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13 individually and on behalf of all others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

EDMUNDO BAQUIRING, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

CALIFORNIA SIERRA EXPRESS, INC.,
a Nevada Corporation; and DOES 1-50,
inclusive,

Defendants.

CASE NO.: RG21106254
Consolidated with Case No. 21CV00142
Hon. Evelio Grillo

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: July 14, 2023
Time: 9:00 a.m.
Dept.: 21

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1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on July 14, 2023 at 9:00 a.m. or as soon thereafter as the
3 matter may be heard in Department 23 of the Alameda County Hayward Hall of Justice, 24405
4 Amador Street, Hayward, California 94544, before the Honorable Evelio Grillo, Plaintiff
5 Edmundo Baquiring (“Plaintiff”), by and through Plaintiff’s counsel of record, will and hereby
6 does move the Court for Final Approval of the Class Action Settlement, awarding attorneys’ fees,
7 costs, enhancement award, administration costs and entering judgment.

8 This Motion is made pursuant to Rule 3.769 of the California Rules of Court. This Motion
9 is based on this Notice of Motion and Motion, the attached Memorandum of Points and
10 Authorities, the accompanying Declarations of James R. Hawkins, Declaration of Nathalie
11 Hernandez, the Declaration of Plaintiff Edmundo Baquiring, the proposed Stipulation of
12 Settlement Class and Representative Action (the “Settlement Agreement”), argument of counsel,
13 all papers and pleadings filed in the action, and upon any further information or evidence
14 requested by the Court at the time of hearing on this Motion.

15 Dated: June 21, 2023

JAMES HAWKINS APLC



JAMES R. HAWKINS
GREGORY MAURO
MICHAEL CALVO

Attorneys for Plaintiff, the Putative Class, and
the Aggrieved Employees

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Edmundo Baquiring (“Plaintiff”), on behalf of the 598 members conditionally
4 certified class, respectfully requests that this Court grant final approval of the settlement, which
5 seeks to resolve claims against California Sierra Express, Inc., (“Defendant”) (collectively with
6 Plaintiff, the “Parties”) in exchange for a non-reversionary Total Settlement Amount (“TSA”) of
7 Four-Hundred Twenty-Five Thousand Dollars and Zero Cents (\$425,000.00.). The Class
8 Members overwhelmingly supported the Settlement, as there were 0 objections and only 1
9 request(s) for exclusion from the Settlement representing 99.83% of the 598 Settlement Class
10 Members. The proposed Settlement is projected to pay an average of \$351.22 per Class Member,
11 with the highest estimated gross payment at \$1,617.33 (Declaration of Nathalie Hernandez
12 hereinafter Hernandez Decl., ¶¶ 11-12, 14).

13 Plaintiff also moves for final approval of attorneys’ fees in the amount of \$141,666.66 of
14 the TSA. As will be demonstrated herein, Class Counsel’s attorney fee request is supported using
15 the percentage fee method and the lodestar method. Second, Plaintiff moves for final approval of
16 payment of the litigation costs in the amount of \$13,303.16, all of which was incurred in litigating
17 this matter. Third, Plaintiff moves for final approval of the Class Representative Service Payment
18 to Plaintiff in the sum of \$7,500.00, to compensate the Class Representative for the work
19 performed in this case and the resultant settlement benefiting class members, and also providing
20 for a general release of his claims against Defendant – a release significantly greater than the
21 Class Members provided – and for the risks absorbed and time spent litigating the case. Plaintiff
22 played a vital role in representing Class Members in this case and spearheading the lawsuit to
23 seek monetary relief on behalf of all Class Members. Fourth, Plaintiff moves for final approval of
24 the payment of \$10,000.00 in administrative costs to ILYM Group, Inc.. Fifth, Plaintiff moves for
25 final approval of the \$42,500.00 PAGA Payment and the payment to the Labor and Work
26 Development Agency (“LWDA”) for its share of the PAGA Payment (\$31,875.00 which is 75%
27 of \$42,500.00; with the remaining \$10,625.00 payable to Class Members). (Declaration of James
28 Hawkins hereinafter, Hawkins Decl., ¶ 11).

1 This case required many hours of attorney time from Class Counsel and sought relief on
2 behalf of 598 persons within the State of California. Specifically, the Settlement Class consists of
3 “All current and former hourly drivers employed by Defendant in California or continuing to be
4 employed by Defendant in California (either directly or through a temporary staffing agency)
5 between January 1, 2019 and the date of preliminary approval of the Settlement (the “Driver
6 Class”); and All current and former hourly employees who were not or are not drivers, employed
7 by Defendant in California (either directly or through a temporary staffing agency) between July
8 23, 2017 and the date of preliminary approval of the Settlement (the “Non-Driver Class”)
9 (together, the Driver Class and Non-Driver Class are the “Class Members” or “Settlement
10 Class”). (Hawkins Decl., Exh. A - Settlement Agreement I, §5 hereinafter Settlement
11 Agreement.)

12 PAGA Settlement Group Member(s) refers to all persons who were employed by
13 Defendant (either directly or through a temporary staffing agency) as either Driver or Non
14 Drivers employees of Defendant in the State of California at any time from July 23, 2020 through
15 the date of Preliminary Approval, regardless of whether they are also a Class Member or
16 Participating Class Member. (Settlement Agreement I §22.)

17 This litigation involved interviews with Class Members; the review and analysis of
18 documents, policies, and practices; the exchange of informal discovery and a full day of private
19 mediation.

20 Most importantly, the Settlement and all its terms received overwhelming support from
21 Class Members, as there were 0 objections and only 1 request(s) for exclusion. (Hernandez Decl.,
22 ¶¶ 11-12). Therefore, Plaintiff respectfully requests the Court grant final approval of the
23 Settlement, attorneys’ fees, litigation costs, class representative service payment, administration
24 costs, and payment to the LWDA in the amounts preliminarily approved by the Court and as fully
25 disclosed to Class Members. (Hawkins Decl., ¶ 13).

26 As discussed below, the Settlement satisfies all criteria for final approval under California
27 law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully requests that
28 this Court grant final approval of the Settlement.

II. BACKGROUND, FACTS, AND PROCEDURE

A. Brief Overview of the Litigation

On July 23, 2021, Plaintiff filed a putative class action entitled *Edmundo Baquiring vs. California Sierra Express, Inc.*, Alameda County Superior Court No. RG21106254 (the "Class Action"); and A Private Attorneys General Act ("PAGA") representative action complaint originally filed on November 1, 2021 and entitled *Edmundo Baquiring v. California Sierra Express, Inc.*, Alameda County Superior Court No. 21CV001422, the ("Lawsuits") seeking damages for Defendant's alleged failure to: failure to pay employees all earned wages (including at least minimum wage for all hours worked and applicable overtime), failure to provide meal periods, failure to provide rest periods, failure to issue premium payments for allegedly non-compliant meal and/or rest periods, failure to timely pay wages, failure to issue proper wage statements, failure to indemnify necessary business expenses, unfair competition, liquidated damages, interest, attorney's fees and costs, and civil penalties under PAGA. (Hawkins Decl., ¶ 3.)

Plaintiff's counsel in the Action—James Hawkins APLC ("Class Counsel" or "Plaintiff's Counsel")—proceeded to diligently investigate the proposed Class Members' claims against Defendant, including any and all applicable defenses and the applicable law. The investigation included, among other things, the exchange of information pursuant to informal discovery methods and the review of numerous corporate policies and practices, including, *inter alia*, employee clock-in policies and procedures, attendance policies, meal periods/rest periods, overtime & premium pay, etc. (Hawkins Decl., ¶ 4.)

B. The Parties Settled After Mediation and Expert Analysis

On June 16, 2022, the Parties engaged in private mediation with a well-respected wage and hour class action mediator, Kelly Knight. Prior to mediation, Plaintiff requested and Defendant produced extensive documentation including time and pay data, policy documents, class size information, information on the number of pay periods and workweeks, and information regarding the hourly rates and workweek. In short, Defendant provided informal discovery sufficient to enable the Plaintiff and Class Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential

1 damages arising from the claims made in this case. As a result of settlement efforts the Parties agreed to
2 settle this matter for the Total Settlement Amount of \$425,000.00 for approximately 598 class members
3 and the terms of which are fully memorialized in the Settlement Agreement. (Hawkins Decl. ¶ 7-16, Ex.
4 1.)

5 Defendant maintains and denies any wrongdoing and denies liability or any wrongdoing
6 with respect to the matters alleged in the Complaints, and believes that it has valid defenses to all
7 of Plaintiff's claims. Defendant further contends that it has complied with all wage and hour laws
8 applicable to the employment of Plaintiff and the proposed Class Members. Defendant entered
9 into this Settlement to avoid the cost, risk and inconvenience of further litigation. (Hawkins Decl.,
10 ¶¶ 9-10.) (Settlement Agreement II ¶ 2).

11 **C. The Settlement Provides Reasonable Compensation to Class Members**

12 As a result of the mediation, the parties agreed to settle this matter for a Total Settlement
13 Amount ("TSA") of \$425,000.00 (Settlement Agreement III §10). Based on their own respective
14 independent investigations and evaluations, and after taking into account the sharply disputed
15 factual and legal issues involved in this matter, the risks attending further prosecution of the case,
16 the Defendant's financial viability, and the monetary benefits received under the Settlement
17 despite the questionable nature of the claims, Plaintiff's counsel is of the opinion that Settlement
18 for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable
19 and adequate and is in the best interests of the Class Members.

20 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE**

21 **A. Summary of Settlement Terms**

22 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Total
23 Settlement Amount of \$425,000.00. The Total Settlement Amount includes: (1) attorneys' fees in the
24 amount of \$141,666.66 and reimbursement of reasonable litigation costs and expenses in the amount of up
25 to \$25,000.00¹ to Class Counsel ("Attorneys' Fees and Costs"); (2) service award to Plaintiff in the
26 amount of up to \$7,500.00 ("Enhancement Award"); (3) fees and expenses of administration of the

27 _____
28 ¹ Plaintiff's Counsel's costs are in the amount of \$13,303.16 (Hawkins Decl., ¶¶ 11, 39, Exh. 2).

1 Settlement to the Settlement Administrator in an amount not to exceed \$10,000.00 (“Settlement
2 Administration Costs”); (4) \$42,500.00 to PAGA with twenty-five percent (25%) share of the PAGA
3 Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA
4 Group in the amount of \$10,625.00; and (5) the seventy-five percent (75%) share of PAGA Penalties
5 (“LWDA Payment”) in the amount of \$31,875.00 to the California Labor and Workforce Development
6 Agency (“LWDA”). (Settlement Agreement III §10).

7 Subject to the Court approving attorneys’ fees and costs, settlement administration costs, the
8 payment to the LWDA, and the enhancement payments, the Net Settlement Fund will be distributed to all
9 Class Members in full. (Settlement Agreement III §10).

10 The Net Settlement Amount (“NSA”) is approximately \$210,030.18. (Hernandez Decl.,
11 ¶ 14). Additionally, Defendant’s share of employer taxes will be paid separate and apart from the
12 TSA. Participating Class Members’ Individual Settlement Amounts shall be based on a *pro*
13 *rata* value, based on the ratio of the Applicable Workweeks worked by each Settlement
14 Class Member during the Class Period, to the total number of Applicable Workweeks
15 worked by all Settlement Class Members during the Class Period. (*Id.*). The Settlement is a
16 common fund settlement with no reversion to Defendant. Thus, each of the participating
17 Settlement Class Members will be paid his or her pro-rata share of the NSA.

18 **B. Formula for Calculating Payments from the Net Settlement Amount**

19 Each Class Member’s share of the Individual Settlement Payments will be paid from the Net
20 Settlement Amount and shall be paid pursuant to the settlement formula as follows:

21 (i) using the Class Information, the Settlement Administrator will compute the total number of
22 Eligible Workweeks of all Participating Class Members collectively during the Class Period; this sum
23 shall be known as the Workweek Total;

24 (ii) the Settlement Administrator will divide the Net Settlement Amount by the Workweek Total
25 to determine the settlement value for each Eligible Workweek (the “Workweek Value”); and

26 (iii) the Settlement Administrator will multiply the number of Eligible Workweeks of a
27 Participating Class Member during the Class Period by the Workweek Value to determine that
28 Participating Class Member’s Individual Settlement Payment. (Settlement Agreement III §10(a).)

1 Given that there are approximately 598 Class Members, can expect to receive on average
2 approximately **\$351.22**, with a high payment of up to **\$1,617.33**. (Hawkins Decl. ¶ 33); (Hernandez Decl.,
3 ¶ 14).

4 **C. Released Claims By The Settlement Class**

5 In exchange for the Total Settlement Amount, Plaintiff and Participating Class Members
6 will agree to release the Released Claims during the Settlement Period: “Released Claims” The
7 claims to be released by the Class Members are any and all claims under state, federal, or local
8 law, whether statutory or common law arising out of or reasonably related to the facts and claims
9 expressly pleaded in the Lawsuits and all other claims, such as those under the California Labor
10 Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded
11 based on the facts pleaded in the Lawsuits for: failure to pay employees all earned wages
12 (including at least minimum wage for all hours worked and applicable overtime), failure to
13 provide meal periods, failure to provide rest periods, failure to issue premium payments for
14 allegedly non-compliant meal and/or rest periods, failure to timely pay wages, failure to issue
15 proper wage statements, failure to indemnify necessary business expenses, unfair competition,
16 liquidated damages, interest, and attorney's fees and costs, including Labor Code sections 201,
17 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2802,
18 and any and all damages, restitution, disgorgement, statutory penalties, taxes for which
19 employees would otherwise be responsible (except as otherwise provided in this Agreement),
20 interest or attorneys’ fees or costs resulting therefrom. Released Claims shall not apply to claims
21 for workers’ compensation benefits, unemployment insurance benefits, wrongful termination
22 claims, discrimination claims, or any other claim or right that as a matter of law that cannot be
23 waived or released. The Parties will meet and confer in good faith if the Court requires changes to
24 the scope of the Released Claims. (Settlement Agreement I §28.)

25 **D. The Class Members Support the Settlement – 0 Objections and Only 1 Opt-**
26 **Out**

27 On February 16, 2023, the Court granted Preliminary Approval of the Settlement,
28 conditionally certified the Class, appointed ILYM Group, Inc. to act as the administrator,

1 approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via
2 U.S. First Class Mail. On April 24, 2023, ILYM mailed the Notices to 598 Class Members.
3 (Hernandez Decl. ¶7). Out of the 598 Notices, 29 were deemed undeliverable, ILYM Group
4 performed a computerized skip trace on the 29 returned Notice Packets that did not have a
5 forwarding address, in an effort to obtain an updated address for the purpose of re-mailing the
6 Notice Packet. As a result of this skip trace, 15 updated addresses were obtained and the Notice
7 Packets were promptly re-mailed to those Settlement Class Members, via U.S First Class Mail.
8 (*Id.* ¶¶ 8-9). A total of 14 Notice Packets were deemed undeliverable notwithstanding the skip
9 tracing. (*Id.* ¶ 10). Therefore, there is a 99.83% participation rate and 597 Class Members will be
10 mailed a settlement check. (*Id.* ¶ 13).

11 The Parties agreed per Stipulation and Ordered by the Court that checks remaining
12 uncashed shall be distributed pursuant to California Code of Civil Procedure section 384, and the
13 funds for any uncashed checks shall be distributed to the *cy pres* recipient - Legal Aid At Work.
14 (Settlement Agreement III § 12).

15 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

16 **A. The Settlement Satisfies the Standard for Final Approval**

17 California Rule of Court, Rule 3.769, requires court approval for class action settlements.
18 Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62
19 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602
20 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what
21 is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer,*
22 *Inc.* (2001) 91 Cal. App. 4th 224, 245.

23 In deciding whether to approve a class settlement, a court evaluates whether the proposed
24 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
25 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir.
26 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination.
27 *Dunk*, 48 Cal. App. 4th at 1801. However, “a presumption of fairness exists where: (1) the
28 settlement is reached through arms-length bargaining; (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
2 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802; *accord Wershba*, 91 Cal.
3 App. 4th at 245. In addition, a court should consider additional relevant factors, including the
4 strength of the plaintiffs’ case compared to the settlement amount; the risk, expenses, complexity,
5 and likely duration of further litigation; and the fair treatment of class members in relation to each
6 other. *Dunk*, 48 Cal. App. 4th at 1802.

7 At the time of preliminary approval, the Court was provided with sufficient information to
8 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
9 until after the Class had an opportunity to respond to the Settlement as explained in the Notice.
10 Subject only to the Class’ reaction to the Settlement, the Court preliminarily presumed the
11 Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and
12 adequate time provided to the Class to object to the Settlement, **no** class members submitted an
13 objection and only one (1) submitted an opt out of the settlement, **resulting in a 99.83%**
14 **participation rate from the Class.** (Hernandez Decl. ¶ 13). Thus, the proposed Settlement is
15 entitled to the presumption that it is fair and in all other respects proper and should be finally
16 approved.

17 **B. Class Counsel Conducted a Thorough Investigation of the Factual and Legal**
18 **Issues and Were Thus Able to Objectively Assess the Settlement’s Reasonableness**

19 As explained above and in detail in the motion for preliminary approval, Class Counsel conducted
20 a thorough investigation into the factual and legal issues implicated by Plaintiffs’ claims and were able to
21 objectively assess the settlement’s reasonableness. For example, prior to filing the action, Plaintiff
22 contacted Plaintiff’s Counsel to discuss the factual bases for pursuing her action against Defendants for
23 Labor Code violations. Plaintiff was intimately familiar with Defendant’s labor policies and practices, and
24 over the course of multiple interviews, knowledgeably summarized those policies and practices to
25 Plaintiff’s Counsel. During those conversations, Plaintiff’s Counsel explained how the policies and
26 practices were instituted and provided valuable insight into how they gave rise to the alleged Labor Code
27 violations. Based on these interviews with Plaintiff, Plaintiff’s Counsel determined that there were legally
28 sufficient grounds for pursuing the Actions against Defendant and in preparation for drafting the

1 complaint, Plaintiff's Counsel conducted their own independent preliminary investigations into the factual
2 bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination of Plaintiff's personnel files
3 and associated records. (Hawkins Decl. ¶ 5.)

4 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which
5 included: (1) determining Plaintiff's suitability as private attorneys general and class representatives
6 through interviews, background investigations, and analyses of their employment files and related records;
7 (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class
8 actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing
9 employees' time and wage records; (5) reviewing Defendant's employment policies and practices; (6)
10 researching settlements in similar cases; (7) evaluating Plaintiffs' claims and estimating Defendant's
11 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation.
12 (Hawkins Decl. ¶ 6.)

13 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Class Counsel
14 can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement,
15 is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all known facts and
16 circumstances, including the risk of significant delay and uncertainty associated with litigation, and various
17 defenses asserted by Defendant. (Hawkins Decl., ¶¶ 7-18.)

18 **C. The Settlement Was Reached Through Arm's-Length Bargaining in which**
19 **All Parties Were Represented by Experienced Counsel**

20 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
21 settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the
22 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered;
23 thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

24 As explained above, the Parties settled this matter with the assistance of an experienced wage and
25 hour class and PAGA action mediator. Mr. Knight helped to manage the Parties' expectations and
26 provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod.*
27 *Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in
28 favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL),

1 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
2 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir.
3 2001) (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
4 proceedings were free of collusion and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–
5 00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation “tends to support
6 the conclusion that the settlement process was not collusive”); *Ogbuehi v. Comcast of*
7 *California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation
8 “tends to support the conclusion that the settlement process was not collusive”). At all times, the Parties’
9 negotiations were adversarial and non-collusive.

10 The Parties were represented by experienced class action counsel throughout the negotiations
11 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff’s Counsel employ
12 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on
13 the merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 35.).
14 Defendant is represented by Holland & Hart LLP, a respected defense firm.

15 **D. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of**
16 **the Amount in Controversy Discounted by the Risks of Continued Litigation**

17 In seeking Court approval, a settling party must provide sufficient information to “enable the court
18 to make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker*
19 *Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement
20 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
21 unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628
22 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure
23 of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are
24 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
25 delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit*
26 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the
27 claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled
28

1 claims for risks such as changes in the law, the probability of success, and other factors.²

2 Settling parties are not, however, required to partake in a hypothetical accounting exercise:
3 **“Kullar does not ... require any such explicit statement of [maximum] value;** it requires a record
4 which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of
5 the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting
6 *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining
7 “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits,
8 balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th
9 at 130). As explained in detail below, the Total Settlement Amount is within the range of reasonableness
10 in light of the nature and magnitude of the claims being settled and the various potential impediments to
11 recovery.

12 As explained in detail below, the Total Settlement Amount is within the range of reasonableness
13 in light of the nature and magnitude of the claims being settled and the various potential impediments to
14 recovery.

15 Defendant denies all allegations pled, along with all allegations intended to be pled in the
16 operative complaints. Defendant contends they implemented written policies and maintained practices that
17 complied with the requirements of the California Labor Code and applicable California Wage Orders.
18 Defendant contends all employees were provided meal periods and authorized rest periods, were paid all
19 wages, and were timely paid wages in compliance with California law and applicable California Wage
20 Orders. In addition, an individualized investigation into the circumstances surrounding any missed meal

21
22 ² Federal district courts also recognize that there is an inherent “range of reasonableness” in determining whether to
23 approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant
24 risks and costs necessarily inherent in taking any litigation to completion.” *In re World Trade Ctr. Lower Manhattan*
25 *Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat’l Rural Telecomm. Coop. v. Directv, Inc.*,
26 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well-settled law that a proposed settlement may be acceptable even though it
27 amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436,
28 461 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even
dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194
F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the
most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered
in light of strength of the claims”); *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d
615, 628 (9th Cir. 1982) (it is “the complete package, taken as a whole rather than the individual component parts,
that must be examined for overall fairness”).

1 and rest breaks is warranted because such claims can only be decided on a case-by-case basis, common
2 issues do not predominate and class certification is neither superior nor proper. Defendant contends that
3 any occurrence of missed, late, and interrupted meal period was *de minimis*, and that their witness
4 interviews and time records confirmed the employees in question took meal and rest breaks regularly each
5 day and any instances of non-compliance were a result of personal choice. Further, Defendant contends its
6 meal period practices were and always have been lawful in that Settlement Class Members were
7 automatically paid premiums for late, short or unprovided meals. (Hawkins Decl. ¶¶ 17-28).

8 Defendant contends Plaintiff could not successfully argue that derivative waiting time penalties
9 were owed. Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the
10 willfulness threshold required by Labor Code section 203. The considerable risk that Defendant could
11 defeat certification and prevail on its defenses defeating any and all recovery to the class warranted a
12 compromise of the class claims. Similarly, Defendant contends that they have complied with all such
13 requirements with respect to payroll records and wage statements at all times. Further, Plaintiff would still
14 face a difficult, if not impossible, hurdle to overcome the thresholds required by Labor Code section 226
15 claims. (*Id.* ¶ 25).

16 Defendant also argued that notwithstanding its apparently compliant meal break, rest break and
17 time keeping policies regarding the timing and length, that Plaintiff and Class Members are subject to
18 IWC Wage Order 9-2001 as it relates to the transportation industry. Defendant also argued Plaintiff's meal
19 and rest break claims fail because California's meal and rest break provisions are expressly pre-empted by
20 federal law, pursuant to the Federal Motor Carrier Safety Administration's December 2018 Determination
21 of Pre-emption. [Docket No. FMCSA-2018-0304]. Plaintiff argued that notwithstanding those legal
22 hurdles, the policies and practices in place were contrary to those exemptions and applied to all class
23 members across the board. Again, notwithstanding these arguments, Plaintiff was able to secure a
24 reasonable and favorable settlement. Defendants contend their practices have been in compliance with
25 applicable law as set forth above. (*Id.* ¶ 26).

26 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff
27 determined that a settlement amounting to \$425,000.00 was fair and reasonable, and accounts for an
28 approximate 12-24% of total possible recovery and courts have routinely approved settlements that

provided a similar discounted range of the maximum potential recovery. (Hawkins Decl., ¶¶ 30-31). See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).³ (Id.)

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of a Common Fund

Class Counsel applies for an award of attorneys’ fees in the sum of \$141,666.66 of the TSA, and litigation costs of \$13,303.16 (Hawkins Decl. ¶¶ 37-38, Exhs. 1-2). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. See *Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

³ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where Total Settlement Amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 The recognized advantages of the percentage method—including relative ease of
2 calculation, alignment of incentives between counsel and the class, a better
3 approximation of market conditions in a contingency case, and the encouragement
4 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation—convince us the percentage method is a valuable tool that should
not be denied our trial courts.

5 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34
6 (1977) (“when a number of persons are entitled in common to a specific fund, and an action
7 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
8 that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v.*
9 *Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the
10 benefit of all parties, the trial court acts within its equitable power to prevent the other parties’
11 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir.
12 1993) (the percentage of the fund method for calculating attorney’s fees more accurately reflects
13 the results achieved for the putative class than the lodestar method and “establishes reasonable
14 expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages
15 early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*,
16 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
17 common fund cases because it allows courts to award fees from the fund ‘in a manner that
18 rewards counsel for success and penalizes it for failure.’”).⁴

19 The purpose of the common fund/percentage approach is to “spread litigation costs
20 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
21 burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d
22 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a
23 fund from which others derive benefits may require those passive beneficiaries to bear a fair share
24 of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
25 105, 110, the California Supreme Court recognized that the common fund doctrine has been

26 ⁴ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar
27 cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion
28 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”).

1 applied “consistently in California when an action brought by one party creates a fund in which
2 other persons are entitled to share.” The reasons for applying the common fund doctrine include:
3 “...fairness to the successful litigant, who might otherwise receive no benefit because his
4 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the
5 others who are entitled to share in the fund and who should bear their share of the burden of its
6 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
7 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
8 is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*
9 Because there is a defined and clearly traceable benefit to the Class, the Court can base an award
10 of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

11 **B. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**
12 **Comparable Common Fund Cases**

13 Assessing an appropriate fee based on a percentage of the fund involves considering “all
14 of the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where
15 awards were challenged by defendants or objectors – the only parties with standing to appeal.
16 *Wershba*, 91 Cal.App.4th at 236. Several studies of class action fee awards have found that the
17 median common fund fee award is approximately one-third of the total settlement fund.⁵

18 The requested fee falls in the mid-range of percentage class fee awards, which generally
19 range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking
20 complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates
21 Class Counsel for their efforts, as well as the result achieved for the benefit of the Class.
22 Numerous state and federal courts in California routinely approve fee requests equal to or greater
23 than 33% of the common fund. Indeed, courts have found that an award of 33% of the common
24

25 ⁵See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee
26 awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich,
27 *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T.
28 Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report*
to the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in
the traditional range of approximately one-third of the total settlement”).

1 fund represents the “benchmark” in California.⁶ In short, Class Counsels’ fee request of
2 \$141,666.66 (33% of the common fund) is in line with awards in similar cases in California and
3 nationwide and demonstrates that Class Counsels’ fee request is consistent with market rates and
4 is reasonable.

5 **1. A Lodestar Cross-Check Confirms the Reasonableness of the**
6 **Requested Fee**

7 Class Counsels’ fee request is reasonable when calculated using the lodestar method.
8 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
9 spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at
10 48. The court then may enhance this lodestar figure by a “multiplier” to account for a range of
11 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
12 success achieved. *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer*
13 *v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), “[t]here is no...rule limiting the factors
14 that may justify an exercise of judicial discretion to [adjust the] lodestar”].

15 As of the date of filing, Class Counsel worked 217.10 combined documented hours on this
16 case. Thus, the total lodestar for Class Counsel is \$160,680.00. As Plaintiff’s counsel’s lodestar
17 exceeds the requested fee amount, Plaintiff’s counsel is not requesting a multiplier. All of the
18 work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of
19 this case. (Hawkins Decl. ¶¶36-37).

20 **2. Class Counsel’s Hourly Rates are Reasonable**

21 Class Counsels’ hourly rates are between \$200 and \$900 and are in line with rates
22 typically approved in wage and hour class action litigation and which rates have been approved
23 by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and
24 San Diego County Superior Courts.

25 _____
26 ⁶ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL 163293, *5
27 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v.*
28 *Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (“This percentage compares favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a lodestar cross-check as well.”).

1 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
2 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084,
3 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and
4 experience, the nature of the work performed, the relevant area of expertise and the attorney's
5 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
6 Class Counsels' skill and experience support their hourly rates. Their practice is limited
7 exclusively to litigation, focusing on the representation of employees in wage and hour and
8 consumer class action matters. (Hawkins Decl., ¶ 36). As prominent attorneys in the field of wage
9 and hour class action litigation, Class Counsel continually monitors the prevailing market rates
10 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
11 paralegals to be consistent with the prevailing market rates in the private sector for attorneys and
12 staff of comparable skill, qualifications and experience. Other wage and hour attorneys working
13 as class counsel before California courts charge comparable if not higher rates. Therefore, as they
14 are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

15 **3. Class Counsel's Total Hours are Reasonable**

16 In determining a lodestar fee, reasonable hours include, in addition to time spent during
17 litigation, the time spent before the action was filed, including time spent interviewing clients,
18 investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight*
19 *Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to
20 establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

21 Class Counsel expended a total of approximately 217.10 documented hours on this case.
22 The work performed to achieve a settlement that will provide valuable consideration to the Class,
23 is summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl., ¶ 37,
24 Ehx. 1). All tasks and work performed were reasonable and necessary to the prosecution of this
25 case. The work performed was justified in light of the result achieved.

26 **4. Costs of Litigation are Reasonable**

27 Class Counsel seeks reimbursement of the litigation costs and expenses of
28 \$13,303.16. These costs were reasonable and necessary to prosecute this case and the results

1 achieved and are fair, and reasonable. (Hawkins Decl. ¶ 38, Ex. 2).

2 **5. The Settlement Penalties Under PAGA are Reasonable**

3 Pursuant to the Settlement Agreement, \$42,500.00 from the Total Settlement Amount shall be
4 allocated to the resolution of the PAGA claim, of which 75% (\$31,875.00) will be paid directly to the
5 LWDA, and the remaining 25% (\$10,625.00) will be paid to PAGA Members who worked during the
6 PAGA Period beginning July 23, 2020 through the date of Preliminary Approval. (Settlement Agreement
7 I §20-21.); (Hernandez Decl., ¶14).

8 This result was reached after good-faith negotiation between the parties. The amount was valued
9 as follows: Based on information and evidence produced by Defendant during discovery, Plaintiffs’
10 Counsel determined that aggrieved employees worked a combined total of approximately 9,000 pay
11 periods during the PAGA Period . Statutory penalties would be calculated according to Labor Code
12 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil
13 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
14 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
15 (Hawkins Decl. ¶ 30).

16 However, a number of courts have found that the “subsequent” penalty under PAGA applies only
17 after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
18 *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
19 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the
20 employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor
21 Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200
22 for subsequent violations will not be calculated to determine the amount in controversy”); *Steenhuysen v.*
23 *UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley*
24 *Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)
25 (“Under the Labor Code, if an employer does not have notice that they are committing a violation, they are
26 not subject to the heightened penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No.
27 CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that
28 employers are not subject to heightened penalties for subsequent violations unless and until a court or

1 commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
2 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

3 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
4 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an
5 award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing
6 PAGA penalties, courts have considered issues including whether the employees suffered actual injury
7 from the violations, whether the defendant was aware of the violations, and the employer’s willingness to
8 fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA
9 penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D.
10 Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D.
11 Cal. Aug. 12, 2011).

12 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
13 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or**
14 **0.21% of the maximum**—and stated that this reduction was warranted because imposing the maximum
15 penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply
16 with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal.
17 App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty
18 under PAGA. *Id.* at 529.

19 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
20 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*
21 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under
22 specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder*
23 *v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing
24 trial court decision denying any civil penalties where violations had been proven, remanding for the trial
25 court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise,*
26 *Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA
27 penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis
28 pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-

00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved by California courts.⁷ Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).

Thus, Plaintiff requests the Court finally approve the PAGA payment to the LWDA.

6. The Class Representative Enhancement Award is Reasonable

Class Counsel seeks approval of a \$7,500.00 enhancement award to the named Plaintiff/Class Representative. The requested enhancement award is reasonable in light of the general releases of all claims Plaintiff agreed to, greater than the release given by Class Members, the benefits Plaintiff conferred upon the entire Class resulting in payments to all Class Members, the time spent assisting counsel with the investigation and prosecution of these claims, commitment to responding to his counsel, and consenting to the proposed Settlement.

⁷ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

1 Furthermore, in pursuing this action on behalf of the Class, Plaintiff risked a judgment for
2 attorneys' fees and costs in the event this matter had been lost. But not for Plaintiff's efforts, it is
3 plausible many of the class members would not have sought redress for the alleged wrongs, yet
4 have now benefited due to Plaintiff's efforts. (Hawkins Decl., ¶ 35); (Baquing Decl. ISO Final
5 Approval.)

6 Courts routinely approve service payments, or incentive awards, to compensate named
7 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
8 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
9 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
10 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on
11 the foregoing, the \$7,500.00 enhancement payment to the named Plaintiff/Class Representative is
12 fair, appropriate, and justified as part of the overall settlement.

13 7. The Settlement Administrator Costs are Reasonable

14 Plaintiff requests final approval of settlement administration costs in the amount of
15 \$10,000.00. The Parties agreed to hire ILYM Group, Inc. as the administrator, and the Court
16 approved this choice. The Administrator was responsible for formatting, printing and mailing the
17 Notice. It was also responsible for updating addresses and re-mailing Notices returned as
18 undeliverable, responding to Class Member inquiries, answering questions from Counsel for the
19 Parties, and providing a declaration to document its duties and responsibilities under the
20 settlement. Plaintiff now request that the Court approve the \$10,000.00 fee to ILYM Group, Inc.
21 for services rendered and to be rendered. (Hernandez Decl. ¶¶ 3-15). Following the grant of final
22 approval, the Administrator's duties will continue in order to calculate and mail the Individual
23 Settlement Payment checks to Class Members, perform tax reporting obligations, disburse other
24 payments as ordered by the Court, and perform such other duties as set forth in the Settlement
25 Agreement. The fee of \$10,000.00 for services rendered and to be rendered is fair and reasonable
26 and should be granted.

27 VI. CONCLUSION

28 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval

1 of the Class Action Settlement, award (1) Class Counsel's attorneys' fees in the sum of
2 \$141,666.66 and litigation costs of \$13,303.16; (2) award the named Plaintiff an enhancement
3 service award payment in the sum of \$7,500.00; (3) award \$10,000.00 to ILYM Group, Inc., for
4 settlement administration services, and (4) approve a payment to the LWDA in the amount of
5 \$31,875.00.

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8 Dated: June 21, 2023

JAMES HAWKINS APLC

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11 JAMES R. HAWKINS
12 GREGORY MAURO
13 MICHAEL CALVO

14 Attorneys for Plaintiff, the Putative Class, and
15 the Aggrieved Employees
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