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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

ANH DUONG and CHAU NGOC BAO
PHAN, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

LOAN FACTORY, INC., a California
corporation; THUAN NGUYEN, an
individual; and DOES 1-50, Inclusive,

Defendants.

CASE NO. 21CV382467

Assigned for All Purposes to:
Hon. Patricia M. Lucas
Dept. 3

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

[Filed concurrently with Notice of Motion
and Motion; Declarations of Zachary M.
Crosner and Nicole Bench; [Proposed]
Order]

Date: September 28, 2022
Time: 1:30 p.m.
Dept.: 3

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2 **I. INTRODUCTION**

3 Plaintiffs and Class Representatives Anh Duong and Chau Ngoc Bao Phan seek final
4 approval of a non-reversionary class action settlement resolving wage and hour claims on
5 behalf of 142 individuals who worked for Defendant Loan Factory, Inc. (“Loan Factory” or
6 “Defendant”) in certain specified job positions in California during the period of May 26, 2017
7 to December 1, 2021. The proposed \$1,000,000 total settlement provides \$624,000 in cash
8 payments to the Class, with an average award of over \$4,400. The remaining balance will
9 cover modest service awards to each Plaintiff, settlement administration costs, civil penalties
10 to the state, and reasonable attorney’s fees and costs. The parties and their counsel finalized
11 the settlement after extensive and difficult arms-length negotiations overseen by an
12 experienced and highly-regarded mediator. The Court conditionally certified the Class
13 and preliminarily approved the settlement on February 2, 2022.

14 Since then, the Court-approved notice form was mailed to the Class Members, who
15 reacted very favorably to the settlement. Only one Class Member requested exclusion, and
16 there are no objections. Accordingly, on behalf of themselves and the Settlement Class,
17 Plaintiffs respectfully request the Court grant this motion, give full and final approval to the
18 settlement, and enter judgment accordingly.

19 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

20 The details of the procedural and factual background of this matter were outlined in
21 the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
22 November 19, 2021). To re-familiarize the Court with this litigation, Loan Factory is a
23 privately-held mortgage broker company headquartered in San Jose, California. It has
24 approximately six offices in California. Plaintiffs Anh Duong and Chau Ngoc Bao Phan both
25 started working for Defendant in 2020, and were paid a modest monthly salary ranging from
26 \$2,200 to \$2,600, plus performance bonuses based on the number of loans closed. Loan Factory
27 classified Plaintiffs and the Class Members as exempt employees and therefore did not pay them
28 overtime or provide them with meal and rest periods. Plaintiffs contend, however, that they and

1 the Class Members were misclassified as exempt for several reasons. First, the amounts paid by
2 Loan Factory did not satisfy the salary basis test, which requires exempt employees be paid a
3 salary at least two times the applicable minimum wage each month (or upwards of \$4,600/month
4 during the Class Period). Plaintiffs and the Class Members also do not meet the requirements of
5 the commissioned sales exemption, which requires an employee earn at least 1.5 times the
6 applicable minimum and at least one-half of the earnings be in the of a bona fide commission.
7 Because Loan Factory's compensation plan did not meet the requirements of either of these
8 exemptions (and no other exemption conceivably applies), Plaintiffs contend they were
9 misclassified and accordingly should have received overtime pay, meal and rest periods (or
10 compensation in lieu thereof), and other protections afforded non-exempt employees under
11 California's wage and hour laws. [Declaration of Zachary M. Crosner ("Crosner Decl."), ¶¶ 2-3.]

12 On May 21, 2021, Plaintiffs submitted a notice letter to the Labor & Workforce
13 Development Agency ("LWDA") as the mandatory prerequisite to filing a claim under the Private
14 Attorneys General Act ("PAGA"). They then filed their class action complaint against all
15 Defendants on May 26, 2021, alleging claims for: (1) failure to pay all wages due, including
16 minimum and overtime wages (2) failure to provide all required meal and rest breaks or
17 compensation in lieu thereof; (3) failure to provide accurate, itemized wage statements; and (4)
18 failure to pay all wages due upon termination of employment. Plaintiffs also alleged claims for
19 unfair competition and for violations PAGA premised on the same Labor Code violations.
20 [Crosner Decl., ¶ 4.]

21 In and around April 2021 (after receiving records requests from Plaintiffs), Loan Factory
22 purportedly began conducting an independent "audit" of its payroll practices and apparently
23 realized its exemption classification decisions regarding the Class Members were problematic.
24 Consequently, starting that month and continuing into June, the company attempted to "cure" the
25 misclassifications by, inter alia, attempting to "true up" Class Member compensation and paying
26 them for overtime and meal/rest period violations. By the end of June 2021, Loan Factory paid
27 out almost \$250,000 in back wages and penalties, and the company also attempted to issue
28 revised wage statements to correct the inaccuracies in previously issued statements. Finally, Loan

1 Factory reclassified the job positions at issue as non-exempt. [Crosner Decl., ¶ 5.]

2 After Plaintiffs filed their complaint and after undertaking lengthy discovery meet and
3 confer sessions and discussions about the merits of the case, the Parties ultimately agreed to early
4 mediation. The settlement was reached in June 2021 after extensive investigation, discovery and
5 negotiations. The negotiations were at arms-length, and facilitated by experienced and well-
6 respected neutral Steve Cerveris, Esq., over the course of a full day of mediation. [Crosner Decl.,
7 ¶¶ 6-7.] This Court preliminarily approved the settlement on February 2, 2022.

8 Class Notices were mailed to class members on March 31, 2022, with a 45-day
9 window (to May 16, 2022) for class members to opt out or object to the proposed settlement.
10 [Declaration of Nicole Bench (“Bench Decl.”), ¶¶ 7, 12-13.]

11 **III. THE PROPOSED SETTLEMENT TERMS**

12 Under the settlement, Loan Factory will pay \$1,000,000 into a common fund, the
13 Maximum Settlement Amount (“MSA”). Attorney’s fees of up to \$333,333.33 (1/3 of the MSA),
14 litigation costs of up to \$20,000 (only \$7,123.11 is requested), settlement administration costs of
15 no more than \$7,355, a service award to each Plaintiff of no more than \$10,000, and a payment of
16 \$7,500 to the Labor & Workforce Development Agency for its share of the PAGA penalties, all
17 will be paid from the MSA. The remainder of \$624,688.56 will be allocated pro rata among the
18 Class Members based on their total weeks worked during the Class Period. No portion of the
19 MSA will revert to Loan Factory. [Crosner Decl., ¶ 8.]

20 **A. *Certification of the Settlement Class***

21 The Court conditionally certified a settlement class defined to include including all
22 individuals employed by Defendant in the positions of Loan Advisor, Client Advisor, Escrow
23 Officer Assistant, Client Manager, Insurance Agent, Branch Manager, Team Lead, Loan
24 Originator, Customer Service Manager, Underwriter, Admin, Front Desk, Business Development,
25 Loan Officer Assistant, Loan Processor, Administration Assistant, Accountant, and/or Chief
26 Credit Officer in the State of California employed by Defendant as non-exempt employees in the
27 State of California during the period from May 26, 2017, through December 1, 2021. [Crosner
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Decl., ¶ 9.] The Settlement Administrator ultimately mailed class notices to 142 individuals identified as members of the Class. [Bench Decl., ¶¶ 4-7.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Loan Factory to pay \$1,000,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs, and in addition to the approximately \$250,000 already paid to the Class Members. Approximately \$624,000 from the MSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. One-third of each settlement share will be allocated to wages and the remaining two-thirds will be allocated to penalties and interest, which allocation is consistent with Loan Factory's potential liability as discussed below. Loan Factory will pay any and all applicable employer-side payroll taxes separately and in addition to the MSA. Per the Court's preliminary approval order, the Parties are meeting and conferring on a proposed *cy pres* beneficiary of any residual funds under Code of Civil Procedure section 384, and will advise the Court of their decision at least 10 days prior to the Final Approval Hearing. [Crosner Decl., ¶ 10.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Loan Factory during the Class Period while employed in one of the specified positions. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a settlement award corresponding to the relative value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Loan Factory and the number of unpaid overtime hours, number of missed meal breaks and/or rest breaks, were not provided compensation in lieu of such missed breaks, and

1 related penalties. [Crosner Decl., ¶ 11.] The average class member award will be approximately
2 \$4,430, and the largest class member award will be over \$23,000. [Bench Decl., ¶ 15.]

3 **C. Settlement Administration**

4 ILYM Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
5 Packet to the Class members after making all reasonable effort to ascertain the best mailing
6 address, including running each address through the National Change of Address database
7 and "skip-tracing" any Notice Packets returned as undeliverable. [Bench Decl., ¶¶ 4-7.] The
8 Class Notice, previously approved by the Court, duly informed Class Members of the
9 settlement terms, including the estimated relief each Class Member will receive, the amounts
10 to be requested for attorney's fees and the class representative enhancement awards, and the
11 right to opt out of or object to the settlement. [Bench Decl., ¶ 7, Exh. A.] ILYM mailed 142
12 Notice Packets on March 31, 2022. [Bench Decl., ¶ 7.] Ultimately, two Notice Packets were
13 deemed undeliverable, representing a 98.6% success rate. [Bench Decl., ¶¶ 8-10.] The 45-day
14 response window for objecting to the settlement expired on May 16, 2022. [Bench Decl., ¶¶
15 12-13.] As of the filing of this motion, ILYM has received one request for exclusion, and
16 zero objections to the settlement. No disputes have been submitted regarding the information
17 used to calculate class member settlement shares. [Bench Decl., ¶¶ 11-13.]

18 **D. Release of Claims**

19 All Participating Class Members will release Loan Factory from all claims alleged in the
20 operative complaint, or that could have been brought based on the factual allegations in the
21 operative complaint, including PAGA claims, during the Class Period. The release is limited to
22 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
23 complaint. [Crosner Decl., ¶ 12.]

24 **E. Attorney's Fees and Costs**

25 The Settlement Agreement allows for an award of attorney's fees to Class Counsel of
26 up to one-third of the MSA, or \$333,333.33 as well as litigation costs expenses up to
27 \$20,000.00 (although only \$7,123.11 is requested). Plaintiff's counsel filed a separate
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1 motion for attorney's fees and costs, concurrently with this motion, attesting to the nature
2 and scope of the work performed and costs and expenses incurred. [Crosner Decl., ¶ 13.]

3 **F. PAGA Claims**

4 Finally, the settlement provides for \$10,000 to be allocated to civil penalties under
5 PAGA and Plaintiffs request the Court approve said amount. Consistent with PAGA, \$7,500
6 of this amount will be paid to the LWDA as the state's share of the civil penalties, with the
7 remainder included in the Net Settlement Amount for distribution to the Class. The
8 settlement agreement and this motion were submitted to the LWDA through its online portal prior
9 to filing. [Crosner Decl., ¶ 14; Exh. 1.]

10 **IV. ARGUMENT**

11 **A. Standard of Review for a Class Action Settlement**

12 The law favors settlement, particularly in class actions where substantial resources
13 can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg &
14 A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of
15 Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v.
16 Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37
17 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
18 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
19 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
20 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
21 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
22 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
23 two-step process intended to determine whether, under the totality of circumstances, the
24 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
25 Cal.App.4th at 245.

26 On a motion for final approval, the trial court is charged with determining whether, in
27 light of the total circumstances of the action and the response of the class members to the
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1 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
2 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
3 determination and may consider a number of relevant factors, including: the strength of
4 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
5 further litigation; the amount offered in settlement; the extent of discovery and stage of the
6 proceedings; the experience and opinion of counsel; and the reaction of class members to the
7 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
8 courts generally apply a presumption of fairness to a proposed class action settlement when:
9 (1) the settlement is reached through arm's-length bargaining; (2) investigation and
10 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
11 experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48
12 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

13 ***B. The Proposed Settlement Merits Final Approval***

14 The proposed settlement of this action warrants final approval under the standards
15 summarized above. The settlement is fair, reasonable and adequate, and represents a
16 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
17 approved by the class members, as there were no objections and only one class member
18 requested exclusion, for a 99.3% participation rate.

19 ***1. The Settlement Is the Product of Arm's-Length, Informed Negotiations***

20 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
21 was reached following arm's-length negotiations presided over by Steve Cerveris, Esq., a
22 highly respected and well-known mediator with extensive experience mediating wage and
23 hour class actions. [Crosner Decl., ¶7.] Moreover, Plaintiffs and their counsel were well-
24 informed about the facts and the law. [Crosner Decl., ¶¶ 6, 15.] Plaintiffs' counsel Zachary
25 Crosner, Blake R. Jones, and Michael Crosner all have years of extensive experience
26 litigating wage and hour class actions and representative actions.¹ Defendant Loan Factory
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28 ¹ Crosner Legal's experience and qualifications are set forth in detail in the Crosner Declaration in support
of Plaintiffs' motion for attorney's fees, filed concurrently herewith.

likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients and nothing was "left on the table."

Prior to mediation, Plaintiffs engaged in significant formal and informal discovery. [Crosner Decl., ¶¶ 6, 15.] Plaintiffs' counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class.

2. *The Class Reacted Favorably to the Settlement*

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and only a single class member has requested exclusion out of 142 settlement class members. [Bench Decl., ¶¶ 12-13.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

3. *The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks*

The proposed settlement involves a substantial sum of money that, when distributed, will confer meaningful monetary benefits on the Class members. As described above, each individual award will be based on an allocation consistent with the nature of the claims asserted and will fairly and equitably allocate the available funds in relation to the degree of damage each Class member incurred. While Class members who worked for only a short period of time will receive relatively small sums, those with longer tenures and who worked more hours and shifts throughout the class period will receive appropriately larger awards.

Prior to mediation, the parties engaged in informal discovery to facilitate settlement discussions. Thus, Plaintiffs reviewed documents and information regarding Loan Factory's payroll practices, a random sampling of pay stubs and time records for the class members, applicable compensation plans, meal and rest break policies, etc., and information from

1 Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other
2 information used to formulate a damages model. Plaintiffs then had that information analyzed by
3 a consulting expert to assist in determining potential violation rates and other data used to
4 formulate a damages model. Plaintiffs' counsel are confident they obtained sufficient information
5 to understand the law and facts of this case and make an informed decision regarding the
6 proposed settlement and whether it is fair and reasonable. [Crosner Decl., ¶¶ 6, 15.]

7 Using that data, Plaintiffs ran various calculations and estimated Loan Factory's likely
8 maximum exposure on the class claims at approximately \$2,274,000, including approximately
9 \$281,000 on the unpaid minimum wage claims; approximately \$1,112,000 on the unpaid
10 overtime claims; about \$592,000 on the meal and rest break claims, approximately \$117,000 on
11 the wage statement claims, and approximately \$372,000 on the waiting time penalty claims..
12 [Crosner Decl., ¶ 16.] Plaintiffs' counsel substantially discounted the value of these claims,
13 however, in light of the risks posed by proceeding with the litigation, as well the delay and
14 increase in costs that would result from what would likely be protracted class action litigation.

15 As noted, the crux of Plaintiffs' claims turns on applicability of two overtime exemptions,
16 neither of which Defendant can meet. An employee is exempt under California law under if the
17 employee (1) earns "a monthly salary equivalent to no less than two (2) times the state minimum
18 wage for full-time employment" and (2) is primarily engaged in exempt duties. Here, Plaintiffs
19 and the Class Members did not meet the salary test requirements of two times minimum wage.
20 For example, to meet the salary test, Defendant would have needed to compensate Plaintiffs and
21 the Class Members approximately \$4,160/month in 2020 ($\$26.00 * 40 * 4 = \$4,160.00$) and
22 \$4,480/month in 2021 ($\$28.00 * 40 * 4 = \$4,480.00$). Plaintiffs were both compensated \$2,200
23 per month in 2020 and \$2,600 per month in 2021. Since Defendant can only attribute an
24 additional 10% of its non-discretionary bonuses to the required salary amount,² there is no way
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27 ² “. . . the amount of non-discretionary bonuses, incentive payments or commissions an employer may
28 Semprini v. Wedbush Sec., Inc. (2020) 57 Cal.App.5th 246, 252.

1 that Defendant can meet the salary requirements even if bonuses are included in the calculation.
2 [Crosner Decl., ¶ 17.]

3 Further, the Class Members do not meet the commission sales exemption requirements for
4 several reasons. First, the Class Members generally were not compensated 1.5 times the minimum
5 wage for all their hours worked. For example, Plaintiffs typically worked between 45 to 65 hours
6 per week. In order to meet the commission sales salary requirement Plaintiffs would have to be
7 compensated more than \$2,145 per pay period in 2020 ($\$19.50/\text{hr} * 55 \text{ hours on average} * 2$
8 $\text{workweeks} = \$2,145$), far in excess of their \$1,100 bimonthly salary compensation. Even in pay
9 periods where Plaintiffs (and the Class Members) were paid more than 1.5 minimum wage for
10 hours worked, they were not compensated by commission. Rather, they were paid flat amounts as
11 bonuses that were not tethered to a percentage of any sale or loan amount. [Crosner Decl., ¶ 18.]

12 As previously described, Plaintiffs allege that the Class Members worked 55 hours per
13 work week on average, or 110 hours per two week pay period. This amounts to approximately
14 \$1,430 per pay period, yet Defendant generally only compensated the Class Members a salary of
15 \$1,100 in pay periods. As a result, Defendant also failed to meet minimum wage obligations in
16 pay periods where they did not compensate the Class Members additional bonuses that exceeded
17 the minimum wages for all hours worked in the pay period. [Crosner Decl., ¶ 19.]

18 For the meal and rest break claims, Plaintiffs argued because of the misclassification,
19 Defendant failed provide all meal and rest breaks required under California law, and really didn't
20 even have a written policy applicable to the Class Members. Defendant argued the Class
21 Members received lunches and breaks and at a minimum this fact would raise individualized
22 inquiries regarding the extent to which breaks were or were not taken. Defendant further noted
23 this would potentially impact damages as well by substantially reducing the number of potential
24 violations. [Crosner Decl., ¶ 20.]

25 Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged inaccurate
26 wage statement violations) and §§ 201-203 (waiting time penalties). These claims were based on
27 the unpaid minimum and overtime wage claims and will rise or fall along with those primary
28 claims, in addition to being subject to "good faith" and other defenses available to Defendant.

1 E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did
2 not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the
3 merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiffs
4 discounted the derivative claims significantly in light of these multiple potential defenses.
5 [Crosner Decl., ¶ 21.]

6 As far as potential PAGA liability, the theoretical penalties theoretically totaled around
7 \$625,000 should Plaintiffs prevail on all claims and establish violations of the multiple Labor
8 Code sections at issue for every single eligible pay period. [Crosner Decl., ¶ 22.] As with the
9 class claims, Plaintiffs discounted the potential PAGA penalties for defenses proffered by
10 Defendant, and further discounted these claims since the Court possesses wide discretion to
11 reduce such penalties even if Plaintiffs ultimately prevailed. Accordingly, the Parties allocated
12 \$20,000 to PAGA penalties, which amount is reasonable and in line with comparable settlements
13 in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25,
14 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA penalty from
15 \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I
16 (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500 PAGA payment
17 reasonable when measured against the overall settlement of \$345,000 and the possible
18 weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has
19 been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as
20 necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS
21 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have]
22 submitted the settlement agreement to the LWDA, and the LWDA has not objected to the
23 settlement").

24 Plaintiffs' counsel discounted the value of the claims consistent with the risks discussed
25 above, and carefully weighed the likelihood of the class receiving substantially greater benefit if
26 the litigation continued. Plaintiffs and their counsel concluded – in light of these very real and
27 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
28 was in the best interests of the class. The overall \$1,000,000 recovery represents a significant

percentage of Defendant's potential exposure, and is roughly 35% of the maximum value of the class claims and, as noted above, Loan Factory paid out some \$250,000 in "true up" payments in addition to this settlement. Given the risks, uncertainties and delays inherent in continuing to litigate, a total recovery for the class of \$1,000,000, which will result in average award of some \$4,300 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Crosner Decl., ¶¶ 23-25.]

Moreover, the fact that a settlement is less than what might be achieved at trial is not a proper indicator of whether the settlement is fair and reasonable. 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention that settlement is not fair and reasonable even though it was asserted the settlement amounted to a 99% discount over full value of claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court."); Behrens v. Wometco Enterprises, Inc. (S.D. Fla. 1988) 118 F.R.D. 534, 542 ("A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery."). In fact, given the low percentage of class actions actually certified in California, the assigned risk probabilities are reasonable. Findings of the Study of California Class Action Litigation, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion).

It is also significant that the settlement funds do not revert back to Loan Factory, and provide immediate benefit to a class of workers without a lengthy claims process. White, 803 F.Supp.2d at 1086; Kakani v. Oracle Corp. (N.D. Cal. June 19, 2007) 2007 WL

1 1793774, at *7; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide
2 for Judges (3d ed. 2010) at 20, at <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf>
3 (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). In
4 sum, Plaintiffs and their counsel have concluded the settlement, which assures Class
5 Members prompt and reasonable compensation, is in the best interests of the class.

6 **V. PLAINTIFFS' ENHANCEMENT AWARDS**

7 Pursuant to the terms of the settlement, Plaintiffs seek modest incentive awards of \$10,000
8 each for their service in bringing these claims on behalf of the Class. These requests are
9 reasonable given the risks they undertook on behalf of the Class Members. By contacting and
10 retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the
11 absent Class Members (plus the aforementioned true up payments), while shouldering the risk of
12 being liable for Defendant's litigation costs. Plaintiffs also exposed themselves to unwanted
13 notoriety related to filing a public lawsuit (discoverable even through a simple google search) for
14 the benefit of other employees, placing themselves at risk of discrimination by future prospective
15 employers. As set forth in more detail in their declarations submitted with the preliminary
16 approval motion, among taking many other actions assisting in the successful litigation of this
17 case, Plaintiffs provided substantial factual information and documents to counsel, attended
18 numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all
19 significant developments. [Crosner Decl., ¶ 26.] Finally, there are no class member objections
20 submitted with respect to the amounts Plaintiffs propose to receive. [Bench Decl., ¶ 13.]
21 Accordingly, the requested enhancement payments to Plaintiffs are appropriate and justified as
22 part of the settlement.

23 **VI. SETTLEMENT ADMINISTRATION COSTS**

24 The settlement provides for a payment to ILYM of no more than \$12,000 for its services
25 as the Settlement Administrator. As set forth in the Declaration of Nicole Bench, ILYM has
26 performed and will continue to perform its required duties through final distribution of the
27 settlement funds, and incurred \$7,355 in fees and expenses. [Bench Decl., ¶ 16.] Accordingly,
28

1 Plaintiffs respectfully request the Court approve payment of \$7,355.00 to ILYM from the MSA.
2 [Crosner Decl., ¶ 27.]

3 **VII. CONCLUSION**

4 For all the foregoing reasons, Plaintiffs Anh Duong and Chao Ngoc Bao Phan respectfully
5 request that the Court grant this motion and grant final approval of the proposed class action
6 settlement and approve the payment of PAGA penalties to the State. Plaintiffs further request the
7 Court approve payment of the Settlement Administrator's fees and expenses, approve the
8 requested class representative enhancement payments, approve the award of attorney's fees and
9 costs as requested in Plaintiffs' Motion for Attorney's Fees and Costs, and enter judgment in this
10 action. Finally, Plaintiffs request the Court set a final compliance hearing for September 27,
11 2023, or a later date convenient for the Court.

12
13
14 Dated: September 2, 2022

CROSNER LEGAL, PC

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20 CHAU NGOC BAO PHAN
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