

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PIPICH, as an “aggrieved employee” on behalf of all other similarly situated “aggrieved employees” under the Labor Code Private Attorney General Act of 2004,

Plaintiff,

v.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; EXPRESS SERVICES, INC., a Colorado corporation d/b/a Express Employment Professionals; and DOES 2-50, inclusive,

Defendants.

Case No.: 3:21-cv-01120-AHG

ORDER:

(1) GRANTING PLAINTIFFS' MOTION FOR AWARD OF ATTORNEY FEES, REIMBURSEMENT OF COSTS, ADMINISTRATION EXPENSES PAYMENT, AND CLASS REPRESENTATIVE SERVICE PAYMENTS; and

(2) GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[ECF Nos. 99, 103]

Presently before the Court are Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Motion for Attorney Fees, Costs, Administration Expenses Payment, and Class Representative Service Payments. ECF No. 99, 103. A hearing on these motions was held on October 9, 2024.

Based on the reasons set forth below, the Court **GRANTS** Plaintiffs' Motion for Final Approval of Class Action Settlement and **GRANTS** Plaintiffs' Motion for Attorney

1 Fees and Costs, the Administration Expenses Payment, and Class Representative Service
2 Payments.

3 **I. BACKGROUND**

4 On June 16, 2021, Plaintiff filed his initial complaint against Defendant O'Reilly
5 Auto Enterprises, LLC ("O'Reilly") in this Court, styling his claims as a collective action
6 under the Fair Labor Standards Act ("FLSA"), and alleging that O'Reilly had failed to
7 provide proper payment of all wages to Plaintiff and other employees who were putative
8 collective members by requiring them to undergo COVID-19 screenings and security
9 inspections each day without pay, including during meal breaks, rest breaks, and off-the-
10 clock pre-shift and post-shift time. ECF No. 1. After the Court found that Plaintiff failed
11 to state a cognizable legal claim under the FLSA and dismissed the action without prejudice
12 (ECF No. 15), Plaintiff filed a Second Amended Complaint against O'Reilly on
13 April 7, 2022, bringing claims under the Private Attorneys General Act ("PAGA") of the
14 California Labor Code based on the same underlying allegations. ECF No. 23. In
15 September 2022, while discovery was underway, the parties requested and were granted a
16 stay of the case for approximately six months pending private mediation in February 2023,
17 which ultimately proved unsuccessful. ECF Nos. 32, 33, 38. The stay was lifted on
18 March 7, 2023. ECF No. 39. On April 14, 2023, upon the order of the Court, Plaintiff
19 amended the complaint once more to properly allege subject-matter jurisdiction. ECF No.
20 45.

21 On February 21, 2024, the parties settled the case during a Mandatory Settlement
22 Conference conducted by the Honorable Jill L. Burkhardt. ECF No. 70. The settlement was
23 a global settlement including this matter and three related matters involving Defendant
24 O'Reilly: (1) *Eve Storm v. O'Reilly Auto Enterprises, et al.*, Riverside Superior Court, Case
25 No. CVRI2104730; (2) *Eve Storm v. O'Reilly Auto Enterprises, et al.*, Case No. 5:23-cv-
26 00597-FLA-MAR (C.D. Cal.); and (3) *Gary Cull, et al. v. O'Reilly Auto Enterprises, LLC*,
27 Case No. 5:23-cv-01623-FLA-MAR (C.D. Cal.). See ECF No. 82 at 4. The parties agreed
28 to settle these cases on a class-wide basis, and the federal matters in the United States

District Court for the Central District of California have since dismissed the Storm and Cull matters without prejudice. ECF No. 89-1 at 21.¹ Thereafter, the parties consented to the undersigned to preside over the case and review the proposed settlement for court approval. ECF No. 77.

Pursuant to the terms of the settlement and with leave of Court, Plaintiff filed the operative Fourth Amended Complaint (“4AC”) on May 21, 2024. ECF No. 86. The 4AC added Plaintiffs Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez to the case as class representatives, added Express (a named defendant in the *Storm* cases) as a Defendant, and added certain class allegations and causes of action. *See* ECF No. 82 at 5; ECF No. 86. Specifically, in the 4AC, Plaintiffs bring class-wide claims for (1) failure to provide meal periods under California Labor Code §§ 226.7, 512, and 1198; (2) failure to authorize and permit rest breaks under California Labor Code §§ 226.7 and 1198; (3) failure to pay all wages earned at the correct rates of pay under California Labor Code §§ 223, 510, 1194, 1197, 1198; (4) failure to indemnify under California Labor Code §§ 1198 and 2802; (5) failure to issue accurate and complete wage statements under California Labor Code § 226; (6) willful failure to timely pay final wages under California Labor Code §§ 201-203; and (7) unfair competition under California Business and Professional Code §§ 17200, *et seq. Id.* ¶¶ 65-137. In addition, Plaintiffs bring an eighth cause of action seeking civil penalties under PAGA on behalf of the “Aggrieved Employees,” defined as all members of the Class employed by Defendants during the period beginning May 11, 2020, and ending on the date that final judgment is entered in this action. *Id.* ¶¶ 138-164.

On May 24, 2024, Plaintiffs filed a Motion to Grant Preliminary Approval of Class Action Settlement (ECF No. 89), which the Court granted on June 7, 2024. ECF No. 94. The preliminary approval order established a process for notice to the Class. *Id.* Notice was

¹ As part of the settlement agreement, Plaintiffs agree to dismiss Plaintiff Eve Storm’s PAGA action in the Riverside County Superior Court without prejudice within 14 days after final approval of the settlement. ECF No. 89-2 at 72.

1 completed as ordered.

2 On September 30, 2024, the parties filed a Motion to Reserve Ruling on the Motion
3 for Final Approval of Class Action Settlement (ECF No. 101), which the Court granted on
4 October 1, 2024. ECF No. 102. On October 2, 2024, Plaintiffs filed an unopposed Motion
5 for Final Approval of Class Action Settlement. ECF No. 103. The final approval hearing
6 took place on October 9, 2024. No Class Members objected to the settlement, and one Class
7 Member requested exclusion because they had reached an individual settlement separately
8 with O'Reilly. ECF No. 103-1 at 9.

9 II. SETTLEMENT AGREEMENT

10 The parties have executed a Joint Stipulation of Class Action and PAGA Settlement
11 (“Settlement Agreement” or “Settlement”). ECF No. 103-2 at 7. The primary terms of the
12 Settlement are:

- 13 • The Settlement Class is defined as all individuals employed by one or both
14 Defendants as non-exempt, hourly employees, either directly or indirectly through
15 staffing agencies, and who worked at one of Defendant O'Reilly Auto Enterprises,
16 LLC's distribution centers in California at any time during the Class Period of
17 July 5, 2018 to May 22, 2024. The “Aggrieved Employees” are all class members
18 who were employed by one or both Defendants in California and classified as non-
19 exempt, hourly employees, either directly or indirectly through staffing agencies, at
20 one of Defendant O'Reilly Auto Enterprises, LLC's distribution centers in
21 California at any time during the PAGA Period of May 11, 2020 to May 22, 2024.
22 The Settlement Class thus includes all Aggrieved Employees.
- 23 • Defendant O'Reilly will pay \$4,100,000.00 (the “Gross Settlement Amount”), in
24 addition to any and all employer payroll taxes owed on the Wage Portions² of the
25 Individual Class Payments, to settle the claims of the Settlement Class. The
26 Administrator will disburse the entire Gross Settlement Amount without asking or
27

28 ² This term is defined below.

1 requiring Participating Class Members or Aggrieved Employees to submit any claim
2 as a condition of payment. None of the Gross Settlement Amount will revert to
3 Defendants.

- 4 • The Administrator will make and deduct the following payments from the Gross
5 Settlement Amount:

- 6 ○ Class Representative Service Payments to the Class Representatives totaling
7 not more than \$55,000 (in addition to any Individual Class Payment and any
8 Individual PAGA Payment each Class Representative is entitled to receive as
9 a Participating Class Member), divided among the Class Representatives as
10 follows:

- 11 ■ \$22,500 to Jeffrey Pipich;
12 ■ \$10,000 to Eve Storm;
13 ■ \$7,500 to Gary Cull;
14 ■ \$7,500 to Melissa Kolakowski; and
15 ■ \$7,500 to Daniel Lopez.

- 16 ○ Attorney fee payments to Class Counsel of up to one-third of the Gross
17 Settlement Amount, which is estimated to be \$1,366,666.67, and a Class
18 Counsel Litigation Expenses Payment of up to \$120,000.

- 19 ○ An Administration Expenses Payment to the Administrator not to exceed
20 \$40,000.

- 21 ○ An Individual Class Payment to each Participating Class Member, which will
22 be calculated by: (a) dividing the Net Settlement Amount by the total number
23 of workweeks worked by all Participating Class Members during the Class
24 Period; and (b) multiplying the result by each Participating Class Member's
25 workweeks.

- 26 ■ Ten percent of each Participating Class Member's Individual Class
27 Payment will be allocated to settlement of wage claims ("Wage
28 Portion"), while the remaining ninety percent of each participating

- 1 Class Member's Individual Class Payment will be allocated to
2 settlement of claims for interest and penalties ("Non-Wage Portion").
- 3 ■ Non-Participating Class Members will not receive any Individual Class
4 Payments. The Administrator will retain amounts equal to the
5 Individual Class Payments in the Net Settlement Amount for a pro rata
6 distribution to Participating Class Members.
- 7 ○ PAGA Penalties in the amount of \$410,000 to be paid from the Gross
8 Settlement Amount, with 75% allocated to the LWDA PAGA Payment and
9 25% allocated to the Individual PAGA Payments.
- 10 ■ An Individual PAGA Payment is each Aggrieved Employee's pro rata
11 share of 25% of the PAGA Penalties, calculated according to the
12 number of PAGA workweeks worked during the PAGA Period. The
13 Administrator will calculate each Individual PAGA Payment by (a)
14 dividing the amount of the Aggrieved Employees' 25% share of PAGA
15 Penalties (\$102,500) by the total number of PAGA workweeks worked
16 by all Aggrieved Employees during the PAGA Period and (b)
17 multiplying the result by each Aggrieved Employee's PAGA
18 workweeks.
- 19 ● Defendant O'Reilly shall fully fund the Gross Settlement Amount, as well as the
20 amounts necessary to pay Defendants' share of payroll taxes fully, by transmitting
21 the funds to the Administrator no later than fourteen (14) calendar days after the
22 Effective Date of settlement, which is defined as the date when the Court's Judgment
23 on its Order Granting Final Approval of the Settlement becomes final. Within
24 fourteen (14) calendar days after Defendant O'Reilly funds the Gross Settlement
25 Amount, the Administrator will mail checks for all seven categories of payments
26 outlined above.
- 27 ● Effective on the date when Defendant O'Reilly fully funds the Gross Settlement
28 Amount and funds all employer payroll taxes owed on the Wage Portion of the

1 Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will
2 release all claims against the Released Parties, as defined in the Settlement
3 Agreement. See Settlement Agreement ¶ 6.

4 **III. LEGAL STANDARD**

5 A class action may not be settled without court approval, “which may be granted
6 only after a fairness hearing and a determination that the settlement taken as a whole is fair,
7 reasonable, and adequate.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946
8 (9th Cir. 2011) (citing Fed. R. Civ. P. 23(e)(2)). The Ninth Circuit Court of Appeals has a
9 “strong judicial policy” in support of class action settlements. *Class Plaintiffs v. City of*
10 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). However, when presented with a motion to
11 finally approve a class action settlement, “judges have the responsibility of ensuring
12 fairness to all members of the class” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir.
13 2003).

14 **IV. MOTION FOR FINAL SETTLEMENT APPROVAL**

15 **A. Class Certification**

16 Before granting final approval of a class action settlement agreement, the Court
17 must first determine whether the proposed class can be certified. *Amchem Prods. v.*
18 *Windsor*, 521 U.S. 591, 620 (1997) (indicating that a district court must apply “undiluted,
19 even heightened, attention [to class certification] in the settlement context” in order to
20 protect absentee class members). In the present case, the Court previously granted
21 Plaintiffs’ motion for conditional class certification. ECF No. 94. Accordingly, the Court
22 reaffirms and incorporates by reference its prior analysis under Rule 23 of the Federal
23 Rules of Civil Procedure as set forth in its Order Granting Plaintiffs’ motion to
24 conditionally certify the settlement class. ECF No. 94. Accordingly, the settlement class is
25 **CERTIFIED** for settlement purposes only.

26 **B. Adequacy of Notice**

27 Next, the Court must determine whether the Class received adequate notice.
28 Rules 23(c)(2)(B) and (e)(1) generally require that a Rule 23(b)(3) settlement class should

1 receive notice in a reasonable manner, and that the notice be “the best notice that is
2 practicable under the circumstances, including individual notice to all members who can
3 be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see also Amchem*, 521
4 U.S. at 617.

5 In its Preliminary Approval Order, the Court preliminarily approved notice of
6 this class action and proposed settlement. ECF No. 94 at 25-27. As part of their Final
7 Approval Motion, Plaintiffs filed the Declaration of Jonathan Paul, CEO of Xpand Legal,
8 the Settlement Administrator retained by the parties in this action. *See generally*, ECF No.
9 99-5. The declaration details the actions taken by the Administrator, including mailing the
10 class notice in both English and Spanish to Class Members, implementing a settlement
11 administration website and toll-free hotline that provides Class Members with information
12 about the proposed settlement, and securing a post office box to which Class Members can
13 send communications. *Id.* The Settlement Administrator declares that Xpand mailed a class
14 notice to the 5,053 Class Members. *Id.* As of the close of the notice period, 4,987 Class
15 Members (98.6%) received the class notice. ECF No. 103-1 at 8. The Administrator reports
16 that, as of September 6, 2024, the Settlement website had been visited fifty (50) times since
17 it was established on July 22, 2024. ECF No. 99-5 at 6. Additionally, as of
18 September 6, 2024, the toll-free number, which opened on July 22, 2024, had received
19 twelve (12) calls. *Id.*

20 The Notice advised the classes of the terms of the Settlement and of their rights
21 including: (1) how to participate and how to receive payment of their share of the
22 Settlement; (2) how to object to the Settlement and to appear at the Final Approval Hearing;
23 (3) how to request exclusion from the Settlement; (4) the manner and timing for doing any
24 of these acts; and (5) the date and time set for the Final Approval Hearing. The Notice also
25 displayed the Settlement's website: www.oreillysettlement.com and the toll-free number 1-
26 888-557-2773.

27 As of the date of this order, no Class Members have objected to the Settlement,
28 and one Class Member requested exclusion because they had reached an individual

1 settlement separately with O'Reilly. ECF No. 103-1 at 9.

2 Accordingly, the Court determines that the Notice was adequate and satisfied
3 both the requirements of Rule 23 and due process, giving the settlement Class Members
4 adequate notice of the Settlement.

5 Furthermore, as required by the Class Action Fairness Act ("CAFA"), the
6 Defendant sent notice of the proposed settlement to the Attorneys General for each of the
7 33 states that Class Members reside in, as well as the Attorney General of the United States.
8 *See* ECF No. 103-1 at 10; ECF No. 103-3 at 4. Defendants issued the required notice on
9 September 30, 2024.

10 Accordingly, the Court determines that the appropriate CAFA notice has been
11 given. *See* 28 U.S.C § 1715(b) (requiring settling defendants give notice of a proposed
12 class settlement to appropriate state and federal officials).

13 **C. Fairness of the Settlement**

14 The Court must next determine whether the proposed settlement is "fair,
15 reasonable, and adequate" pursuant to Federal Rule of Civil Procedure 23(e)(2). In its
16 Preliminary Approval Order, the Court found that the applicable Rule 23(e)(2) factors
17 weighed in favor of approving the Settlement. *See* ECF No. 94 at 19-25. These factors
18 include the adequacy of class representatives and class counsel, the non-collusive nature
19 of the settlement negotiations, the degree of recovery on behalf of the Class Members, the
20 risks attendant in continued litigation, the experience of class counsel, and the effectiveness
21 of the proposed method of distributing relief to the class.

22 In its Preliminary Approval Order, the Court expressed the need to further
23 scrutinize the proposed attorney fees and the proposed service award for Plaintiff Pipich.
24 ECF No. 94 at 24. The Court has reviewed the basis for the proposed attorney fees and the
25 proposed service award for Plaintiff Pipich and finds the fees and service award are
26 reasonable. These areas are discussed in detail below.

27 Further, it is established that the "absence of a large number of objections to a
28 proposed class action settlement raises a strong presumption that the terms of a proposed

1 class settlement are favorable to the class members.” *Nat’l Rural Telecomm. Co-op. v.*
2 *Directv, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). Here, after receiving notice of the
3 Settlement, no Class Member objected and only one Class Member requested exclusion,
4 (ECF No. 103-1 at 15-16), which weighs in favor of settlement.

5 Finally, no pertinent facts have changed since the Court reached its earlier
6 conclusion in its Preliminary Approval Order. ECF No. 94. The Court at this juncture has
7 found that the settlement negotiations were not collusive and that the parties approached
8 their negotiations seriously and with the interests of the absent putative Class Members in
9 mind. Thus, the Court reaffirms and incorporates by reference its analysis of the Rule 23(e)
10 requirements as set forth in its Preliminary Approval Order. ECF No. 94. Accordingly, the
11 Court finds the settlement to be “fair, reasonable, and adequate” pursuant to Federal Rule
12 of Civil Procedure 23(e).

13 **V. ATTORNEY FEES AND COSTS**

14 **A. Attorney Fees**

15 “In a certified class action, the court may award reasonable attorney fees and
16 nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P.
17 23(h). However, “courts have an independent obligation to ensure that the award, like the
18 settlement itself, is reasonable, even if the parties have already agreed to an amount.” *In re*
19 *Bluetooth*, 654 F. 3d at 941. “Where a settlement produces a common fund for the benefit
20 of the entire class, courts have discretion to employ either the lodestar method or the
21 percentage-of-recovery method.” *Id.* at 942; *see Laffitte v. Robert Half Int’l Inc.*, 1 Cal 5th
22 480, 504 (2016) (“The choice of a fee calculation method is generally one within the
23 discretion of the trial court, the goal under either the percentage or lodestar approach being
24 the award of a reasonable fee to compensate counsel for their efforts.”). Irrespective of
25 which methodology a court uses, the court cannot apply it mechanically or formulaically,
26 but must ensure that the fee award is reasonable. *In re Mercury Interactive Sec. Litig.*, 618
27 F.3d 988, 992 (9th Cir. 2010); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

28 Under the percentage-of-recovery method, the benchmark for a reasonable fee

award is 25% of the common fund. *Id.* However, a district court “may adjust the benchmark when special circumstances indicate a higher or lower percentage would be appropriate.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1995)). The court must consider all the circumstances of the case to determine an appropriate rate, including the results achieved, the risk counsel took in pursuing the case, incidental or non-monetary benefits of the litigation, and the time and money counsel expended on the case. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).

Here, Class Counsel request an award of attorney fees in the amount of \$1,366,666.67 (33 and 1/3% of the Gross Settlement Amount). ECF No. 99-1 at 15. Class Counsel have a lodestar of approximately \$1,038,704, which represents a multiplier of 1.32 when compared to their request for attorney fees. Lodestar multipliers can range from 2 to 4. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) (finding a 1.42 multiplier reasonable where plaintiffs’ attorneys submitted declarations evidencing the reasonable hourly rate for their services and outlining the number of hours dedicated to the case). Here, too, Class Counsel provided declarations and an itemization of hours alongside the areas of efforts they managed, including researching and drafting complaints across the five separate actions that this action involves, opposing motions to dismiss, reviewing extensive data, driving difficult settlement negotiations, thoroughly investigating the underlying facts of the action including interviewing over 268 Class Members, and negotiating the terms and agreements supporting the underlying settlement. Declaration of David Spivak, ECF No. 99-2, ¶ 11.

Other factors also weigh in favor of granting Class Counsel’s requested fee award. The Settlement confers substantial benefits upon the settlement class, particularly as compared to settlements in similar actions. *See, e.g., Boone v. Amazon.com Servs., LLC*, No. 1:21-CV-00241-KES-BAM, 2024 WL 2327647, at *13 (E.D. Cal. May 22, 2024) (preliminarily approving \$5,500,000 settlement in unpaid COVID-19 screening action involving 250,000 class members with average recovery of approximately \$12.18 per class

1 member). Recovery to each Class Member in the present action greatly exceeds this rate.
2 Further, Class Counsel took this case on a contingency fee basis and assumed the risk of
3 non-payment, which weighs in favor of the award. The experience of Class Counsel in
4 litigating class actions of this type—as discussed in this Court’s Preliminary Approval
5 Order—also supports Class Counsel’s request. ECF No. 94 at 21-22. Further, Courts in this
6 Circuit have routinely authorized similar awards. *See, e.g., Ripee v. Bos. Mkt. Corp.*, No.
7 05cv1359 BTM (JMA), 2006 WL 8455400, at *4 (S.D. Cal. Oct. 10, 2006) (award of 40%
8 of \$3,750,000 wage and hour class action settlement); *Stuart v. RadioShack Corp.*, No. C-
9 07-4499-EMC, 2010 WL 3155645, at *6 (N.D. Cal. Aug. 9, 2010) (finding 33% fee award
10 “well within the range of percentages which courts have upheld as reasonable in other class
11 action lawsuits”).

12 As such, the Court approves a 33 and 1/3% Class Counsel fee award in the
13 amount of \$1,366,666,67.

14 **B. Litigation Expenses**

15 Class Counsel is entitled to reimbursement of the out-of-pocket costs they
16 reasonably incurred investigating and prosecuting this case. *See Staton*, 327 F.3d at 974.
17 Through final accounting of the Settlement, Class Counsel will have incurred \$58,918.01.
18 ECF No. 104. No Class Member has objected to the request for reimbursement of litigation
19 expenses. The Court finds that Class Counsel’s out-of-pocket costs were reasonably
20 incurred in connection with the prosecution of this litigation, were advanced by Class
21 Counsel for the benefit of the Class and shall be reimbursed in full in the amount requested.
22 The Court approves the request for litigation costs and expenses in the amount of
23 \$58,918.01.

24 **C. Administrative Costs**

25 The Court preliminary approved the estimated Administrator costs of up to
26 \$40,000 to Xpand Legal Consulting, LLC, the appointed Settlement Administrator. ECF
27 No. 89-1 at 64; Spivak Decl. ¶¶ 120-21; Exs. 16-19 to the Spivak Decl. In this settlement,
28 Xpand Legal Consulting, LLC, took steps to implement notice of the settlement, including

1 establishing a Qualified Settlement Fund, mailing the *Notice of Proposed Class Action and*
2 *PAGA Settlement*, and establishing and maintaining a settlement administration website.
3 ECF No. 99-5 at 4. Courts regularly award administrative costs associated with providing
4 notice to the class. *See Vasquez v. Kraft Heinz Foods Co.*, No. 3:16-cv-2749-WQH-BLM,
5 2020 WL 1550234, at *9 (S.D. Cal. Apr. 1, 2020) (awarding \$50,000 for administrative
6 costs). Plaintiffs request the Court award an Administration Expenses Payment in the
7 amount of \$38,900 to the Settlement Administrator for its services. The Court concludes
8 Xpand Legal Consulting, LLC’s costs were reasonably informed for the benefit of the
9 Class. The Court approves Class Counsel’s request for administrative costs in the amount
10 of \$38,900.

11 **D. Service Awards to Class Plaintiff**

12 Finally, Plaintiffs seek to divide the \$55,000 Class Representative Service
13 Awards as follows: (1) \$22,500.00 to Jeffrey Pipich; (2) \$10,000.00 to Eve Storm; (3)
14 \$7,500 to Gary Cull; (4) \$7,500 to Melissa Kolakowski; and (5) \$7,500 to Daniel Lopez.
15 ECF No. 99-1 at 31. Importantly, Pipich was the only named Plaintiff in the case between
16 the time it was first filed in 2021 and the filing of the 4AC in May 2024.

17 “[I]ncentive awards that are intended to compensate class representatives for
18 work undertaken on behalf of a class are fairly typical in class action cases” and “do not,
19 by themselves, create an impermissible conflict between class members and their
20 representatives.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir.
21 2015) (internal citation and quotations omitted). Named plaintiffs in class action litigation
22 are eligible for reasonable incentive payments. *Staton*, 327 F.3d at 977. The purpose of
23 such awards is “to compensate class representatives for work done on behalf of the class,
24 to make up for financial or reputational risk undertaken in bringing the action, and,
25 sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*
26 *v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). These awards are “fairly typical
27 in class action cases,” but are ultimately “discretionary.” *Id.* at 958.

28 In the settlement papers, Plaintiff Pipich asks for a service award of \$22,500. Mr.

1 Spivak, on behalf of Class Counsel, declares that Plaintiff Pipich “made significant
2 contributions to the prosecution of this case” that warrant the requested service award.
3 (ECF No. 99-1 at ¶¶ 20(c)). Mr. Spivak attests that Plaintiff was the first employee to raise
4 his concerns about O’Reilly’s time and pay policies and take the first step in seeking legal
5 recourse for not only himself but also for his fellow colleagues. *Id.* For more than three
6 years, Mr. Pipich gave up his personal time and took time off work to further the litigation,
7 including providing detailed information regarding O’Reilly’s policies and procedures
8 (including the COVID-19 screenings and security screenings at issue in this litigation),
9 notifying the California Labor and Workforce Development Agency, spending multiple
10 hours reviewing proposed legal filings (including the four iterations of complaints filed in
11 this action), searching for and gathering documents related to the case, providing detailed
12 responses to discovery requests, preparing for and participating in his deposition, preparing
13 for and attending four settlement conferences and mediations, and requesting several PTO
14 days with his current employer. *Id.*; ECF No. 99-6 at ¶¶ 14-50. While devoting considerable
15 time to the litigation, Plaintiff Pipich attests that he has always “striven to represent the
16 best interests of [his] fellow employees and class members.” ECF No. 99-6 at ¶¶ 48-53.
17 Plaintiff Pipich also attests that due to this action, he fears what negative implication would
18 arise from others discovering he is participating in the litigation, but that he has accepted
19 this risk; he also declared that the Class Representative Service Award is not equal to the
20 harm to [his] future career prospects that this case may cause [him].” *Id.* at ¶¶ 52. Further,
21 Mr. Spivak attested that Plaintiff Pipich has “always acted in the best interests of the Class,”
22 (ECF No. 99-2 ¶¶ 20(c)), and that when Pipich was asked in his deposition what actions he
23 wanted O’Reilly to take, Pipich “focused his answer not on himself but instead on the
24 interests of his fellow employees by stating that he would like Defendants to ‘change some
25 company policies, change the location of their time clocks, compensate[e] employees for
26 lost time and maybe send[] out a letter of apology.” *Id.*

27 Given Plaintiff’s level of involvement in the case, the undertaking of the risk in
28 bringing this action, and the fact that the amount of the request is consistent with those

1 typically awarded as service payments, the court determines Plaintiff Pipich's request is
2 reasonable. *See, e.g., Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG (BLM), 2010
3 WL 2196104, at *9 (S.D. Cal. June 1, 2010) (approving \$25,000 service award for plaintiff
4 in FLSA action); *Salazar v. Driver Provider Phoenix LLC*, No. CV-19-05760-PHX-SMB,
5 2024 WL 2923718, at *7 (D. Ariz. June 10, 2024) (preliminarily approving "service awards
6 of \$20,000 each" to four named plaintiffs in FLSA action out of \$2.5 million settlement);
7 *Johnson v. U.S. Bank Nat'l Ass'n.*, No. 19-CV-286 JLS (LL), 2020 WL 13652583, *3 (S.D.
8 Cal. Aug. 20, 2020) (awarding \$15,000 - \$25,000 to class representatives in wage and hour
9 action).

10 The Court also finds the proposed service awards for Plaintiffs Eve Storm, Gary
11 Cull, Melissa Kolakowski, and Daniel Lopez reasonable given Plaintiffs provided
12 Defendants with a full release, assumed a fiduciary role to Settlement Class Members
13 requiring them to actively participate in the lawsuit, rendered their individual payment
14 uncertain, delayed their payment by several months, and spent many hours on work related
15 to the lawsuit. ECF No. 99-1 at 32-33; *see generally* Plaintiff's Declarations. That the total
16 value of the approved class representative service payments is 1.34 percent of the total
17 amount of the Settlement further supports the requested award. Finally, there are no
18 circumstances indicating the award would create a conflict between Plaintiffs and Class
19 Members.

20 Thus, the service awards for the Class Representatives are reasonable.
21 Accordingly, this Court awards \$55,000 in Class Representative Service Payments to be
22 divided as follows: (1) \$22,500 to Jeffrey Pipich; (2) \$10,000 to Eve Storm; (3) \$7,500 to
23 Gary Cull; (4) \$7,500 to Melissa Kolakowski; and (5) \$7,500 to Daniel Lopez.

24 VI. CONCLUSION AND ORDER

25 Based on the foregoing and the entire record, the Court **GRANTS** Plaintiff and Class
26 Counsel's motion for final approval of the Settlement. The Court **ORDERS** as follows:

- 27 1. The Court **GRANTS** final approval of the proposed Settlement Agreement
28 (ECF No. 89-2). All terms and provisions of the Settlement, including the

1 release of claims contained therein, should be and hereby are ordered to be
2 consummated, and the Parties shall effectuate the Settlement according to its
3 terms;

4 2. This order applies to all claims or causes of action settled under the Settlement
5 Agreement and binds all Class Members who did not affirmatively opt out of
6 the Settlement Agreement by submitting a timely and valid Request for
7 Exclusion. This order does not bind persons who filed timely and valid a
8 Request for Exclusion;

9 3. Plaintiffs and all Class Members who did not timely submit a valid request
10 for exclusion are (1) deemed to have released and discharged Defendant from
11 any and all Released Claims accruing during the Class Period, and (2) barred
12 and permanently enjoined from prosecuting any and all Released Claims
13 against the Released Parties. The full terms of the releases described in this
14 paragraph are set forth in the Settlement Agreement and are incorporated here
15 by reference;

16 4. The Settlement Administrator will issue individual settlement payments to
17 participating Class Members according to the terms and timeline stated in the
18 Settlement Agreement;

19 5. The Court **GRANTS** Plaintiffs' motion for attorney fees and costs,
20 administration expenses, and class representative payments (ECF No. 99).
21 The Court **GRANTS** Class Counsel attorney fees in the amount of
22 \$1,366,666.67 plus Class Counsel's actual litigation costs in the amount of
23 \$58,918.01;

24 6. The Court **GRANTS** class representative awards to Plaintiffs for their
25 services as follows: (1) \$22,500.00 to Jeffrey Pipich; (2) \$10,000.00 to Eve
26 Storm; (3) \$7,500 to Gary Cull; (4) \$7,500 to Melissa Kolakowski; and (5)
27 \$7,500 to Daniel Lopez;

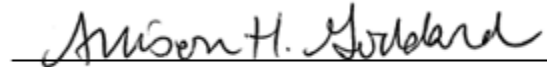
28 7. The Court **APPROVES** settlement administrator costs of \$38,900;

1 8. The Court **APPROVES** payment of \$307,500.00 (75% of the PAGA penalty)
2 to the LWDA; and

3 9. Without effecting the finality of this Final Approval Order, the Court
4 **RETAINS JURISDICTION** over: (a) implementation and enforcement of
5 the Agreement pursuant to further order of the Court until the final judgment
6 contemplated hereby has become effective and each and every act agreed to
7 be performed by the Parties shall have been performed pursuant to the
8 Agreement; (b) any other action necessary to conclude this Settlement and to
9 implement the terms of the Agreement; and (c) the construction and
10 interpretation of this agreement.

11 **IT IS SO ORDERED.**

12 Dated: January 7, 2025

13 
14 Honorable Allison H. Goddard
15 United States Magistrate Judge
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