL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: June 7, 2022
Time: 8:45 a.m.
Dept.: 14
Stanley Mosk Courthouse
111 N. Hill Street
Los Angeles, CA 90012

Complaint filed: March 12, 2021
FAC filed: June 9, 2022
Trial date: None set

DECLARATION OF MARCELLA BERNAL

I, Marcella Bernal, hereby declare as follows:

1. I am a plaintiff and proposed Class Representative in the above-captioned class and representative action, *Torres, et al. v. Monetary Management of California, Inc., et al.*, Los Angeles County Superior Court, Case No. 21STCV09917.

2. I am over 18 years of age and make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently thereto.

3. This declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

4. Defendant Monetary Management of California, Inc. ("Money Mart") is a payday lender. I have worked as a non-exempt Assistant Store Manager and Customer Service Representative for Money Mart at its check-cashing facility in Hemet, California, since August 2017.

5. I seek to represent current and former non-exempt employees who worked for Money Mart in California and were subject to the same uniform policies and procedures with respect to timekeeping and payroll.

6. Despite my concerns about how a lawsuit could potentially affect my job prospects, I believe that Money Mart should be held accountable for how they treat their employees and decided to pursue these claims.

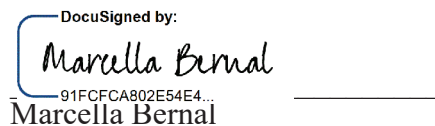
7. Before and during the litigation, I was advised by my attorneys about my duties and responsibilities as a representative for other current and former employees. I have taken these duties seriously and was actively involved in my case throughout. I understand the factual allegations, and, as far as I am aware, my experience is typical of Money Mart's employees in California. I have no interest that is adverse to, or even substantially different from, any other employee.

8. Throughout the litigation, I have maintained regular contact with my attorneys and received updates from them. My attorneys kept me informed about all settlement negotiations and sought my opinion, including with respect to mediation. I have reviewed the proposed settlement and conferred extensively with my attorneys about its pros and cons. I was never offered anything to serve as the class representative, and I understand that my duty to the class is ongoing until the litigation is fully resolved.

1 Ultimately, I believe the settlement is fair, adequate, and reasonable because it holds Money Mart
2 accountable and will actually compensate the proposed class, sooner rather than later.

3
4 I declare, under penalty of perjury under the laws of the State of California, that the foregoing is
5 true and correct to the best of my belief and knowledge.

6 Executed on 5/12/2022 in Hemet, California.

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

DARLENE TORRES, LEANNA RUVALCABA,
and MARCELLA BERNAL, individuals, on their
own behalf and on behalf of all similarly
aggrieved employees,

Plaintiffs,

v.

MONETARY MANAGEMENT OF
CALIFORNIA, INC., a foreign corporation; DFC
GLOBAL CORP., a foreign corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV09917

*[Assigned for all purposes to the Hon. Terry
Green, Dept. 14]*

**DECLARATION OF LEANNA
RUVALCABA IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 7, 2022
Time: 8:45 a.m.
Dept.: 14
Stanley Mosk Courthouse
111 N. Hill Street
Los Angeles, CA 90012

Complaint filed: March 12, 2021
FAC filed: June 9, 2022
Trial date: None set

DECLARATION OF LEANNA RUVALCABA

I, Leanna Ruvalcaba, hereby declare as follows:

1. I am a plaintiff and proposed Class Representative in the above-captioned class and representative action, *Torres, et al. v. Monetary Management of California, Inc., et al.*, Los Angeles County Superior Court, Case No. 21STCV09917.

2. I am over 18 years of age and make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently thereto.

3. This declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

4. Defendant Monetary Management of California, Inc. ("Money Mart") is a payday lender. I was as a non-exempt Customer Service Representative for Money Mart at its check-cashing facility in Hemet, California, from June 2018 until March 2021.

5. I seek to represent current and former non-exempt employees who worked for Money Mart in California and were subject to the same uniform policies and procedures with respect to timekeeping and payroll.

6. Despite my concerns about how a lawsuit could potentially affect my job prospects, I believe that Money Mart should be held accountable for how they treat their employees and decided to pursue these claims.

7. Before and during the litigation, I was advised by my attorneys about my duties and responsibilities as a representative for other current and former employees. I have taken these duties seriously and was actively involved in my case throughout. I understand the factual allegations, and, as far as I am aware, my experience is typical of Money Mart's employees in California. I have no interest that is adverse to, or even substantially different from, any other employee.

8. Throughout the litigation, I have maintained regular contact with my attorneys and received updates from them. My attorneys kept me informed about all settlement negotiations and sought my opinion, including with respect to mediation. I have reviewed the proposed settlement and conferred extensively with my attorneys about its pros and cons. I was never offered anything to serve as the class representative, and I understand that my duty to the class is ongoing until the litigation is fully resolved.

1 Ultimately, I believe the settlement is fair, adequate, and reasonable because it holds Money Mart
2 accountable and will actually compensate the proposed class, sooner rather than later.

3
4 I declare, under penalty of perjury under the laws of the State of California, that the foregoing is
5 true and correct to the best of my belief and knowledge.

6 Executed on 3/29/2022 in Hemet, California.

7 DocuSigned by:
8 *Leanna M Ruvalcaba*
9 A8A731207A3C437...
Leanna Ruvalcaba

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Gregory Taylor (SBN 272309)
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Telephone: (310) 395-2988
Facsimile: (310) 395-2088

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

DARLENE TORRES, LEANNA RUVALCABA,
and MARCELLA BERNAL, individuals, on their
own behalf and on behalf of all similarly
aggrieved employees,

Plaintiffs,

v.

MONETARY MANAGEMENT OF
CALIFORNIA, INC., a foreign corporation; DFC
GLOBAL CORP., a foreign corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV09917

*[Assigned for all purposes to the Hon. Terry
Green, Dept. 14]*

**DECLARATION OF DARLENE TORRES IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 7, 2022
Time: 8:45 a.m.
Dept.: 14
Stanley Mosk Courthouse
111 N. Hill Street
Los Angeles, CA 90012

Complaint filed: March 12, 2021
FAC filed: June 9, 2022
Trial date: None set

DECLARATION OF DARLENE TORRES

I, Darlene Torres, hereby declare as follows:

1. I am a plaintiff and proposed Class Representative in the above-captioned class and representative action, *Torres, et al. v. Monetary Management of California, Inc., et al.*, Los Angeles County Superior Court, Case No. 21STCV09917.

2. I am over 18 years of age and make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently thereto.

3. This declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

4. Defendant Monetary Management of California, Inc. ("Money Mart") is a payday lender. I have worked as a non-exempt Customer Service Representative for Money Mart at its check-cashing facility in Hemet, California, since March 20, 2018.

5. I seek to represent current and former non-exempt employees who worked for Money Mart in California and were subject to the same uniform policies and procedures with respect to timekeeping and payroll.

6. Despite my concerns about how a lawsuit could potentially affect my job prospects, I believe that Money Mart should be held accountable for how they treat their employees and decided to pursue these claims.

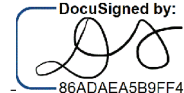
7. Before and during the litigation, I was advised by my attorneys about my duties and responsibilities as a representative for other current and former employees. I have taken these duties seriously and was actively involved in my case throughout. I understand the factual allegations, and, as far as I am aware, my experience is typical of Money Mart's employees in California. I have no interest that is adverse to, or even substantially different from, any other employee.

8. Throughout the litigation, I have maintained regular contact with my attorneys and received updates from them. My attorneys kept me informed about all settlement negotiations and sought my opinion, including with respect to mediation. I have reviewed the proposed settlement and conferred extensively with my attorneys about its pros and cons. I was never offered anything to serve as the class representative, and I understand that my duty to the class is ongoing until the litigation is fully resolved.

1 Ultimately, I believe the settlement is fair, adequate, and reasonable because it holds Money Mart
2 accountable and will actually compensate the proposed class, sooner rather than later.

3
4 I declare, under penalty of perjury under the laws of the State of California, that the foregoing is
5 true and correct to the best of my belief and knowledge.

6 Executed on 3/29/2022 in Hemet, California.

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8  DocuSigned by:
86ADAE5B9FF48C...
9 Darlene Torres