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Attorney for Plaintiffs Humberto Reyes Monreal and Pedro Gonzalez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

HUMBERTO REYES MONREAL, on behalf of himself and all others similarly situated;

Plaintiffs,

v.

DINSMORE ENTERPRISES, INC. d.b.a. ALPINE LANDSCAPES, a California Corporation, and DOES 1 through 50 inclusive,

Defendants.

Case No.: 21CV386800
[Assigned for all purposes to the Hon. Charles F. Adams, Dept. 7]

CLASS AND REPRESENTATIVE ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND REQUEST FOR AWARD OF ATTORNEY'S FEES, COSTS, AND CLAS REPRESENTATIVE PAYMENTS

[Concurrently filed with the Notice of Motion and Motion; Declaration of Anna R. Salusky; Supplemental Declarations of Humberto Reyes Monreal and Pedro Gonzalez; Declaration of Garvin Brown; and [Proposed] Order and Judgment]

Date: August 14, 2025
Time: 1:30 p.m.
Dept.: 7

Action filed: September 17, 2021

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, rule 3.769, and California Code of Civil Procedure section 382, Plaintiffs Humberto Reyes Monreal and Pedro Gonzalez ("Plaintiffs") bring this motion seeking final approval of a class action and PAGA settlement with Defendants Dinsmore Enterprises, Inc. (dba "Alpine Landscapes"), and Ryan Dinsmore ("Defendants") (collectively, the "Parties"), which was obtained on behalf of 285 current and former nonexempt employees who worked for Defendants at any time between September 17, 2017, to April 29, 2025.

Beginning with Plaintiff Reyes' filing of the lawsuit in September 2017, and continuing after Plaintiff Gonzalez joined the suit as a named Plaintiff in April 2023, Plaintiffs and their counsel have dedicated significant time and energy litigating this action against Defendants. Through their efforts, Plaintiffs and their counsel were able to successfully negotiate a non-reversionary settlement in the amount of $460,000, to resolve all claims asserted, attorney's fees, and litigation costs, on the terms set forth in the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"), which was preliminarily approved by this Court on February 25, 2025. The Settlement Agreement provides for the following payments, allocations, and awards:

- PAGA Penalties in the amount of $10,000 for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), including a payment of $7,500 to the California Labor and Workforce Development Agency ("LWDA") and a payment of $2,500 to the Aggrieved Employees[1];
- Class Representative Service Payments of $10,000 each to Plaintiffs Humberto Reyes Monreal and Pedro Gonzalez, for a total of $20,000;
- Administration Expenses Payment to ILYM Group, Inc., in the amount of $8,850; and
- Class Counsel Fees Payment and Class Counsel Expenses Payment, consisting of $153,333 in attorneys' fees and actual and documented litigation expenses not to exceed $28,000.

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[1] As discussed in Section V below, the Parties erred in distribution of the $10,000 PAGA Penalties between the LWDA and the Aggrieved Employees. As amended in 2024, the PAGA requires that *65*% of civil penalties recovered be distributed to the LWDA, and *35*% to aggrieved employees.

The Net Settlement Amount, estimated to be $241,941, will be allocated to the Participating Class Members. Individual Class Payments will be made on a pro rata basis according to the number of workweeks each Participating Class Member worked during the Class Period. This is considerable monetary relief to the 285 Class Members, without the expense, delay, and uncertainty of continued litigation.

The fairness, adequacy, and reasonableness of the Settlement is also supported by the fact that as of the date of this filing, no Class Members have objected to the Settlement, and no Class Members have opted out of the Settlement. The 100-percent participation rate raises a strong presumption that the Settlement is fair, reasonable, adequate, and in the best interest of the Class Members.

Class Members' overwhelmingly positive response to the Settlement is not surprising, as the Court previously ruled it to be fair. Furthermore, the Settlement is: (i) the product of arm's-length negotiations; (ii) was negotiated by experienced wage and hour counsel during the course of negotiations and significant document and data exchanges; (iii) was reached after undertaking sufficient investigation necessary to evaluate the relative strength and value of the Class Members' claims, as well as Defendants' legal and factual defenses; and (iv) reflects a reasoned compromise based directly on the relative strength and value of the Class Members' Claims, as well as the risks, expense, complexity, and likely duration of further litigation.

Based on the fairness and adequacy of the Settlement achieved, Plaintiffs request that the Court:

1. Finally approve the settlement under the terms set forth in the Parties' Settlement Agreement[2];
2. Confirm its conditional certification of the Class for settlement purposes;
3. Confirm its appointment of Salusky Law Group as Class Counsel for settlement purposes;
4. Confirm its appointment of Plaintiffs Humberto Reyes Monreal and Pedro Gonzalez as the Class Representatives for settlement purposes;
5. Confirm its appointment of ILYM Group, Inc., as the Administrator;
6. Finally approve the following allocations, awards, and payments from the Gross Settlement Amount:

[2] Corrected for the correct statutory distribution of the PAGA Penalties (see Section V, below).

1. PAGA Penalties in the amount of $10,000;
    i. LWDA PAGA Payment in the amount of $6,500[3];
    ii. Payment to the Aggrieved Employees in the amount of $2,500[4];
2. Class Representative Service Payments of $10,000 each to Plaintiffs Humberto Reyes Monreal and Pedro Gonzalez, for a total of $20,000 in Class Representative Service Payments;
3. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, the total of which consists of $153,333 in attorney's fees and $25,876.00 in actual and documented litigation costs;
4. Administration Expenses Payment in the amount of $8,850; and

7. Enter the Order and Judgment of Final Approval.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Class Members Received Adequate Notice and Responded Favorably to The Settlement

1. Class Members Received Adequate Notice and Responded Favorably to The Settlement

In granting preliminary approval of the Settlement on February 25, 2025, the Court found the form of notice was generally adequate but ordered modifications to the instructions for opting out and appearances at the final fairness hearing. The Court approved the notice procedures. Class Counsel modified the Class Notice in accordance with the Court's Order. (Declaration of Anna R. Salusky in Support of Final Approval ("Salusky Decl."), ¶ 7.)

In the five months since the Court granted Preliminary Approval of the Settlement, the Parties and the Administrator, ILYM Group, Inc., have worked to carry out the notice procedures. (Salusky Decl., ¶ 8.) In accordance with the Class Notice procedures, the Administrator checked all Class

[3] As discussed in Section V, below, the distribution of PAGA Penalties between LWDA and Aggrieved employees stated in the Settlement Agreement is incorrect, as the PAGA was amended in 2024. Under Labor Code § 2699, subd. (m), recovered 65% of recovered civil penalties are forwarded to the LWDA and the remaining 35% are shared among aggrieved employees.

[4] *Ibid*.

Members' addresses against the National Change of Address database to update and confirm the mailing addresses before mailing the Class Notices. (Declaration of Garvin Brown ("Brown Decl."), ¶ 6.) On March 21 2025, the Administrator mailed the Class Notice to the 285 Class Members via First Class U.S. Mail in both Spanish and English. (Brown Decl., ¶ 7.)

Of the 285 Class Notices that were mailed, 41 were returned as undeliverable. (Brown Decl., ¶ 8.) For the 41 Class Notices that were returned as undeliverable without a forwarding address, the Administrator performed a skip trace. (*Ibid*.) The Administrator re-mailed 12 Class Notices as a result of the skip trace effort. (*Ibid*.) As of the date of this filing, 29 Class Notices have been deemed undeliverable. (Brown Decl., ¶ 10.)

The Settlement was extremely well received by the Class Members. There were no objections to the Settlement and no requests for exclusion. (Brown Decl., ¶¶ 11-12.) This results in a 100-percent participation rate. (*Id*., ¶ 14.) Class Counsel attributes the Class Members' favorable opinion of the Settlement to the fact that the Class Notice made it easy for Class Members to understand the terms of the Settlement and ask questions, if need be. (*Id.,* ¶ 7, Ex. A.) In addition, the Class Notice clearly indicated the estimated Individual Class Payment that each Class Member was eligible to recover in dollar terms. (*Ibid.*) Providing the estimated Individual Class Payment and Individual PAGA Payment in the Class Notice allowed Class Members to understand how much they may receive under the Settlement and make an informed decision about whether to object or request exclusion. (Salusky Decl., ¶ 11.) Thus, the extremely high participation rate underscores Class Members' overwhelming support for the settlement.

B. Settlement Class Members Will Receive Substantial Monetary Recovery If This Court Grants Final Approval Of The Settlement

If the Court finally approves the Settlement, all 285 confirmed Participating Class Members stand to obtain a monetary benefit from the Settlement. The Settlement Administrator calculated the Net Settlement Fund as follows:

Gross Settlement Amount	**$460,000**
Class Counsel Fees Payment	$153,333
Class Counsel Expenses Payment	$25,876.14

Class Representative Payments	$20,000
Administrator Expenses Payment	$8,850
LWDA PAGA Payment	$7,500[5]
Individual PAGA Payments	$2,500[6]
Net Settlement Amount	**$241,940.86**

The Net Settlement Amount is allocated to the Participating Class Members. (Settlement Agreement, § 3.2.4.) Individual Class Payments will be allocated on a pro rata basis according to the number of workweeks each Participating Class Member worked during the Class Period. (*Ibid.*) Class Members will receive an estimated average gross payment of $841.46, with the estimated highest gross payment being $3,833.18 and the estimated lowest gross payment being $10.80. (Brown Decl., ¶ 16.) Aggrieved Employees will receive an estimated average payment of $8.77, with the estimated highest payment being $32.69, and the estimated lowest payment being $0.31. (*Id.*, ¶ 17.)

III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. The Settlement is Fair, Adequate, and Reasonable

In complex class litigation, "[v]oluntary conciliation and settlement are the preferred means of dispute resolution." *7-Eleven Owners For Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1151 (2000) (quoting *Officers for Justice v. Civil Service Com.* 688 F.2d 615, 625 (9th Cir. 1982)). The trial court has broad discretion in reviewing a proposed class settlement for approval. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235 (2001); *Kullar v. Footlocker Retail, Inc.*, 168 Cal. App. 4th 116, 127-128 (2008). In deciding whether to grant final approval to a proposed class action settlement under Code of Civil Procedure section 382, the Court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).

Courts bear the responsibility of ensuring that the settlement is a reasonable compromise, "given the magnitude and apparent merit of the claims being released, discounted by the risks and expense of attempting to establish and collect on those claims by pursing the litigation." *Kullar*, 168 Cal. App. 4th at 127. When considering the fairness of a proposed settlement, courts consider a number

[5] This number must be adjusted to $6,500 to make the distribution consistent with law.
[6] This number must be adjusted to $3,500 to make the distribution consistent with law.

of factors including, but not limited to: (a) the strength of plaintiff's case; (b) the risk, expense, complexity and likely duration of further litigation; (c) the risk of maintaining class action status through trial; (d) the benefits conferred by the settlement; (e) the experience and views of plaintiff's counsel; (f) the extent of discovery completed and the state of the proceedings; and (g) the reaction of Class Members to the proposed settlement. *Dunk*, 48 Cal. App. 4th at 1802.

While the proponent of the settlement bears the burden of showing that the proposed settlement is fair and reasonable, California courts generally recognize a presumption of fairness 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. *Id.* "Ultimately, the court's determination is nothing more than an amalgam of delicate balancing, gross approximations and rough justice." *Id*. at 1801.

1. The Settlement is The Product of Arm's-Length Negotiations

There is a presumption of fairness where a settlement is reached through arm's-length bargaining. *Wershba,* 91 Cal. App. 4th at 245. As outlined in the Declaration of Anna R. Salusky in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Salusky Decl. ISO MPA"), the Parties attended a full-day mediation with a highly respected and experienced mediator, Steve Rottman. (Salusky Decl. ISO MPA, ¶ 18.) During the mediation, the Parties engaged in good faith, non-collusive negotiations and exchanged additional information regarding Defendants' exposure and the strengths and weaknesses of Plaintiffs' claims. (*Ibid*.)

Class Counsel considered the law applicable to Plaintiffs' claims, the risks of further litigation, including the challenges in obtaining and maintaining class certification of each claim and succeeding at trial, and was able to ascertain a range of value that represented a reasonable and fair compromise of the claims in the Action. (*Ibid*.) At all times, the parties' negotiations were hard-fought and conducted at arm's length between attorneys with substantial experience litigating wage and hour class actions, and the Settlement is evidence of the parties' efforts to reach a mutually agreeable and non-collusive compromise. (*Ibid*.) There can be no doubt as to the fairness of the Settlement because it was the product of arm's-length and non-collusive negotiations that were assisted by a well-respected class action mediator, Steve Rottman. (*Ibid.*)

2. Sufficient Investigation and Discovery Has Been Conducted

Generally, the status of discovery is considered when determining whether a settlement is fair, reasonable, and adequate. *Dunk,* 48 Cal. App. 4th at 1801. Here, the Parties engaged in extensive discovery prior to attending private mediation. (Salusky Decl. ISO MPA, ¶¶ 13-17.) The information produced by Defendant Dinsmore Enterprises, Inc. ("Alpine"), before the mediation, including its policies, discovery responses, declarations from current and former Alpine employees, and a sampling of putative Class Members' time and compensation records, were sufficient for the Parties to make an informed decision about an appropriate range of settlement value, and fair resolution, of this Action. (Salusky Decl. ISO MPA, ¶ 17.)

3. Class Counsel is Experienced in Similar Litigation

Class Counsel is well versed in wage and hour litigation. (Salusky Decl. ISO MPA, ¶¶ 75-80.) Prior to starting her own firm in 2021, Anna R. Salusky served as managing partner of Mahoney Law Group, APC, wherein she supervised approximately 150 wage and hour class actions at any given time. (Salusky Decl. ISO MPA, ¶ 77.) Based on her experience in litigating similar matters, Ms. Salusky is of the opinion that the Settlement represents a favorable resolution for members of the Class, as it provides significant recovery and eliminates the risk and expense of further litigation. (*Id*., ¶¶ 47-54.)

4. The Response From Class Members Was Overwhelmingly Positive

"It is established that the absence of a large number of objections to proposed class action settlement raises a strong presumption that the terms of proposed class settlement action are favorable to the Class Members." *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). Class Members' acceptance of the Settlement is a testament to the fairness, reasonableness, and adequacy of the settlement. *See, e.g.*, *7-Eleven Owners for Fair Franchising,* 85 Cal. App. 4th at 1152-1153 (affirming approval of the settlement where the response was "overwhelmingly positive" when 80 Class Members elected to opt out); *Rodriguez v. West Publishing Corp.*, 53 F.3d 948, 967 (9th Cir. 2009) (affirming approval of settlement where only 52,000 out of 376,301 putative Class Members submitted claims forms and 54 objected to the settlement); *Chun-Hoon v. McKee Foods Corp*. 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (affirming approval where 4.86 percent of Class Members opted out); *In re Texas Prison Litig*., 191 F.R.D. 164, 175 (W.D. Mo.

1999) (characterizing 8 percent rate of objection as "relatively low" and an indication of settlement's fairness).

In this case, on March 21, 2025, the Court-approved Class Notice was mailed out to the 285 Class Members (as identified in the Class Data). (Brown Decl., ¶ 7.) The Class Notice included information regarding the: (1) the nature of the litigation; (2) a summary of the terms of the Settlement; (3) the definition of the Class Members; (4) the PAGA Penalties; (5) the estimated payment to the LWDA; (6) the Class Representative Payments to Plaintiffs; (7) the Class Counsel Fees Payment and Class Counsel Expenses Payment; (8) the procedure and deadline for submitting an objection, a request for exclusion, or challenging the number of Class Workweeks and PAGA Pay Periods attributed to the Class Members; (9) the Class Members' estimated Individual Class Payment and Individual PAGA Payment; and (10) how to get additional information regarding the Settlement. (*Id.*, ¶ 7, Ex. A.)

To ensure that Class Members were reasonably informed of the Settlement, the Administrator performed a computerized skip trace on all 41 returned Class Notices that did not have a forwarding address, in an effort to obtain updated addresses for re-mailing of these Class Notices. (Brown Decl., ¶ 8.) As a result of the skip trace, 12 updated addresses were obtained, and Class Notices were re-mailed to those Class Members. (*Ibid*.) As of this filing, the Administrator has deemed 29 Class Notices undeliverable, as no updated addresses were found after skip tracing. (Brown Decl., ¶ 10.) The response to the Settlement has been extremely positive with no Class Members objecting to, or opting out of, the Settlement. (*Id.*, ¶¶ 11-12.)

Coupled with the fact that the Settlement before the Court was negotiated at arm's-length, by highly experienced counsel after sufficient investigation and discovery had been conducted, the positive response among Class Members raises a strong presumption that the Settlement is fair, adequate, and reasonable.

B. Benefits of The Proposed Settlement

A settlement is not judged against what might have been recovered had plaintiff prevailed at trial, nor does a settlement have to provide 100-percent of the damages sought to be fair and reasonable. *Wershba,* 91 Cal. App. 4th at 250. In fact, courts commonly approve settlements that amount to a fraction of the potential recovery. *See Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139

(1990) (finding a settlement to be fair and reasonable despite the fact that the relief provided was "relatively paltry"); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (11th Cir. 1990), aff'd, 889 F.2d 21 (S.D. Fla. 1988) ("A settlement can be satisfying even if it amounts to a hundredth or even – a thousandth of a single percent of the potential recovery."); *City of Detroit v. Grinnel Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972) (a recovery of 3.2 to 3.7 percent of the amount is "well within the ball park"); *see also* 4 William B. Rubenstein et al., *Newberg on Class Actions* § 13:15 (5th ed. 2016) (the range of reasonableness percentage could be as low as 1/100th or 1/1000th of 1 percent).

Class Counsel estimated the maximum potential liability for the claims in this action to be $2,531,980. (Salusky Decl. ISO MPA, ¶ 36.) This "best case scenario" valuation assumed that class certification would be granted, and that Plaintiffs would prevail on all viable claims at trial and recover the full amount of the indicated damages sought, including statutory penalties. (*Id.*, ¶ 23.) While the Gross Settlement Amount of $460,000 represents a significant discount over the estimated maximum potential exposure, it represents a reasonable compromise considering the substantial risks that Plaintiffs and the Class faced in this Action. (*Id.*, ¶¶ 38, 47.)

Should the Court grant final approval of the Settlement, the Net Settlement Amount will be allocated to Participating Class Members. This is an exceptional recovery for the 285 Class Members. Therefore, the Settlement offers a significant benefit to the Class.

C. Risks Associated with Continued Litigation

Although Plaintiffs assert that Defendants are liable to all Class Members for their unpaid wages, expenses, damages, and penalties, none of the claims are certain. (Salusky Decl. ISO MPA, ¶ 50.) Throughout this litigation, Alpine has denied any liability for the claims alleged, contending among other things, that they followed all applicable law with respect to Plaintiffs and Class Members's employment, that Class Members were timely paid all wages owed, were provided compliant meal and rest periods, and were reimbursed for any necessary business expenses. (*Id.*, ¶ 52.) Moreover, if the Court declined to grant class certification, finding that the named plaintiffs are not adequate, or ruled that the case is unmanageable, the Class Members would be without a remedy as a practical matter. The Court would then be forced to address the claims asserted in a piecemeal, costly, and time-consuming manner. In absence of the proposed Settlement, this litigation would likely have taken up significant judicial resources.

Given the risks, the Gross Settlement Amount is a considerable resolution and is consistent with the "overriding public interest in settling and quieting litigation." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also* 4 William B. Rubenstein et al., *Newberg on Class Actions* § 11.41. The Court should finally approve the Settlement because it provides all Class Members with significant recovery in a prompt and efficient manner.

IV. REAFFIRMATION OF CONDITIONAL CERTIFICATION IS PROPER

Pursuant to Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent Class Members share a community of interest and questions of law and facts common to the class predominate over questions unique to individual Class Members; (3) the representative's claims are typical of the members of the class; and (4) the representative will fairly and adequately represent the interest of the class. *See, e.g.*, *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981).

In granting preliminary approval of the Settlement on February 25, 2025, this Court determined that for settlement purposes only, the defined Class set forth in the Settlement Agreement meet all of the requirements for class certification. There have been no subsequent events that would cast doubt on this determination. Accordingly, Plaintiffs request that the Court reaffirm its prior conditional grant of class certification for settlement purposes only.

V. APPROVAL OF THE PAGA SETTLEMENT, WITH MODIFICATION, IS PROPER

Plaintiff requests that the Court finally approve the PAGA Penalties of $10,000 for payment of civil penalties under PAGA. The PAGA Penalties represent approximately two percent of the Gross Settlement Amount. At the time the Parties agreed to terms of a settlement, Labor Code section 2699, subd. (i) required that 75% of civil penalties recovered under the PAGA be distributed to California's Labor and Workforce Development Agency ("LWDA"), and 25% of those penalties distributed to aggrieved employees. **However, the PAGA was amended in 2024**.

Effective July 1, 2024, subdivision (m) of Labor Code section 2699 provided for an increase of the aggrieved employees' share of civil penalties recovered in PAGA actions. Under the statutory revision, the **LWDA is to receive 65% of civil penalties recovered, and aggrieved employees are to receive 35% of civil penalties recovered**. (Lab. Code, § 2699, subd. (m).)

Anna Salusky alerted counsel for Defendants of the error. (Salusky Decl., ¶ 59.) Class Counsel respectfully asks the Court to correct the error in allocation, to bring the allocation in compliance with the current statutory requirement, by ordering that the $10,000 allocated in the Settlement for civil penalties under the PAGA be distributed as follows: **65% to the LWDA and 35% to the Aggrieved Employees**. This change in allocation does not alter the *total* amount allocated to civil penalties.

Appellate authority affirm the approval of class action settlements with non-allocations to civil penalties under the PAGA. See, e.g., Nordstrom Comm'n Cases, 186 Cal. App. 4th 576, 589 (2010) (affirming settlement that allocated zero dollars to any PAGA claim under Labor Code section 2698 et seq. and finding no abuse of discretion in the trial court's approval of the settlement agreement, which contained the term). Additionally, courts in wage and hour class actions have routinely granted final approval of settlements allocating minimal amounts of the settlement funds to the PAGA. See, e.g., Smith v. Am. Greetings Corp., 2016 WL 2909429 (N.D. Cal. May 19, 2016) (granting final approval of class settlement allocating $37,500 of a $4 million settlement to PAGA penalties); Chu v. Wells Fargo Investments, LLC, 2011 WL 672645 (N.D. Cal. Feb. 15, 2011) (approving a $10,000 PAGA allocation in a $6.9 million settlement).

The $10,000.00 allocated to PAGA penalties in this action represents a limited waiver of the statute of limitations by Defendants, only for the purposes of settlement. (Salusky Decl. ISO MPA, ¶ 37.) This amount represents a fair and equitable sum for the resolution of claims pursuant to PAGA and falls within the settlement amounts set by precedent.

Accordingly, Plaintiffs request that this Court finally approve the PAGA Penalties of $10,000, directing a payment of $6,500 to the LWDA as the LWDA PAGA Payment and the remaining $3,500 for distribution to the Aggrieved Employees on a pro rata basis.

VI. THE REQUESTED CLASS REPRESENTATIVE PAYMENTS ARE REASONABLE

Courts routinely grant service awards to the named plaintiff in a class action. See, e.g., *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380 (2010) (affirming $10,000 service award to four named plaintiffs); *Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294 (N.D. Cal. 1995) (awarding $50,000 incentive award to a class representative). While such awards are discretionary, they are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1393-1394. In determining whether a service award is appropriate, courts consider several different factors, including: (1) the actions the plaintiff has taken to protect the interest of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the plaintiff expended in pursuing the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 805 (2009).

The proposed Settlement contemplates, and Plaintiffs request, Class Representative Payments in the amount of $10,000 for each named Plaintiff, for a total of $20,000. (Settlement Agreement, § 3.2.1.) As class representatives, Plaintiffs performed their duties without exception. (Salusky Decl., ¶¶ 32.) Plaintiffs' active participation in the litigation allowed Class Counsel to negotiate a settlement that confers significant benefits to the Class and is in the best interest of the Class Members. (Salusky Decl., ¶ 26; Declaration of Humberto Reyes Monreal Decl. ("Reyes Decl."), ¶¶ 3-11; Declaration of Pedro Gonzalez ("Gonzalez Decl."), ¶¶ 3-8.) Plaintiffs provided Class Counsel information about Alpine's practices, which was instrumental to Counsel's understanding of the claims and defenses raised in the action. (Salusky Decl., ¶¶ 26; Reyes Decl., ¶ 5; Gonzalez Decl., ¶ 5.) At all times, Plaintiffs remained cognizant of their obligations and duties to the members of the Class. (Salusky Decl., ¶ 27.)

By bringing and maintaining this action, Plaintiffs assumed the risk of an adverse judgment, and the financial responsibility of such a judgment, and the risk that their future employment may be negatively impacted by their involvement in this action. (Salusky Decl., ¶ 32.) In absence of Plaintiffs' participation and efforts, there would be no recovery for the Class. (Salusky Decl., ¶ 34.) The requested Class Representative Payments in the amount of $10,000 to each Plaintiff (for a total of $20,000) are fair and reasonable in light of the work done and the risks undertaken by Plaintiffs. The Class Representative Payments are also on par with other court-approved enhancement awards. *See Cooley v. Indian River Transp. Co.*, 2019 WL 2077029, at *4 (E.D. Cal. May 10, 2019) (approving a $10,000 incentive award to the named class representative); *Aguilar v. Wawona Frozen Foods*, 2017 WL

2214936, at *8 (E.D. Cal. May 19, 2017) (approving an incentive award of $7,500 to each class representative).

VII. THE REQUESTED CLASS COUNSEL FEES PAYMENT IS JUSTIFIED

California courts generally recognize two methods of calculating attorneys' fees in civil class actions: (1) the percentage of recovery, or percentage-of-the-fund method; and (2) the lodestar method. *Wershba,* 91 Cal. App. 4th at 254. Regardless of which method is used to analyze attorneys' fees, the main inquiry is to determine whether the end result is fair and reasonable. *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000).

A. The Requested Attorney's Fees are Reasonable Under the Common Fund Method

1. The Fees Sought as a Percentage of the Fund are Reasonable

Under the percentage-of-the-fund approach, "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003). In determining whether the requested percentage fee is reasonable, courts typically consider: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work performed; (4) the contingent nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases. *Wershba*, 91 Cal. App. 4th at 250-251. A number of courts have held that an acceptable range for fee recoveries from a common fund is between 20 and 50 percent of the fund. *See, e.g.*, *Williams v. Costco Wholesale Corp.*, 2010 WL 2721452, at *17 (S.D. Cal. July 7, 2010).

Class Counsel is requesting a Class Counsel Fees Payment in the amount of one-third of the Gross Settlement Amount, or $153,333. This is well within the range of amounts deemed reasonable in similar wage and hour cases. (Anderson Decl., ¶¶ 37, 50; *Birch v. Office Depot, Inc.*, 2007 WL 9776717, (S.D. Cal. Sept. 28, 2007) (awarding fees in the amount of 40 percent); *Rippee v. Boston Market Corporation*, 2006 WL 8455400, (S.D. Cal. Oct. 10, 2006) (finding request for attorneys' fees in the amount of 40 percent "fair and reasonable").) The fee award sought is also justified by the excellent results achieved; the risk of litigation; the skill and quality of the work Class Counsel performed in reaching a fair resolution of the case; the contingent nature of the fee; and the financial burden carried by Class Counsel. The requested award of Class Counsel Fees Payment is reasonable given that more than 351.1 hours of work were performed by Class Counsel's office; the real and substantial risks that Class Counsel assumed taking this complex case on a contingency basis and advancing all costs; deferring any payment of fees for nearly four years of litigation; the experience and reputation of Class Counsel; and the highly favorable result obtained for the Class. (Salusky Decl., ¶¶ 37- 52.) Class Counsel reached a fair and adequate Settlement that will result in substantial monetary recovery to Class Members while eliminating the risks, expense, and time of further litigation.

2. The Settlement Class Received a Favorable Outcome

The proposed Settlement creates a non-reversionary common fund of $460,000 for the 285 Class Members. (Settlement Agreement, § 3.1.) This recovery is well within the ranges approved in similar cases. *See Rebney* 220 Cal. App. 3d at 1139 (finding a settlement to be fair and reasonable despite the fact that the relief provided was "relatively paltry"). Moreover, after distributions from the Gross Settlement Amount for the LWDA and Individual PAGA Payments, the Class Representative Payments, Administration Expenses Payment, Class Counsel Fees Payment, and Class Counsel Litigation Expenses Payment, it is estimated that the average gross settlement payment will be at least $841.46. (Brown Decl., ¶ 16.) The Net Settlement Amount will be allocated to all Participating Class Members on a pro rata basis. (Settlement Agreement, § 3.2.4.) These payments undoubtedly constitute a meaningful recovery for Participating Class Members. Accordingly, this Settlement, which occurred prior to class certification and trial, is an excellent one.

3. The Litigation Involved Complex Legal Issues and Significant Risk

This litigation involved complex issues of law and fact, presenting Plaintiffs with significant risks. Prosecuting this action and negotiating the Settlement was a long and arduous process requiring substantial work, including: the initial factual and legal investigation; drafting written notice to the LWDA; drafting pleadings; propounding and responding to multiple rounds of written discovery; reviewing and analyzing documents produced by Defendant; drafting and filing a motion to compel further discovery responses; taking and defending depositions; conducting legal research; working with a forensic expert to build a damage analysis; preparing for mediation, including drafting a mediation brief; negotiating the terms of a finalized Settlement Agreement; moving for preliminary approval; and monitoring the Class Notice process. (Salusky Decl., ¶ 48.) The fact that Plaintiffs and Class Counsel were able to achieve the result they did is a direct result of their determination and Class Counsel's skill level.

4. Class Counsel Took on a Heavy Contingent Risk and Advanced all Litigation Costs Without Any Guarantee of Payment

Class Counsel has borne the entire risk and cost of prosecuting this action since its inception in 2021 on a pure contingency basis. (Salusky Decl. ¶¶ 44.) Throughout the litigation, Class Counsel prepared and prosecuted this action while advancing all costs and deferring all payment of fees, with no guarantee that any of the fees incurred or litigation costs advanced would ever be recovered. (*Ibid*.) Due to the extent of this litigation and the occupation of Class Counsel's resources, Class Counsel was precluded from taking other fee generating work. (*Ibid*.) The fact that the settlement was embraced and supported by the Class, as evidenced by a 100-percent participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

B. A Lodestar Cross-Check Confirms the Reasonableness of The Award Sought

Although Class Counsel makes this application on a percentage the common fund basis, using the lodestar cross-check further demonstrates that the requested fee is reasonable and should be awarded. Courts may use the lodestar method to cross-check a percentage fee. *Laffitte v. Robert Hall International, Inc.*, 1 Cal. 5th 480, 506 (2016). Under the lodestar method, a court must first begin with the lodestar figure, which is calculated by multiplying the number of hours reasonably expended by the reasonable hourly rate of compensation. *Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 322 (1983), *citing Serrano v. Priest*, 20 Cal. 3d 25, 48 (1997.) The court may then enhance the lodestar by a multiplier to account for (1) the results obtained; (2) the novelty and complexity of the issues raised; (3) the extent to which the litigation precluded other employment by the attorneys; (4) the experience, reputation, and ability of the attorneys and the skill they displayed in dealing with the difficult issues in the case; and (5) the delay in awarding fees. (*Laffitte*, 1 Cal. 5th at p. 489; *Graham v. DaimlerChrysler Corp.,* 34 Cal. 4th 553, 582 (2004) [the results obtained factor can properly be used to enhance a lodestar calculation where an exceptional effort produced an exceptional benefit].)

Class Counsel is requesting a Class Counsel Fees Payment in the amount of $153,333. To date, Class Counsel has spent 351.1 hours litigating this matter, resulting in a lodestar of $197,435. (Salusky

Decl., ¶¶ 41-42.) Thus, Class Counsel's request for an award of attorneys' fees in the amount of $153,333, or approximately 77.6% of the total lodestar, is undoubtedly fair and reasonable given the nature and complexity of the litigation and experience level of Class Counsel. (*Id.*, ¶ 47.)

1. The Number of Hours Expended is Reasonable

Class Counsel has submitted a declaration outlining the number of hours spent working on this case since its inception. (Salusky Decl., ¶ 46.) The hours spent include: the initial factual and legal investigation; drafting written notice to the LWDA; drafting pleadings; propounding and responding to multiple rounds of written discovery; reviewing and analyzing documents produced by Defendant; drafting and filing a motion to compel further discovery responses; taking and defending depositions; conducting legal research; working with a forensic expert to build a damage analysis; preparing for mediation, including drafting a mediation brief; negotiating the terms of a finalized Settlement Agreement; moving for preliminary approval; and monitoring the Class Notice process. (*Id.*, ¶ 48.) The 351.1 hours spent by Class Counsel's office prosecuting this action were not only reasonable but were entirely necessary to achieve the excellent results obtained on behalf of the Class. (*Id.*, ¶ 49.)

2. The Hourly Rates Requested are Reasonable

The requested hourly rates range from $175 per hour to $850 per hour. (Salusky Decl., ¶ 47.) These rates are fair and reasonable given the nature and complexity of this litigation and the experience of Class Counsel. (*Ibid.*) The hourly rates are also commensurate with the prevailing market rates for attorneys of comparable experience and skill.

C. The Requested Litigation Costs are Reasonable and Were Necessarily Incurred

It is appropriate for litigation costs to be paid from the common fund. See *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionally by those Class Members who benefit from the settlement."). In addition, courts permit attorneys to "recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." See *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008); *see also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("[Plaintiff] may recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee-paying client."). California courts routinely allow for the recovery of expenses for photocopying, document scanning, postage and delivery charges, travel, attorney services fees, and legal research. *Bussey v. Affleck*, 225 Cal. App. 3d 1162, 1166 (1990) ("[A]ttorneys' fees and expenses are inseparably intertwined as equally vital components of the costs of litigation . . . expenses such as supplemental secretarial costs, copying, telephone costs and necessary travel, are integrally related to the work of an attorney and the services for which outlays are made may play a significant role in the ultimate success of litigation . . . ").

Here, the Court's authority to award costs to Class Counsel is also found in the Settlement Agreement, which provides that Class Counsel may seek reimbursement of up to $28,000 from the Gross Settlement Amount for litigation costs. (Settlement Agreement, § 3.2.2.) Class Counsel is seeking an award of Class Counsel Expenses for actual and documented litigation costs in the amount of $25,876. (Salusky Decl., ¶ 54, Ex 2.) Each Expense was reasonably and necessarily incurred in Class Counsel's efforts to effectively prosecute the claims raised in this action and are the type of expenses that would normally be billed to and paid for by the client. (*Id.*, ¶¶ 54-56; *see also Harris*, 24 F. 3d at 19.)

D. Potential Fee Dispute

In Plaintiffs' Motion for Preliminary Approval of the Class Acton and PAGA Settlement, Class Counsel disclosed a verbal fee sharing agreement with Jose Garay, APLC, noting that Plaintiff Reyes signed a consent form, but Ms. Salusky could not locate any written agreement between Salusky Law Group and Jose Garay, APLC. (Salusky Decl., ¶63.)

On January 27, 2025, Salusky Law Group electronically served the moving papers for Plaintiffs' Motion for Preliminary Approval of the Class Action and PAGA Settlement to the law office of Jose Garay, APLC. After receipt of these papers, Jose Garay, APLC failed to move to intervene or file any papers responding to the issue of a potential fee sharing agreement. (Salusky Decl., ¶64.)

In its February 25, 2025, order, the Court stated in pertinent part, *"The Court has not received a declaration from Mr. Garay. In the absence of a written agreement between counsel, the Court cannot conclude a valid fee sharing agreement exists between Salusky Law Group and Jose Garay, APLC, pursuant to California Rule of Professional Conduct 1.5.1(a)(1)."* On February 28, 2025, Salusky Law Group filed and electronically served Jose Garay, APLC with a copy of the Notice of Entry of Order

Granting Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement. (Salusky Decl., ¶65.)

Salusky Law Group fully disclosed this potential fee sharing agreement to this Court and served Jose Garay, APLC with Plaintiff's Motion for Preliminary Approval and supporting documents, which provided Jose Garay, APLC an opportunity to respond. However, Jose Garay, APLC failed to respond, and this Court found that it could not conclude that a valid fee sharing agreement exists. Salusky Law Group performed the work on this case that led to the result that benefited the Class and Aggrieved Employees. Accordingly, and consistent with the decision in *Mark v. Spencer* (2008) 166 Cal.App.4th 219, Class Counsel respectfully requests that the award of attorney's fees and costs in this case have res judicata effect. (Salusky Decl., ¶66.)

VIII. CONCLUSION

Plaintiffs respectfully requests that the Court finally approve the Settlement under the terms of the Settlement Agreement. As set forth herein, the Settlement is fair, adequate, and reasonable based on the disputed nature of the claims, the risks and expenses associated with further litigation, the scope of the releases, and the experience and views of Class Counsel.

Respectfully Submitted,

Dated: July 22, 2025

SALUSKY LAW GROUP, APC

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