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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ELDER CARE ALLIANCE AND ALMAVIA WAGE AND HOUR CASES

Included Actions:

MARITES BALLESTEROS v. ELDER CARE ALLIANCE OF SAN FRANCISCO INC. dba ALMAVIA OF SAN FRANCISCO, et al.
Superior Court of California, County of San Francisco, Case No. CGC-21-588913

YESENIA ARIAS v. ELDER CARE ALLIANCE, et al. Superior Court of California, County of Alameda, Case No. RG21090600

YESENIA ARIAS v. ELDER CARE ALLIANCE, et al.Superior Court of California, County of Alameda, Case No. RG21102829

MARTA AGUILAR v. ELDER CARE ALLIANCE OF SAN RAFAEL INC., et al. Superior Court of California, County of Alameda, Case No. RG21107053

MARIA TABUYO v. MERCY RETIREMENT AND CARE CENTER AND ELDER CARE ALLIANCE INC., et al. Superior Court of California, County of Alameda, Case No. 22CV022908

MARITES BALLESTEROS v. ELDER CARE ALLIANCE OF SAN FRANCISCO INC. dba ALMAVIA OF SAN FRANCISCO, et al. Superior Court of California, County of Alameda, Case No. 23CV046186

Case No.: RG21090600 (Lead Case)
RG21090600;
RG21102829;
RG21107053;
22CV022908;
23CV046186;
CGC-21-588913 (San Francisco);

CLASS & REPRESENTATIVE ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: December 9, 2025
Time: 02:30 P.M.
Location: Department 21
Judge: Hon. Somnath Raj Chatterjee

Ballesteros SF Action filed: January 13, 2021
Arias Class Action filed: March 3, 2021
Arias PAGA Action filed: June 24, 2021
Augilar Action filed: July 29, 2021
Tabuyo Action filed: November 30, 2021
Ballesteros AM Action filed: October 2, 2023

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter has been brought as a wage and hour class action filed by Plaintiff, Marites Ballesteros ("Plaintiff" or "Ms. Ballesteros") against Elder Care Alliance, Alma Via of San Francisco, Elder Care Alliance of San Francisco, Elder Care Alliance of San Rafael, and Mercy Retirement and Care Center ("Defendants" or "Elder Care Alliance"). Ms. Ballesteros worked for Defendant Alma Via of San Francisco as an hourly, non-exempt employee beginning approximately July 2017. On January 13, 2021, Plaintiff brought this action on behalf of herself, and all similarly situated employees employed by Defendants in the State of California in an hourly or non-exempt position during the Class Period and later filed an Amended Complaint on March 8, 2021.

Plaintiff brought the case against Defendants alleging violations of California wage and hour laws, including failure to pay for all hours worked, failure to pay the minimum wage, failing to furnish timely statements accurately showing, among other things, the gross wages Class Members earned during each pay period, and failure to timely pay all wages owed upon termination of employment. Plaintiff also alleged that these acts, which violate the California Labor Code, constitute predicate unlawful and unfair business practices in violation of the California Unfair Competition Laws.

On April 1, 2021, Defendant Elder Care Alliance filed an Answer to the First Amended Complaint of Plaintiff Ballesteros generally denying all claims and asserting 14 affirmative defenses.

Plaintiff further alleged claims of unfair competition and civil penalties under the Private Attorneys General Act ("PAGA"). On March 21, 2023, the Parties participated in an all-day mediation presided over by experienced mediator Mark S. Rudy. Following the mediation, each side, represented by its respective counsel, agreed to settle the Actions. The agreement was memorialized in the form of a Memorandum of Understanding. The fully executed Settlement Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

On September 25, 2024, Plaintiffs filed a motion for preliminary approval. On October 23, 2024, the Court issued a ruling ordering the Parties to file a brief or amended settlement agreement addressing the Court's stated concerns. An amended version of the Settlement Agreement, which is now the basis for this Motion, was filed on April 3, 2025.

On June 12, 2025, the settlement, as amended, was preliminarily approved by this Court, and administration of the Class Notice began.

The Class response to the Settlement has been overwhelmingly positive. The deadline for objecting to the Class Notice was October 27, 2025. As of November 7, 2025, out of one thousand two hundred and fifty-three (1,253) Class Members, there were zero (0) opt-outs and zero (0) objections. Only eleven (11) notices were ultimately undeliverable after skip tracing methods were applied to find alternative addresses. Wherefore, Plaintiff and the Settlement Class, through Class Counsel, now request that the Court grant final approval to the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants operate a Senior Living Facility in the State of California, including the Counties of San Francisco and Alameda. (Declaration of Robert Ottinger, "Ottinger Decl." at ¶ 9.) Plaintiff Marites Ballesteros began employment with Defendant in July 2017. (*Id.*) On January 13, 2021, Plaintiff Ballesteros filed a Complaint against Defendant Alma Via of San Francisco in the Superior Court of the State of California, County of San Francisco. Plaintiff Ballesteros asserted claims that Alma Via of San Francisco: (1) Failed to provide meal periods in violation of Cal. Lab. Code §§ 226.7, 512, and 1198; (2) Failed to provide rest periods in violation of Cal. Lab. Code §§ 226. 7 & 1198; (3) Failed to pay overtime wages & penalties in violation of Cal. Lab. Code §§ 510, 1194; (4) Failed to provide accurate, itemized wage statements in violation of Cal. Lab. Code § 226; (5) Failed to pay for all hours worked in violation of Cal. Lab. Code § 223, IWC Wage Order 10-2001; (6) Waiting time penalties in violation of Cal. Lab. Code §§ 201, 202 & 203; and (7) Unfair competition & business practices in violation of Cal. Bus. & Prof. Code §17200 et seq.

On March 3, 2021, Plaintiff Arias filed a complaint against Defendant Elder Care Alliance in the Superior Court of the State of California, for the County of Alameda ("Arias Action"). (See the Settlement Agreement, Exhibit 1 to the Declaration of Robert Ottnger ("Settlement" or "SA") ¶ II(D).) Plaintiff Arias asserted the following claims against Defendant Elder Care Alliance: violation of California Labor Code §§ 510 and 1198 for unpaid overtime; violation of California Labor Code § 226.7 and 512(a) for unpaid Meal Period Premiums; violation of California Labor Code § 226.7 for Unpaid Rest Period Premiums;

violation of California Labor Code §§ 1194, 1197, and 1197.1 for Unpaid Minimum Wages; violation of California Labor Code §§ 201 and 202 for Final Wages Not Timely Paid; violation of California Labor Code § 204 for Wages Not Timely Paid During Employment; violation of California Labor Code § 226(a) for Non-Compliant Wage Statements; violation of California Labor Code § 1174(d) for Failure to Keep Requisite Payroll Records; violation of California Labor Code §§ 2800 and 2802 for Unreimbursed Business Expenses; and violation of the Business and Professions Code § 17200 et seq. for Unfair Competition. (*Id.*)

On March 8, 2021, Plaintiff Ballesteros filed her First Amended Complaint against Defendant AlmaVia of San Francisco and Defendant Elder Care Alliance of San Francisco in the Superior Court of the State of California, County of San Francisco. Plaintiff Ballesteros asserted claims that Alma Via of San Francisco and Elder Care Alliance of San Francisco: (1) Failed to provide meal periods in violation of Cal. Lab. Code §§ 226.7, 512, and 1198; (2) Failed to provide rest periods in violation of Cal. Lab. Code§§ 226.7 & 1198; (3) Failed to pay overtime wages & penalties in violation of Cal. Lab. Code § § 510, 512, 1194, 1194.2, and 1198; (4) Failed to provide accurate, itemized wage statements in violation of Cal. Lab. Code§ 226; (5) Waiting time penalties in violation of Cal. Lab. Code §§ 201, 202 & 203; and (6) Unfair competition & business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq. (Ottinger Decl. ¶ 11.)

On April 1, 2021, Defendant Elder Care Alliance, Inc. filed an Answer to the First Amended Complaint of Plaintiff Ballesteros generally denying all claims and asserting 14 affirmative defenses. (Ottinger Decl. ¶ 12.)

On July 29, 2021, Plaintiff Aguilar filed a complaint against Defendant Elder Care Alliance of San Rafael in the Superior Court of the State of California, for the County of Alameda. (SA ¶ II(F).) Plaintiff Aguilar asserted claims for violations of PAGA against Defendant Elder Care Alliance of San Rafael ("Aguilar Action"). (*Id.*)

On November 30, 2022, Plaintiff Tabuyo filed a complaint against Defendant Mercy Retirement and Care Center and Defendant Elder Care Alliance in the Superior Court of the State of California, for the County of Alameda ("Tabuyo Action"). (SA ¶ II(H).) Plaintiff Tabuyo asserted the following claims against Defendant Mercy Retirement and Care Center and Defendant Elder Care Alliance: Failure to Pay

Minimum and Straight Time Wages in violation of Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197; Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 1194 and 1198; Failure to Provide Meal Periods in violation of Cal. Lab. Code §§ 226.7, 512; Failure to Authorize and Permit Rest Periods in violation of Cal. Lab. Code § 226.7; Failure to Timely Pay Final Wages at Termination in violation of Cal. Lab. Code §§ 201-203; Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab. Code § 226; Failure to Indemnify Employees for Expenditures in violation of Cal. Lab. Code § 2802; and Unfair Business Practices in violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (*Id.*)

On March 21, 2023, the Parties participated in an all-day mediation presided over by mediator Mark S. Rudy. Following the mediation, each side, represented by its respective counsel, agreed to settle the Actions which was memorialized in the form of a Memorandum of Understanding. (Ottinger Decl. ¶ 13.) The fully executed Settlement Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties. (See the Settlement Agreement, Exhibit 1 to the Declaration of Robert Ottnger ("Settlement" or "SA").) There are one thousand two hundred and fifty-three (1,253) Class Members. (Declaration of Settlement Administrator Laura Singh ("Singh Decl." ¶ 5)

On April 19, 2024, the Arias Class Action, Arias PAGA Action, Ballesteros Action, Tabuyo Action, and Aguilar Action (collectively, the "Actions") were consolidated, with the Aria Class Action designated as the lead action.

On September 25, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On June 12, 2025, the Court entered an order granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement and setting the Final Approval Hearing for December 9, 2025.

Plaintiff now moves for final approval of the Settlement, Class Counsel Fees and Costs Award, Service Awards and Settlement Administration Costs.

III. EVALUATION OF THE SETTLEMENT

"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).)

The Court has already scrutinized the settlement in conjunction with the earlier Motion for Preliminary Approval. Nevertheless, the Court still has the duty to evaluate the "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." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 133; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802.)

"[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." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 225 [disapproved on other grounds]; *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 225 [*citing Dunk, supra*, at 1802]; see also *Kullar, supra*, at 130.) In this case, no evidence, whatsoever, exists to rebut the presumption of fairness. Additionally:

> 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*, at 250.) (citations omitted)

For the reasons stated in the Motion for Preliminary Approval, the Court has already found that a presumption of fairness attaches to the Settlement under consideration, including sufficient discovery and investigation, arms' length negotiations, and the considered opinion of experienced class action counsel, as well as the *Kullar* analysis that was presented. Moreover, the released claims are narrowly tailored to cover only those claims arising during the Class Period that were alleged or could have been alleged based on the facts in the operative complaint and cross-complaint. This ensures the release is not overbroad and remains coextensive with the litigated issues. Additionally, the favorable reaction of the Settlement Class to the Settlement only confirms that finding and it should be given final approval.

IV. SUMMARY OF SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

A. Basic Terms of The Settlement

This agreement contains settlement provisions for both PAGA violations and class action claims. Separate notices for the Class Action Settlement and the PAGA settlement were distributed at the same time.

1. Analysis of the Claims

Based on the exchange of information and documents, the mediation session, and discussions between counsel, Plaintiffs and Class Counsel assessed the Parties' positions and evaluated the value of the claims of the Class. The information and documents exchanged by the Parties and settlement discussions are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis. Plaintiffs and Class Counsel believe that the claims, causes of action, allegations and contentions asserted in the Action have merit. However, Plaintiffs and Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendants through trial and through appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of obtaining certification of the Action as well as trying the claims of the Class Members. Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims alleged in the Action. Class Counsel has also considered Defendants' potential defenses to Plaintiffs' allegations. Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiff sand the Settlement Class Members and that an independent review of this Stipulation by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation is fair, adequate, and reasonable and is in the best interests of Class Members.

2. Monetary Terms

Defendants will pay a Total Settlement Amount of $5,500,000.00 on a non-reversionary basis. (Singh Decl. ¶ 12; SA ¶¶ I(R).) Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Class Counsel Fees and Costs Award, consisting of attorney fees in the amount of $1,925,000.00 and reimbursement of litigation costs and expenses in the amount of $50,419.79 to Class Counsel; (2) Service Awards in the amount of $7,500.00 to Plaintiff; (3) Settlement Administration Costs to not exceed the amount of $20,000.00 to CPT Group, Inc. (4) and PAGA Allocation. (See generally SA ¶ III.) The PAGA Allocation, which is estimated to be $250,000.00 will be divided between the Labor Workforce Development Agency ("LWDA") at 75% (totaling $187,000.00) and the PAGA Settlement Group Members at 25% (totaling $62,500.) The Net Settlement Amount, which is estimated to be $3,227,835.21, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendants. (Ottinger Decl.¶ 12; Singh Decl. ¶ 16.) Within fourteen (14) calendar days of Defendants' deposit into the Qualified Settlement the Settlement Administrator shall prepare and mail the Individual Settlement Shares to Participating Class Members, less applicable taxes and withholdings and the Individual PAGA Payments. (SA ¶ III(E)(9).)

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows:

> The Settlement Administrator will (a) divide the Net Settlement Amount by the total number of Workweeks worked for all Participating Class Members that occurred during the Class Period and (b) multiply the result by each individual Participating Class Member's Workweeks during the Class Period. (SA ¶ III(C)(2).)

If a check is returned to the Settlement Administrator, the Administrator will make all reasonable efforts to re-mail it to the Participating Class Member (or PAGA Settlement Group Member as discussed below). (SA ¶ III(E)(10).) If a Participating Class Member or PAGA Settlement Group Member does not cash his or her Settlement Check within 120 days after the last mailing the Settlement Administrator will send the member a notice informing them that if they don't cash the check within the next sixty (60) days from the date fo mailing it will expire. (*Id.*) If the check remains uncashed, the funds will be distributed to Legal Aid At Work (the proposed cy pres recipient) in accordance with California Code of Civil Procedure § 384. (*Id.*)

3. PAGA Allocation and Individual Payments

The PAGA allocation will be $250,000.00 taken from the Gross Settlement Amount with 25%

totaling $62,500.00 to be divided among the PAGA Settlement Group Members. (SA ¶ I(Y).) The PAGA Settlement Group Members are all persons who are or were hourly-paid non-exempt employees of Defendants in California employed between April 20, 2020, through July 5, 2023. (SA ¶ I(4); SA Ex. B.) The Individual PAGA Payment for each PAGA Settlement Group Member will be calculated as follows: the Settlement Administrator will divide the PAGA Group Amount by the total number of Workweeks worked for all PAGA Settlement Group Members that occurred during the PAGA Period and multiply the result by each individual PAGA Settlement Group Member's Workweeks during the PAGA Period. (SA ¶ I(S);(BB).) The totality of each PAGA Settlement Group Member's Individual PAGA Payment is in settlement for penalties allegedly due to employees and those payments will not be subject to wage withholdings and shall be reported on IRS Form 1099 (SA ¶ III(C)(3)(c). The remaining 75% of the PAGA Allocation will be paid to the LWDA, totaling $187,500 ("LWDA Payment"). (SA ¶ I(Y).)

4. Settlement Class Members and Individual Payments

The Settlement will be payable to Class Members without them being required to submit any sort of claim form. (See generally, SA.) The Settlement Administrator shall make payments to the Class on a workweek basis. (SA ¶ III(C)(2)).) The Individual Settlement Payments will be made to Class Members proportional to the number of weeks they worked for Defendants during the Class Period. (*Id.*) The applicable Class Period runs from January 13, 2017, through July 5, 2023. (SA Ex. A.) All Individual Settlement Payments made from the Net Settlement Amount shall be allocated as 20% wages and percent 80% as penalties and interest. (SA ¶¶ III(3)(a)-(b).) The portion of the Individual Settlement Payment allocated to wages shall be reported by the Settlement Administrator on an IRS Form W-2. (SA ¶¶ III(3)(a).) The remaining nonwage payments shall be reported on IRS Form-1099 by the Settlement Administrator. (SA ¶¶ III(3)(b).) This method for allocating proceeds to Class Members is fair, adequate, and reasonable because Class Members with more workweeks are more likely to have been subjected to more alleged violations than those with fewer. (Ottinger Decl. ¶15.) The Settlement, as structured, recognizes this and compensates Class Members based on the number of workweeks. (*Id.*) Thus, the method of allocation is fair, adequate, and reasonable.

5. Notice and Administration

Pursuant to the Preliminary Approval Order and the Settlement Agreement, the claims administrator (CPT Group, Inc.) was retained to give notice to the eligible Settlement Class members. The Class Notice given conformed to the requirements of Code of Civil Procedure section 382, Civil Code section 1781, California Rules of Court, rules 2.766 and 3.769, the California and United States Constitutions, and other applicable laws pertaining to notice and Due Process. Notice was given by direct mailing of the Class Notice. (Declaration of Settlement Administrator Laura Singh ("Singh Decl." ¶ 8.) The Class Notice explained to the recipients their options to (a) participate (requiring no further action on the part of the participant), (b) object to the settlement, or (c) exclude themselves from the settlement, and the procedures for accomplishing each of those choices, as well as an explanation of the consequences associated with each one. (Exhibit A to the Settlement Agreement ("SA Ex. A") p. 2.) The Notice further advised of the date, time, and location of the Final Approval Hearing, and provided resources (mailing addresses and phone numbers) should the recipient want or need additional or further information. (*Id.* p. 4-5.)

The Settlement Administrator conducted a National Change of Address search on September 3, 2025, to update the class list of addresses as accurately as possible and (4) new or updated addresses were located. (Singh Decl. ¶ 7.) The Class Notice was mailed on September 10, 2025, to all 1,253 Class Members via first class mail. (*Id.* ¶ 5, 8.) Returned items were researched and/or skip-traced by CPT Group, Inc. and, if possible, re-mailed. (*Id.* ¶ 9) The Notice also apprised the Class Members of their rights to object to or opt-out of the settlement, as well as the date, time, and location of the hearing for the Motion for Final Approval and their right and opportunity to be present at that hearing. (SA Ex. A, p. 4.)

A separate PAGA Notice was also sent out by the Settlement Administrator to all PAGA Settlement Group Members. (SA ¶¶ I(H); III(D); SA Ex. B.) The Notice of PAGA Settlement notified group members of the cases involved, the labor code violations involved, the effective period, and that no further action needed to be taken. (SA Ex. B.) PAGA Settlement Group Members were advised that they could cash their checks immediately upon receipt. (*Id.*)

This method of giving notice constitutes the best notice practicable under the circumstances, by providing individual notice to all eligible Settlement Class members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein. The Class Notice, both the methods used by the Settlement Administrator and the contents of the notice fully satisfied the requirements of Due Process.

The efficacy of this method of notice may be seen in the results obtained. As set forth in the declaration of Laura Singh ("Singh Decl.") from CPT Group, Inc., out of 1,253 total notices mailed to Settlement Class members, eleven (11) have been designated as "undeliverable." That is about 0.88%. As of November 7, 2025, there have been no objectors and no opt-outs to the settlement. (Singh Decl. ¶¶ 10-13.) Therefore, the participation rate will be over 99%.

Finally, the Settlement states that the costs of giving notice will come from the Total Settlement Amount. (SA ¶ III(D).) As of the time of the making of this motion, those costs have been, and remain, estimated at $16,000.00. (*Id*. ¶ III(B)(5); Singh Decl. ¶ 19.)

In light of the foregoing, the Class Notice was proper and afforded the best practical notice under the circumstances presented in this case.

6. Responses to Class Notice

The deadline to request exclusion from the Class Settlement was October 27, 2025. (Singh Decl. ¶ 8.) As of November 7, 2025, the Class Administrator received zero (0) Requests for Exclusion from Class Members. (*Id.* ¶ 13.) The deadline for submitting a dispute was October 27, 2025. As of the date of the filing of this Motion, November 13, 2025, there have been no Class Members who disagreed with the number of eligible workweeks stated on their Notice of Class Action Settlement and no one has endeavored to show contrary information by the Response Deadline. (*Id*.)

V. AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED

1. Legal Standard for Attorneys' Fees in Class Action Settlement

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "'not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal., Inc*. (2000) 82 Cal.App.4th 19, 4; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,1132 [the "experienced trial judge is the best judge of the value of professional services rendered in his court"]; *Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1118.) Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement.

(*Weil and Brown, California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk*, supra, 48 Cal.App.4th at 1808.) The percentage-of-the-benefit approach is preferred in class and representative actions because "it better approximates the workings of the marketplace than the lodestar approach." (*Lealao*, supra, 82 Cal.App. 4th at 49.)

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. (*Id*. at 47-50; *Laffitte v. Robert Half Int'l, Inc*. (2016) 1 Cal.5th 480, 503.) In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Lealao*, *supra*, 82 Cal.App.4th at 50.) Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." (*Lealao*, *supra*, 82 Cal.App.4th at 53.)

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58, quoting *Apple Computer, Inc. v. Superior Court*, supra, 126 Cal-App-4th at 1270.) It is not an abuse of discretion to choose one method over another as long as the chosen method is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. (*Lealao, supra*, Cal.App.4th at 32.) Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. (*Conte & Newberg, Newberg on Class Actions* (4th Ed., 2002) § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of $7.3 million); *Beech Cinema, Inc. v.*

Twentieth-Century Fox Film Corp. (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately 53% of the settlement amount as attorneys' fees].) California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." (*Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66 n.11 [lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions]; *see also Laffitte*, Cal.5th at 488 & 506 [approving fee award of 1/3 of common fund of $19 million].)

In PAGA cases in particular, a representative plaintiff is entitled to recover reasonable attorney's fees, expenses, and costs as a *qui tam* action. (Lab. Code § 2699(g)(l).) "A *qui tam* action is one brought under a statute that allows a private person to sue as a private attorney general to recover damages or penalties, all or part of which will be paid to the government." (*People ex rel. Stratham v. Acacia Research Corp*. (2012) 210 Cal.App.4th 487, 491- 492; Lab. Code § 2699(i).) The Supreme Court recently affirmed that a PAGA action is a *qui tam* action in that the statute allows the employee plaintiff to sue their employer for Labor Code violations and recover civil penalties as a proxy for the State and other absent employees. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal.5th 73; *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 59 Ca1.4th 348, 380-82 ["[a] PAGA representative action is therefore a type of qui tam action"].) In a *qui tam* where the litigation creates a common fund of money in a specific amount for the benefit of others reasonable attorney fees and costs are typically awarded to the plaintiff's attorneys from the common fund. (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91.)

2. A Fee Award of a Percentage of the Entire Fund is Appropriate

California and Federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. (*Laffitte*, Cal. 5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.) The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. (*See Vincent, supra*, 557 F.2d at 769.)

When a litigant's efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought about the settlement. (*See R. Pearle, California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 [permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement].) Both state and federal courts have embraced this doctrine. (*See Serrano*, *supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.)

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. (*Laffitte, supra*, 1 Cal.5th 480 at 486, 506.) The California Supreme Court has taken the position that "[t}rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "(t]he percentage [...] method survives in California." (*Id*. (internal quotes omitted).) Courts have consistently recognized that class and representative action litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify legal action on an individual basis. Accordingly, in determining a reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. (*See* A. Conte, *Attorney Fee Awards* (2d Ed., 993) 104, at 6.)

When the case was originally filed, not only were they inescapably contingent, but the prospect of a long, drawn-out battle with defendant represented by experienced counsel, was almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial economic loss if the results were not successful. This substantial risk is the reason that the courts approve the use of the percentage method when a settlement is obtained by the efforts of class counsel. (*See Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 [discussing the risks of engaging in litigation without certainty of compensation].)

Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement Amount of $5,500,000.00 on a non-reversionary basis. (Ottinger Decl. ¶ 12, SA ¶ I(R), Singh Decl. ¶ 16.) The requested attorneys' fees are thirty-five percent (35%) of the total value of the monetary settlement. (SA ¶ II(B)(2).) In light of Class Counsel's successful prosecution and resolution of the cases, the requested attorneys' fees are appropriate and reasonable.

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the cases; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early, yet reasonable, settlement. The requested attorneys' fees in this matter satisfy all of those factors and should be approved on a percentage basis.

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. Named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff.

Furthermore, a percentage-fee award is not dependent on a determination of the actual amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In *Winslow v. Harold*

G. Ferguson Corp., the California Supreme Court expressly held that it is equitable for an attorney's fee to come from the fund which is "saved for all Classes concerned before it is distributed." (*Winslow v. Harold G. Ferguson Corp*. (1944) 25 Cal.2d 274, 284.) Likewise, *Lealao* expressly held that a percentage-based fee "may be calculated on the basis of the total fund made available rather than the actual payments made to the class." (*Lealao*, *supra*, 82 Cal.App.4th at 51; see also *Boeing, supra*, 444 U.S. at 478 ["a litigant or a lawyer who recovers" a settlement "for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole"].)

In *Wershba v. Apple Computer, Inc*. (2001) 31 Cal.App.4th 224, in determining reasonable attorneys' fees, the Court of Appeal valued a settlement based on the total value of the settlement made available to class members by the efforts of counsel, decided in favor of granting fees as a percentage of the total value of the settlement, and rejected an objection that the fees be awarded based on the exact amount claimed by class members. (*Id*. at 247.)

Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Class, and the results achieved justify an attorney's fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiffs and Class Counsel. Thus, the requested attorney's fees are appropriate.

3. A Percentage Award Of Attorney Fees Is Still Appropriate When Cross-Checked Against The Lodestar

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 505.) Importantly, "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" of the settlement amount and "does not impose an absolute maximum or minimum on the potential fee award." (*Id.*) California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. (*Id.* at 503.) In *Lealao v.*

Beneficial California, Inc. (2000) 82 Cal.App.4th 19, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Id.* at 50.) Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." (*Id*. at 53.)

Under the "lodestar multiplier" method of cross-checking proposed fee awards, the court may enhance the lodestar figure by a "multiplier" to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. (*PLCM Group, Inc. v. Drexler* (2000) 22 Ca1.4th 1084, 1095-96; *Lealao*, 82 Cal.App.4th 19, 43 [the court has discretion to use a multiplier to ensure that the "fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation"].)

In this case, the Ottinger Firm P.C., Wilshire Law Firm, Work Lawyers, P.C., and Lawyers for Justice PC (collectively, "Class Counsel") has a total lodestar of approximately $852,912.00 without the use of any multiplier. (Ottinger Decl. ¶ 16, 18; Declaration of John G. Yslas ("Yslas Decl." ¶ 17; Declaration of Brian St. John ("St. John Decl.") ¶ 12 ; Declaration of Justin Lo ("Lo Decl.") ¶ 24.) This results in a multiplier of approximately 2.25 to grant the fees requested. The number of hours of work performed by each attorney and paralegal, their rates, and a detailed description of the work performed is attached hereto as exhibits to Class Counsel's declarations. (Ottinger Decl. ¶ 17, Exhibit 3; Yslas Decl. ¶ 16; St. John Decl." ¶¶ 3-12 ; Lo Decl. Ex. C) The billing rates used are reasonable in view of the evidence submitted herewith. The fee request here is justified because the fees requested are within the market rate and Class Counsel achieved a substantial recovery for the Class in a risky case while bearing the substantial burdens of representation on a contingency basis. (Ottinger Decl. ¶ 31; see also *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1049.) There is also a precedent to grant multipliers withing this range. (*Vizcaino v. Microsoft Corp.*, (9th Cir. 2002) 290 F.3d 1043, 1051 [approving multiplier of 3.65]; *Steiner* *v. Am. Broad. Co.*, (9th Cir. 2007) 248 F. App'x 780, 783 [approving multiplier of 6.85; *In re High-Tech Emp. Antitrust Litig.,* (N.D. Cal. 2015) 2015 WL 5158730, at *10 [approving multiplier of 2.2]; *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480 [approving a multiplier of 2.03 to 2.13].)

4. Class Counsel's Experience in Employment Litigation Further Supports the Fairness, Adequacy, and Reasonableness of the Fee Request

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request, as does the caliber of opposing counsel. (Ottinger Decl. ¶¶ 5-6; see generally Yslas Decl. ¶ 16; St. John Decl." ¶¶ 13-17; Lo Decl. ¶¶ 8-11.)

Class Counsel's experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the Settlement. (Ottinger Decl. ¶ 31) Practice in the narrow field of wage and hour litigation, especially in cases involving meal and rest period claims, requires particular attention to nuances concerning ever-evolving procedural and substantive issues. (*Id.*) This is especially so given recent changes in the legal landscape surrounding class certification. Indeed, even though California courts have recently been fairly receptive to granting class certification in wage and hour cases, the U.S. Supreme Court has gone in the opposite direction, and the California Supreme Court has followed the U.S. Supreme Court's lead to an extent in view of its decision in *Duran* by placing a heightened emphasis on manageability considerations even in cases that present predominant common questions. (*Duran v. U.S. Bank Nat'l Assn.* (2014) 59 Cal.4th 1.) The previous experience of Class Counsel in wage and hour class action cases was integral in being able to resolve this case on favorable terms for the Class because that experience enabled Class Counsel to pinpoint issues that likely encouraged Defendants to resolve this case for fair compensation on a class-wide basis instead of proceeding to class certification and beyond. Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, the requested fee award warrants this Court's final approval.

Likewise, the caliber and experience of opposing counsel also support the fairness and reasonableness of the requested fee award. Indeed, counsel for Defendants, Jackson Lewis, P.C. have had extensive experience litigating wage and hour class actions on behalf of defendants. Against this formidable opposition, Class Counsel achieved a favorable result on behalf of the Class. Thus, the skill of Defendants' counsel also supports the fairness, adequacy, and reasonableness of the fee request.

V. SUBMISSION TO THE LWDA

Plaintiffs have timely provided the LWDA with the Settlement Agreement and this Motion, thereby notifying the LWDA of this approval hearing via the LWDA's online portal and allowing the LWDA to weigh in on the settlement if it sees fit. (Ott. Decl. Ex. 2.) Where the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement, courts have found the LWDA's silence weighs in favor of approval. (See *Echavez v. Abercrombie & Fitch Co., Inc*. (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607, at *3 [the LWDA's non-response as "tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount"]; *Jennings v. Open Door Marketing, LLC*, (N.D. Cal. Oct. 3, 2018) 2018 WL 4773057, at *9 ["Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement"].)

VI. THE LITIGATION COSTS AND CLAIMS AWARD ARE ALSO FAIR ADEQUATE AND REASONABLE

The request for litigation costs of $50,692.95 and Settlement Administration costs of $16,000.00 are both fair and reasonable. The firms representing Plaintiffs incurred actual costs of $50,692.95 prior to the filing of this motion. (Ottinger Decl. ¶ 19; Yslas Decl. ¶ 19; St. John Decl. ¶ 19; Lo Decl. ¶ 24.) The Settlement allows Class Counsel to apply for reimbursement of costs up to $51,164.70 in total, therefore this request is reasonable and in line with the Settlement. (SA ¶ III(B)(2).) As to costs for the Claims Administration of $16,000 (SA ¶ III(B)(5); Singh Decl. ¶19.) All these costs are documented and reasonably incurred. (See generally Ottinger Decl.; St. John Decl.; Yslas Decl.; Lo Decl.) Thus, they warrant this Court's final approval.

VII. THE REQUESTED ENHANCEMENT AWARD IS ALSO FAIR ADEQUATE AND

REASONABLE.

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. (*See Bell v. Farmers Ins. Exchange* (2004) 115 Cal. App. 4th 715, 726 [upholding "service payments" to named plaintiffs for their efforts in bringing the case]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 [approving $50,000 enhancement award].) Here, the Settlement provides that Plaintiff may seek a Class Representative Service Payment of up to $7,500 (Ottinger Decl.¶¶ 14, 34 SA ¶ III(B)(1).) This is entirely reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of the Class. (Ottinger Decl. ¶ 34.)

Here, Plaintiff advanced the interests of the Class by, among other things, speaking with counsel, assisting counsel in identifying and evaluating potential claims. (Ottinger Decl. ¶ 34.) Further, Plaintiff took the personal risks of potentially facing intrusive and time-consuming discovery and making it publicly available to future employers that she sued a former employer (*Id*.) Finally, Plaintiff agreed to a much broader release than the other class members, waiving all potential claims that legally can be waived against Defendants. (Compare SA ¶ III(F)(1), Plaintiff 's General Release, with SA ¶¶ III(F)(3)-(4).) The average individual award is $49.88 The highest payment is estimated to be $178.10, and the lowest estimated payment is $1.10. (Singh Decl. ¶ 18). Given these considerations, this Enhancement Award to Plaintiff is appropriate and justified as part of the Settlement.

VIII. CONCLUSION

For the reasons set forth above, this Court should grant Plaintiff's Motion in its entirety and enter the Proposed Order and Judgment Granting Final Approval of Class Action Settlement and Judgment submitted concurrently herewith.

Respectfully submitted,

Dated: November 13, 2025

THE OTTINGER FIRM, P.C.

BY *Katheirne Roussos*

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