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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ANGELYNA CELIO, MATTHEW LYTLE,
ROBERT MARTIN, and DONELL FORT,
on behalf of themselves and others similarly
situated

Plaintiffs,

v.

AIR INTERNATIONAL US, INC., a
Delaware Corporation; and DOES 1
Through 10, inclusive,

Defendants.

Case No. RG21098764

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Rebekah Evenson

Department 24

CLASS AND REPRESENTATIVE ACTION

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

Hearing Set by February 2, 2024 Court Notice

Date: April 11, 2024

Time: 9:00 a.m.

Dept: 24

Judge: Hon. Rebekah Evenson

Complaint filed: May 10, 2021

Trial Date: Not Set

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I. INTRODUCTION

Plaintiffs Angelyna Celio, Matthew Lytle and Robert Martin (“Plaintiffs”) seek final approval of a \$600,000.00 non-reversionary wage and hour class and Private Attorney Generals’ Act (PAGA) settlement with Defendant Air International (US), Inc. (“Defendant” or “AIUS”). Declaration of Isam C. Khoury, (“Khoury Decl.”), ¶12.

Support for the Settlement is strong. There are no objections, and with only three (3) Class Members requesting exclusion, a participation rate of 99.69%. Settlement Class Members can expect to receive an average estimated payment of \$319, and highest payment of \$1,900. The Class Representatives are estimated to receive \$185 (Angelyna Celio), \$247 (Matthew Lytle), \$247 (Robert Martin), and \$370 (Donell Fort). (rounded to nearest dollar amount). Khoury Decl. ¶¶13, 27; Declaration of Kaylie O’Connor on behalf of CPT Group, Inc., (“CPT Decl.”), CPT Decl. ¶¶10-13, 15, 17-20.

II. THE PARTIES, CLASS, AND AGGRIEVED EMPLOYEES

A. Plaintiffs and Defendant

AIUS is a division of Air International Thermal Systems, founded in Australia in 1967. AIUS designs, develops, and supplies thermal systems, and offers HVAC, engine cooling, and thermal control systems to the automotive market. AIUS has its primary office in Auburn Hills, Michigan. AIUS didn’t have any employees in California until January 2020. Khoury Decl. ¶14.

Plaintiff Angelyna Celio was employed from June 2020 through January 2021 and worked near the start of the production line wrapping HVAC condensers and evaporators with seals. Declaration of Angelyna Celio filed March 7, 2023, (“Celio Decl.”), ¶3. Plaintiff Matthew Lytle was employed from June 2020 through December 2020 in the position of assembly line crew employee building HVAC units. Declaration of Matthew Lytle filed March 7, 2023, (“Lytle Decl.”), ¶3. Plaintiff Robert Martin was employed from October 2020 through March 2021 as warehouse lead, driving a forklift, loading and unloading trucks, and generally keeping the production line moving. Declaration of Robert Martin filed March 7, 2023, (“Martin Decl.”), ¶3. Plaintiff Donell Fort was employed from March 2020 through December

2020 as a line tech, responsible for assembling HVAC units and boxes for a lineup. Declaration of Donnell Fort filed March 7, 2023, (“Fort Decl.”), ¶3; Khoury Decl. ¶15; Exhs. 1-4.

B. The Class and Aggrieved Employees

The Class Members were all hourly, non-exempt employees of Defendant in California from May 10, 2017 through March 7, 2023 (“Class Period”). Khoury Decl. ¶16.

The Aggrieved Employees were all hourly, non-exempt employees of Defendant in California from May 10, 2020 through March 7, 2023 (“PAGA Period”). Khoury Decl. ¶17.

III. PROCEDURAL HISTORY, INVESTIGATION AND DISCOVERY

Plaintiffs’ counsel formally requested Plaintiffs’ personnel files. AIUS produced the requested documents. Khoury Decl. ¶18. On March 16, 2021, Plaintiffs Celio and Lytle filed a PAGA Notice with the Labor and Workforce Development Agency (“LWDA”) advising of their intent to pursue claims on behalf of all allegedly Aggrieved Employees. On April 2, 2021, Plaintiffs Martin and Fort filed a PAGA Notice with the LWDA advising of their intent to pursue claims on behalf of the allegedly Aggrieved Employees. Khoury Decl. ¶19.

On May 10, 2021, Plaintiffs filed their initial Class Action Complaint, asserting claims for: (1) failure to pay minimum, regular, or overtime wages for all hours worked (Cal. Labor Code §§ 510, 1194, 1194.2, 1197.2); (2) failure to provide compliant meal periods (Cal. Labor Code §§ 226.7, 512, and IWC Wage Orders); (3) failure to authorize and permit paid rest periods (Cal. Lab. Code § 226.7 and IWC Wage Orders); (4) failure to provide accurate itemized wage statements (Cal. Labor Code § 226); (5) failure to timely pay all wages due at separation (Cal. Labor Code § 203); (6) failure to reimburse business expenses (Cal. Lab. Code § 2802); violation of the unfair competition law (Cal. Business & Professions Code §§17200, *et seq.*). Khoury Decl. ¶20.

On June 7, 2021, Plaintiffs filed a First Amended Class Action Complaint and Representative Action (“FAC”), adding claims for PAGA civil penalties for all underlying Labor Code claims alleged in their initial complaint (specifically, causes of action 8-13 of the FAC). Additionally, Plaintiffs sought PAGA civil penalties for failure to maintain a reasonably comfortable temperature and failure to provide one day’s rest in seven (causes of action 14-15

1 of the FAC). Khoury Decl. ¶21.

2 Plaintiff Celio served AIUS with formal discovery including special interrogatories. The
3 Parties engaged in meet and confer efforts and decided to attempt to resolve Plaintiffs' claims
4 through mediation. Khoury Decl. ¶22.

5 The Parties agreed to mediate and participated in mediation on December 8, 2022 with
6 Steve Rottman. In preparation for mediation, Plaintiffs requested and AIUS produced
7 documents and data for the Class Period and PAGA Period, including: (1) employee handbooks
8 and policies relevant to Plaintiffs' claims; (2) number of current and former putative class
9 members and Aggrieved Employees; (3) aggregate number of workweeks; (4) aggregate
10 number of pay periods; (5) timekeeping and payroll records for twenty-five percent of the
11 Class; (6) amount of meal and rest period premium wages paid; (7) itemized wage statements;
12 (8) records showing total wages paid, including overtime, double-time, and bonus wages; and
13 (9) average hourly rate of pay for Class Members. Khoury Decl. ¶23.

14 **IV. SUMMARY OF PROPOSED SETTLEMENT**

15 **A. Settlement Terms**

16 Subject to Court Approval, AIUS will pay the Gross Settlement Amount ("GSA") of
17 \$600,000, which includes: (a) attorneys' fees of \$200,000 (one-third of GSA) [apportioned 60%
18 to Cohelan Khoury & Singer / 40% to Stonebrook Law. Khoury Decl. ¶25]; (b) actual litigation
19 costs of \$15,760; (c) Class Representative Service Award payments of \$7,500 to each of the
20 Plaintiffs (\$30,000 total); (d) \$25,000.00 in PAGA Payment (with \$18,750/75% payable to the
21 LWDA, and \$6,250/25% payable to the Aggrieved Employees); and (e) Settlement
22 Administration Costs not to exceed \$15,000. AIUS will pay the employer's share of payroll
23 taxes in addition to the GSA. Khoury Decl. ¶24; CPT Decl. ¶14.

24 After Court-approved deductions, the estimated Net Settlement Amount ("NSA") of
25 \$314,240 will be distributed pro-rata to Class Members based on the number of Workweeks
26 worked during the Class Period. Khoury Decl. ¶26; CPT Decl. ¶15.

27 Settlement Class Members will receive average estimated payments of \$319, and
28 highest payment of \$1,900 (rounded to nearest dollar). Khoury Decl. ¶¶13, 27; CPT Decl. ¶15.

Aggrieved Employees will divide the 25% PAGA payment based on number of Workweeks worked during the PAGA Period whether they opt out or not. Khoury Decl. ¶28; CPT Decl. ¶16.

Settlement payments are allocated One-Third (1/3) to wages, with normal payroll deductions taken and IRS W-2 Forms issued, and, Two-Thirds (2/3) interest and penalties with IRS 1099 Forms issued. Khoury Decl. ¶29.

Settlement Payment checks uncashed 180 days after issuance will be sent to *cy pres* recipient, California Rural Legal Assistance, Inc. (<https://crla.org/about-crla>), a non-profit providing free legal services to low-income residents of California's rural counties. Khoury Decl. ¶30.

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

1. Preliminary Approval and Class Notice

The Settlement was preliminarily approved on October 19, 2023. Khoury Decl. ¶31. On November 20, 2023, after receiving a data file from Defendant, and searching the National Change of Address database and updating Class Member addresses, the Settlement Administrator mailed a Class Notice to 989 Class Members, informing them of (1) the pendency of the Action; (2) proposed settlement terms; (3) automatic payment of Settlement shares if exclusion not requested; (4) released claims; (5) right to object or request exclusion, and (6) and the date, time and place of the final approval hearing,. Khoury Decl. ¶32; CPT Decl. ¶¶3, 6, Exh. A.

After the Court granted Preliminary Approval of the Settlement and Notice was mailed to the Class, the matter was reassigned and Final Approval hearing rescheduled. On September 8, 2023, the Settlement Administrator mailed a corrective postcard to Class Members with the correct Final Approval hearing date and department, April 11, 2024 in Department 24. Khoury Decl. ¶33; CPT Decl. ¶7, Exh. B.

2. The Class' Response to the Notice

The Class response to the Settlement was extremely favorable. No objections and only three (3) requests for exclusion were received. Khoury Decl. ¶¶13, 34; CPT Decl. ¶¶10-12.

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

The fourth *Dunk* factor was established when the Class, after receiving notice, and having an opportunity to respond, overwhelmingly approved the Settlement.

C. Released Class Claims

Class Members who do not timely file a Request for Exclusion, will release all:

Claims alleged in Plaintiffs' Complaint and First Amended Complaint, as well as all any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law that were or reasonably could have been brought based on the facts alleged in any version of the complaints filed in the Action and in the LWDA Letters submitted to the LWDA by Plaintiffs, regardless of theory of recovery, including: claims under California Labor Code sections 201, 202, 203, 204, 206, 210, 218, 218.5, 226, 226.7, 227, 245 et seq., 510, 511, 512, 515, 517, 551-556, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; the California IWC Wage Orders; the Fair Labor Standards Act (29 U.S.C. Section 201, et seq.); and California Business and Professions Code section 17200, et seq. The Released Class Claims shall apply to all Class Members who do not timely file a Request for Exclusion.

Khoury Decl. ¶35.

Aggrieved Employees will release all:

Claims or causes of action under the Private Attorneys General Act, Labor Code section 2699 et seq. of whatever kind or nature which occurred during the PAGA Period that were or reasonably could have been brought based on the facts alleged in any version of the complaints filed in the Action and in the LWDA Letters submitted to the LWDA by Plaintiffs, regardless of theory of recovery, including but not limited to, any alleged violations of or relief under California Labor Code sections 201, 202, 203, 218.5, 218.6, 226, 226.3, 226.7, 245 et seq., 510, 512, 551, 552, 558, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and the applicable provisions of the applicable IWC Wage Orders.

Khoury Decl. ¶36.

V. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Preliminary Approval Motion analyzed the terms of the Settlement in light of

Dunk's factors supporting a presumption of fairness, and the factors determining whether a settlement is in the Class' best interest, and is adequate and reasonable, under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008). The Court carefully reviewed and ruled on these analyses and they are incorporated here by reference. *See*, Memorandum of Points and Authorities in support Preliminary Approval Motion filed March 7, 2023, at 9:13 – 20:2.

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

VI. ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE AWARDED

Class Counsel requests attorneys' fees of \$200,000, one-third of GSA, and litigation costs of \$15,760. Counsel have expended 169.3 hours, a \$110,329.00 lodestar. Khoury Decl. ¶37, Exh. 5 – Consolidated Class Counsel's Summary of Time & Costs; Exh. 6 – Lodestar Task Chart; Exh. 7 – Costs; Declaration of Joseph Tojarieh, ("Tojarieh Decl."), ¶¶11, 12, Exh. 3 – Lodestar Task Chart.

A. The Results Achieved Support the Fee Request

The most important factor to consider in granting a fee award is the success obtained. *In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475 (RCx), 2005 U.S. Dist. LEXIS 13627, *27 (C.D. Cal. June 10, 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). An excellent result was achieved, ensuring Class benefits despite contested claims.

The Class was provided notice of all settlement terms, including Counsel's request of award of attorneys' fees up to one-third of the GSA. CPT Decl. ¶¶3, 6, Exhs. A ¶3. No Class Member objected to the attorneys' fees award. *Id.* at ¶10.

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

The California Supreme Court recognized it is appropriate to award attorneys' fees based on a percentage of the total value of benefits to Class Members from the settlement, also known as the "common fund" method. *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503 (2016); *Serrano v. Priest*, 20 Cal.3d 25, 34 (*Serrano III*) (1977); *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769 (9th Cir. 1977). (California courts look to federal courts analyzing class issues. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239-40 (2001)).

1 “[T]he lodestar method is not necessarily utilized in common fund cases.” *Lealao v.*
2 *Beneficial California, Inc.*, 82 Cal.App.4th 19, 27 (2000); *Dunk*, at 1808 (attorneys’ fees may
3 be percentage of common fund where settlement amount is certain or easily calculable).

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

12 A common fund fee award is especially appropriate here as it spreads the attorneys’ fees
13 among all beneficiaries of the fund; aligns incentives between counsel and the class; better
14 approximates market conditions in a contingency case; and encourages class counsel to seek
15 early settlement and avoid unnecessarily prolonging litigation, which prevents unnecessary use
16 of judicial and party resources, and delay in compensating the class. *Laffitte*, 1 Cal.5th at 503.

17 With the guiding principle that early class action settlements are favored and may not
18 diminish an award of attorneys’ fees, Class Counsel submits the fee request should be awarded,
19 based on the risks and complexities of prosecuting the action, the contingent nature of any fee,
20 their experience in handling cases of this type, fees commonly awarded in these cases, and
21 vindication of the Class’ rights.

22 Class Counsel undertook representation at their own expense, with compensation wholly
23 contingent upon providing a Class benefit. Class Members will receive substantial benefits from
24 the proposed Settlement. Based on the defined and clearly traceable Class benefit, the Court
25 may award a percentage of the common fund as attorneys’ fees.

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

27 “California courts routinely award attorneys’ fees of one-third of the common fund.”
28 *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214, *28 (S.D. Cal. Sept. 28, 2017).

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

Counsel’s request for one-third of the common fund is in the mid-range of awards which commonly range from 20% to 50%, and is fair compensation for undertaking complex, risky, litigation on a contingent basis, and for the result achieved for the Class. Khoury Decl. ¶38.

Some courts have found an award of 33% of a common fund is the “benchmark” in California. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist. LEXIS 6049, *14 (S.D. Cal. Jan. 14, 2013) (“These percentages compare favorably with” the California (33%) benchmark.); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMC), 2013 U.S. Dist. LEXIS 163118, at *7 (S.D. Cal. Nov. 14, 2013).

Class Counsel’s fee request is consistent with market rates, awards in similar California cases, including to Class Counsel, is reasonable, and should be awarded. Khoury Decl. ¶39.

D. Optional Lodestar Cross-Check Confirms Reasonableness of Fee

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

Even when used, a cross-check “calculation need entail neither mathematical precision

1 nor bean-counting,” is not a “full-blown lodestar inquiry,” and “can be performed with a less
2 exhaustive cataloging and review of counsel’s hours.” *Barbosa v. Cargill Meat Solutions*
3 *Corp*, 297 F.R.D. 431, 451 (E.D. Cal. July 2, 2013).

4 Under the lodestar method, a base fee is calculated from compilation of time reasonably
5 spent on the case and the reasonable hourly compensation of the attorneys. *Serrano v. Priest*,
6 *supra*, at 48. The court then enhances the lodestar by a “multiplier” to account for a range of
7 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
8 success achieved. *Id.*, at 49; see also *Ketchum v. Moses*, Cal.4th 1122, 1132-36 (2001).

9 If the fee award were calculated using lodestar, rather than a common fund percentage, a
10 multiplier of 1.81 would be applied. ($\$200,000/\$110,329.00 = 1.81$). Class Counsel’s work was
11 reasonable and necessary and reflected in the excellent result achieved. Khoury Decl. ¶40.

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

13 Class Counsel are entitled to hourly rates charged by attorneys of comparable
14 experience, reputation, and ability for similar litigation. *Ketchum, supra* at, 1133; *Children’s*
15 *Hospital and Med. Center v. Bonta*, 97 Cal. App. 4th 740, 783 (2002) (affirming rates as
16 “within the range of reasonable rates charged by and judicially awarded comparable attorneys
17 for comparable work”). When determining reasonable rates, Courts may consider attorney skill
18 and experience, nature of the work performed, and the relevant area of expertise and the
19 attorney’s customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th
20 629, 632 (1998).

21 Class Counsel’s skill and experience support their hourly rates and are in line with rates
22 typically approved in California wage and hour class actions and previously awarded to Class
23 Counsel in many courts, including this one. Cohelan Khoury & Singer’s practice is limited to
24 litigating class and representative actions on behalf of employees and consumers, and the firm
25 has been appointed Class Counsel or co-Class Counsel in over 300 such cases. Khoury Decl.
26 ¶¶3-11, 45. Mr. Tojarieh has devoted a significant portion of his practice to employment law
27 and class actions, and has been appointed co-class counsel for plaintiff in numerous wage and
28 hour class actions. Tojarieh Decl. ¶¶2-5.

Class Counsel's skill and experience support their hourly rates: **Cohelan Khoury & Singer**: Founding Partner, Isam C. Khoury - \$925; Managing Partner, Michael D. Singer - \$995; Associate, Marta Manus - \$700; Associate, Rosemary C. Khoury - \$500; Former Partner, J. Jason Hill - \$700; **Stonebrook Law**: Founder and Managing Attorney, Joseph Tojarieh - \$675. Khoury Decl. ¶¶44, 46, Exh. 8 - Laffey Matrix; Tojarieh Decl. ¶¶9-10, Exh. - Laffey Matrix Exh. 2 – Daily Journal Report.

F. Class Counsel's Total Hours are Reasonable

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

G. A Multiplier of the Lodestar Would Be Awarded

A lodestar may be enhanced by a multiplier for an appropriate fee award. *Serrano III*, 20 Cal.3d at 48. Factors determining level of enhancement include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Lealao* at 49. The list is not exhaustive, and the Court may consider other factors it deems important in setting the multiplier. *Id.* at 40; *Ketchum*, *supra* at 1139. "Multipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied." (Newberg on Class Actions §14.03 (4th ed. 2009)). Counsel pursued difficult claims, presented them with skill based on experience prosecuting employment class actions, and achieved an excellent result, on a contingent basis.

A 1.81 multiplier is reasonable and in line with those used in other cases, which may range "from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. at 255; *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 U.S. Dist. LEXIS 10532, *16 (E.D. Pa. June 2, 2004) (finding the average multiplier awarded in common fund cases from 2001 to

200, was 4.35).

In *Lealao*, the Court held a trial court's refusal to enhance the lodestar was an abuse of discretion, opining a multiplier more than 3.5 was reasonable and not ruling out the original request for 8.0. *Lealao, supra*, 82 Cal. App. 4th at 24, 52. See *SternwestCorp. v. Ash*, 183 Cal.App.3d 74, 76 (1986) (remanded with directions "to enhance the lodestar award by such factor (two, three, four or otherwise) that the court, in its discretion shall deem proper"); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (multiplier of 3.65); *Keith v. Volpe*, 501 F.Supp.403, 414 (C.D. Cal. 1980) (multiplier of 3.5).

Although not required, to the extent a lodestar could be used to calculate the fee award, a multiplier is supported by the difficulty of the questions involved, the skill displayed by Class Counsel in addressing them, the statutory employee protections enforced, and the contingent nature of any recovery.

H. Litigation Expenses Are Reasonable

Class Counsel seeks \$15,760 in reasonable and necessary actual costs. Khoury Decl. ¶47, Exh. 7 – Costs.

VII. THE PROPOSED PAGA PAYMENT IS REASONABLE

The Agreement allocates \$25,000 to PAGA claims, \$18,750 (75%) paid directly to the LWDA, and the remaining \$6,250 (25%) to Aggrieved Employees. This was the result of good-faith, mediated negotiations. Where PAGA penalties are negotiated in good faith, with "no indication [the] amount was the result of self-interest at the expense of other Class Members," they are considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *In re Nordstrom Com. Cases* (2010) 186 Cal. App. 4th 576, 579 (No abuse of discretion approving settlement allocating \$0 to PAGA claims).

This allocation is within the range, or higher, than other settlements. See *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in settlement of \$900,000), recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal.

Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (\$10,000 PAGA, \$1.25m settlement); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, *5-6 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA, \$2.5m settlement); *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. 2012) (\$10,000 PAGA, \$3.7m settlement).

VIII. THE SERVICE AWARDS ARE REASONABLE AND SHOULD BE AWARDED

Service awards “are fairly typical in class action[s]” and “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action.” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394.

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

Enforcement of laws protecting California employees would be “random and fragmentary,” or non-existent, if no one came forward and spent time working on behalf of others, and perhaps most importantly, took risks those others are not willing to bear.

Class action plaintiffs, not class members, risk a judgment for defendant’s costs. “Those who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful.” *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433. The *Earley* court contended this risk was balanced by potential reward.

“While imposition of the entire cost burden on the named plaintiffs may have a chilling effect on the willingness of plaintiffs to bring class action suits, this effect easily may be outweighed by the potential recovery.” *Id.* Plaintiff’s recovery in a class action will always be less than an individual action, take longer to obtain, and have no potential for early settlement.

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

The risk of judgment for Defendant’s costs, alone, is sufficient to support Class

Representative Service Awards of \$7,500 each to each Plaintiff.

It is impossible to know, or intervene, each time a class action plaintiff loses an employment opportunity, making it essential to compensate them at final approval, the only time the risk they took can be at least slightly offset and they can be adequately compensated.

Plaintiffs more than satisfied their obligation to protect the interests of the Class and place them above their own. Plaintiffs accepted the risk of judgment for Defendants' costs and potential loss of future employment opportunities. Each had individual claims which they did not pursue, or abandoned, to serve only as representatives of other employees, although, unlike those employees, Plaintiffs were required to give a general release of all claims of any kind, including a section 1542 waiver. Khoury Decl. ¶¶48, Exh. 1 – Celio Decl. ¶¶2, 6-12, 14; Exh. 2 – Lytle Decl. ¶¶2, 6-12, 14; Exh. 3 – Martin Decl. ¶¶2, 6-12, 14; Exh. 4 – Fort Decl. ¶¶2, 6-12, 14.

The Class received notice Plaintiffs requested \$7,500 each “to compensate them for service and extra work provided on behalf of the Class Members.” CPT Decl. ¶¶3, 6, Exh. A, Section IV. No Class Member objected. *Id.* at ¶10; Khoury Decl. ¶49.

IX. CONCLUSION

The Settlement favorably resolves what would otherwise be uncertain and lengthy litigation. Class Counsel respectfully requests the Court grant final approval of the Settlement, approve the Service Awards, attorneys' fees and costs, and administration expenses as requested.

Respectfully submitted,

**COHELAN KHOURY & SINGER
STONEBROOK LAW**

Dated: March 15, 2024

By: 

Marta Manus

Attorneys for Plaintiffs Angelyna Celio, Matthew Lytle, Robert Martin, and Donell Fort, on behalf of themselves and all others similarly situated