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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANIEL ALCARAZ, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

GRIFOLS BIOLOGICALS INC.; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV42719
[Case Assigned for All Purposes to Hon.
Lawrence P. Riff in Dept. 7]

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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Ari J. Stiller, Daniel Alcaraz and Jarrod
Salinas, Proposed Order, and Judgment]*

Date: April 9, 2024
Time: 11:00 A.M.
Dept.: 7

Complaint Filed: November 19, 2021
FAC Filed: January 24, 2022
Trial Date: None Set

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 9, 2024 at 11:00 A.M. in Department 7 of the above-entitled court, Plaintiff Daniel Alcaraz (“Plaintiff”) will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Class Action and PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed Declaration of Ari J. Stiller as Exhibit “1”;

2. Affirming Kingsley & Kingsley, APC as Class Counsel;

3. Affirming Daniel Alcaraz as Class Representative and awarding an enhancement award of \$5,000.00;

4. Awarding Phoenix Settlement Administrators claims administration fees of \$5,500.00 for its services as Administrator; and,

5. Entering judgment.

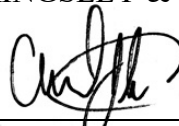
This Motion will be made pursuant to Code of Civil Procedure section 382 and California Rule of Court, rule 3.769 on the grounds that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Class Members and the parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Ari J. Stiller; Daniel Alcaraz, Jarrod Salinas of Phoenix Claims Administrators, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: March 13, 2024

KINGSLEY & KINGSLEY, APC

By:



Ari J. Stiller
Attorneys for Plaintiff DANIEL ALCARAZ and the
proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Daniel Alcaraz (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

- 5 1. Grant final approval of the settlement in this case pursuant to the Class Action and
6 PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-
7 filed Declaration of Ari J. Stiller as Exhibit “1”;
- 8 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
9 Attorneys’ Fees and Costs;
- 10 3. Award Phoenix Settlement Administrators claims administration fees of
11 \$5,500.00 for its services as Administrator;
- 12 4. Affirm named Plaintiff Daniel Alcaraz as Class Representative and award a
13 cumulative Class Representative payment of \$5,000.00; and
- 14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 **A. Litigation Overview and Procedural History**

17 Grifols Biologicals (“Defendant”) is a pharmaceutical and chemical manufacturer that
18 operates throughout the United States. Plaintiff performed work as a manufacturing technician
19 for Defendant from September 2015 to June 2021. Plaintiff and the Proposed Class worked as
20 nonexempt employees who earned hourly wages, including a shift differential or incentive pay.

21 On November 19, 2021, Plaintiff filed the present lawsuit. (Declaration of Ari J. Stiller
22 ¶4.) (“Stiller Decl.”) He alleged six causes of action, including meal and rest break violations,
23 failure to reimburse expenses, wage statement violations, untimely payment of final wages, and
24 penalties pursuant to Business & Professions Code section 17200. (Stiller Decl. ¶5.) Also on
25 November 19, 2021, Plaintiff provided written notice to the Labor and Workforce Development
26 Agency (“LWDA”) and Defendant setting forth his intent to pursue claims pursuant to Labor
27 Code section 2699, et seq. (“PAGA”) for these same violations. (Stiller Decl. ¶6.) Plaintiff’s core
28 theory of liability was that Defendant failed to blend shift differential pay into the “regular rate

of compensation” for meal-and-rest-period premium wages, resulting in an underpayment according to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

Plaintiff filed a First Amended Class and Representative Action Complaint on January 24, 2022, adding an additional cause of action under PAGA based on the same Labor Code violations at issue in the Complaint, and limiting the Proposed Class to all non-exempt employees working for Defendant from December 7, 2018 to the present (hereafter, the “Lawsuit” or “Operative Complaint”) (Stiller Decl. ¶7.)

After engaging in written discovery and Plaintiff’s deposition, the Parties filed a Stipulation re: Class Certification and Striking of Remaining Class Allegations, certifying Plaintiff’s waiting time penalties claim under Labor Code section 203 and striking Plaintiff’s remaining proposed class allegations, leaving only the certified waiting time penalties claim, Plaintiff’s individual claims, and the PAGA claim based on waiting time penalties. (Stiller Decl. ¶8.) The rationale for this stipulation was that Grifols had retroactively repaid meal and rest period premium wages at the blended rate, leaving only a claim for waiting time penalties on behalf of those workers who had left their job without having been repaid within three days of separation/termination, as required by Labor Code section 203. (Stiller Decl. ¶9.)

B. The Discovery Process

The Parties have engaged in significant discovery. Prior to negotiating the Settlement and reaching the stipulation to narrow the case, Plaintiff obtained, through formal discovery, Plaintiff’s personnel file; timekeeping and pay records for Plaintiff, the Class and Aggrieved Employees; relevant policy documents for Defendant’s bonus programs that gave rise to the allegations at issue in the settlement; and the total number of Class Members. (Stiller Decl. ¶10.) Defendant also deposed Plaintiff Alcaraz, and Plaintiff’s counsel received additional informal discovery for settlement purposes, including pay records for the former employees who Plaintiff alleged to have claims for waiting time penalties, as well as a description of the number of employees affected by the alleged violation at different times. (Stiller Decl. ¶11.)

Defendant denies any liability or wrongdoing associated with the claims alleged in the Action, disputes the damages and penalties, and further contends that, for any purpose other than

1 settlement, Plaintiff's claims are not appropriate for class or representative action treatment.
2 (Stiller Decl. ¶12.) Defendant contends that it has complied with the California Labor Code, and
3 the Industrial Wage Commission Orders. (*Id.*)

4 Based on their own independent investigation and evaluation, Class Counsel is of the
5 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best
6 interest of the settlement classes in light of all known facts and circumstances, including the risk
7 of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
8 representative action trial on the merits, and numerous potential appellate issues. (Stiller Decl.
9 ¶13.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to
10 avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully,
11 finally, and forever settle, compromise and discharge all disputes and claims arising from or
12 relating to the Action on the terms set forth here. (*Id.*)

13 C. Preliminary Approval

14 On November 27, 2023, the Court issued an order preliminarily approving the settlement,
15 approving the proposed Notice of Class Action Settlement, ordering that the Administrator send
16 notice to the Class, and setting a date for the Final Approval and Fairness Hearing. (Stiller Decl.
17 ¶14.)

18 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

19 A. The Settlement Class

20 For purposes of Agreement, the Settlement Class is defined as: "all former non-exempt
21 employees of Defendant in California who earned incentive compensation and meal or rest
22 premiums in the same workweek and who left employment with Defendant at any point from
23 July 15, 2021 to March 25, 2022." (Stiller Decl. ¶15.) The Class Period is November 19, 2018
24 through the date of preliminary approval. (Stiller Decl. ¶16; Ex. 1 at ¶1.12.) There are 43
25 Settlement Class Members. (Stiller Decl. ¶17; Ex. 1 at ¶4.1; Salinas Decl. ¶ 3.)

26 B. The Aggrieved Employees

27 For purposes of the Agreement, the Aggrieved Employees are defined as: "all former
28 nonexempt employees of Defendant in California who earned incentive compensation and meal

1 or rest premiums in the same workweek and who left employment with Defendant at any point
2 from July 15, 2021 to March 25, 2022.” (Stiller Decl. ¶18; Settlement, Ex. 1 at ¶1.4.) The PAGA
3 Period is November 19, 2020 through preliminary approval. (Stiller Decl. ¶19; Ex. 1 at ¶1.31.)
4 There are 43 Aggrieved Employees. (Stiller Decl. ¶20; Ex. 1 at ¶¶ 1.4, 1.5, 4.1; Salinas Decl. ¶
5 3.)

6 C. Settlement Payments

7 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
8 Settlement Amount of \$105,000.00, which includes the sum of the Individual Class Payments,
9 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
10 Expenses, the Class Representative Service Payment, and the Administrator’s Expenses. (Stiller
11 Decl. ¶21; Ex. 1 at ¶1.22.)

12 Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to
13 determine the Net Settlement Amount for distribution to the Class as follows:

14	Gross Settlement Amount:	\$	105,000.00
15	Less Class Counsel’s Fees (1/3):	\$	35,000.00
16	Less Class Counsel’s Costs:	\$	9,600.00
17	Less Administrator Costs:	\$	5,500.00
18	Less PAGA Payment:	\$	10,000.00
			<i>(\$7,500.00 to the LWDA; \$2,500.00</i>
			<i>to remain in the Net Settlement</i>
			<i>Amount)</i>
19	Named Plaintiff Enhancement:	<u>\$</u>	<u>5,000.00</u>
20	Net Settlement Amount:	\$	42,400.00

21 D. Individual Settlement Payments

22 The amount of each Participating Class Member’s Individual Class Payment is an
23 individualized amount based on the number of compensable workweeks worked by the
24 Participating Class Member during the Class Period. (Ex. 1 at ¶3.2.4; see also Ex. A to the
25 Agreement [Class Notice].) This individual amount shall be determined according to the
26 settlement payment formula set forth in the Agreement. (See Ex. 1 at ¶3.2.4; Id. at Ex. A to the
27 Agreement [Class Notice].) The Agreement provides for a Workweek dispute process. (See Ex. 1
28 at ¶7.6.)

One-hundred percent (100%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for penalties and any other non-taxable items. (Ex. 1 at ¶3.2.4.1.) The Individual PAGA Payment shall be determined according to the settlement payment formula set forth in the Agreement (See Ex. 1 at ¶3.2.5.1.) Based on these calculations, the average individual settlement share is \$927.91 per Participating Class Member. (Salinas Decl. ¶13.)

E. Class Notice

The Court approved the proposed Class Notice, and directed the mailing of the Notice by first-class mail to Class Members in accordance with the proposed implementation schedule. (Stiller Decl. ¶22.) The procedures for giving notice to the Class Members, as set forth in the Agreement and Plaintiffs’ Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Salinas Decl. ¶2.) Phoenix Settlement Administrators received zero (0) request to be excluded (“opt-outs”) from the proposed Agreement and zero (0) objections. (Salinas Decl. ¶¶8-9.)

F. Check Mailed Settlement – No Reversion

The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every Class Member will receive a settlement check and Class Members do not need to submit a claim in order to receive a settlement check. Any funds that remain uncashed after 180 days shall be turned over by the Administrator, with information for each Class Member who failed to timely cash his/her settlement check, to the Bet Tzedek Legal Services (“Cy Pres Recipient”), consistent with Code of Civil Procedure section 384(b). (Ex. 1 at ¶4.4.3.) Counsel do not have any interest or involvement in the governance of this cy pres recipient or stand to receive any benefit from it as a result of its selection. (Stiller Decl. ¶ 23.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the court

1 directs” In deciding whether to grant final approval to a proposed class action settlement
2 under Code of Civil Procedure § 382, the court’s overriding concern is whether the proposed
3 settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
4 1794, 1801.)

5 A. The Settlement is Entitled to a Presumption of Fairness

6 “A presumption of fairness exists where: (1) the settlement is reached through arm’s
7 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
8 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
9 objectors is small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the
10 present case meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

11 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
12 arm’s-length negotiations. All settlement discussions were made by experienced and informed
13 counsel, who believe that this settlement represents a favorable resolution for the Class
14 Members. (Stiller Decl. ¶24.) The settlement negotiations have been, at all times, adversarial
15 and non-collusive, and no self-dealing or other type of misconduct by either side has taken place.
16 (Stiller Decl. ¶25.) The reason that the parties did not involve a mediator is that there are only 43
17 class members and only one claim at issue so the potential damages and risk could be easily
18 assessed. Moreover, the potential damages were not significant enough to justify the expense of a
19 mediator (often \$10,000 or more) when experienced counsel felt competent to resolve this case
20 through their own adversarial negotiations. (Stiller Decl. ¶26.)

21 Second, the Parties engaged in formal and informal discovery that permitted Class
22 Counsel to fairly evaluate the strength of the case and the risks associated with ongoing
23 litigation. In formal discovery, Defendant produced Plaintiff’s personnel file; timekeeping and
24 pay records for Plaintiff, the Class and Aggrieved Employees; relevant policy documents for
25 Defendant’s bonus programs that gave rise to the allegations at issue in the settlement; and the
26 total number of Class Members. (Stiller Decl. ¶27.) Defendant also deposed Plaintiff Alcaraz.
27 (Stiller Decl. ¶28.) Defendant produced additional data and documents informally for purposes
28 of settlement. (Stiller Decl. ¶29.) This included pay records for the former employees who

1 Plaintiff alleged to have claims for waiting time penalties, as well as a description of the number
2 of employees affected by the alleged violation at different times. (*Id.*) Receipt of appropriate
3 discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each
4 claim alleged in the lawsuit. (Stiller Decl. ¶30.)

5 Third, Class Counsel have significant experience in cases of this type, including several
6 years prosecuting wage, hour, and working condition violations. (Stiller Decl. ¶31.) Class
7 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
8 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and
9 that the average recovery for each Class Member of \$927.91 is substantial, given the risks
10 inherent in litigation and the fact that there is only one underlying core violation (untimely
11 payment of wages) for each class member. (Stiller Decl. ¶32.)

12 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were
13 zero (0) request to be excluded and no objectors. (Salinas Decl. ¶¶8-9.) As all of the *Dunk*
14 factors are satisfied, this settlement is entitled to a presumption of fairness.

15 B. The Court Should Approve This Class Action Settlement Because it Satisfies Each
16 of the *Kullar* Factors

17 In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth
18 several factors that the Court should analyze in determining whether to approve a class action
19 settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
20 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
21 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
22 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
23 governmental participant; and (8) the reaction of the class members to the proposed settlement.

24 The proposed settlement satisfies each of these factors. (Stiller Decl. ¶33.) Class Counsel
25 conducted extensive formal and informal discovery before entering into meaningful settlement
26 negotiations in this matter. (Stiller Decl. ¶¶10-13.) This discovery permitted Class Counsel to
27 fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Stiller
28 Decl. ¶34.) Class Counsel is experienced in handling wage and hour class actions and, after

weighing all of the following factors, supports this Agreement. (Stiller Decl. ¶35.)

1. The Strength of Plaintiffs' Case

This case started out alleging that Defendant failed to compensate employees for meal and rest period premium wages at the “regular rate of compensation,” as required by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. Plaintiff claimed that Defendant failed to blend incentive compensation into the regular rate. (Stiller Decl. ¶36.) In the course of litigation, Defendant revealed that, in March 2022, it made retroactive payments to compensate employees at the higher blended rate that Plaintiff alleges was owed. (Stiller Decl. ¶37.) The only remaining issue was whether Defendant was liable for waiting time penalties under Labor Code section 203 for not timely compensating the workers who had already left their employment by the time the retro payments issued. (Stiller Decl. ¶38.) The former employees who received retro pay for meal and rest periods at the blended rate consists of 43 people—a small subset of the original proposed class. (Stiller Decl. ¶39.)

a) The Risks Associated with the Waiting Time Penalty

This claim alleges that Defendant failed to pay all wages due upon termination or resignation by not timely compensating former employees for meal and rest period premium wages under *Ferra*. Labor Code section 203(a) provides:

If an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Under Labor Code section 203, a “‘willful’ failure to pay wages ... occurs when an employer intentionally fails to pay wages to an employee when those wages are due.” (Cal. Code Regs., tit. 8, § 13520; see also *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 [“‘willful’ simply means that ‘the employer intentionally failed or refused to perform an act which was required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or wrong toward the other party’].)

Here, Plaintiff contends that Defendant failed to pay a group of former employees the amounts owed for meal and rest period premium wages within the time periods prescribed by

1 Section 203 because it took eight months after *Ferra* to issue retro payments, and the Settlement
2 Class consists of people who left their positions before the retro payments issued. (Stiller Decl.
3 ¶40.) The California Supreme Court decided *Ferra* on July 15, 2021 and Defendant issued retro
4 payments on March 25, 2022. (Stiller Decl. ¶ 41.) Defendant asserts that any alleged nonpayment
5 at the time of termination could not be “wilfull” because Defendant took a reasonable time after
6 *Ferra* to determine the wages owed, and then promptly paid those wages when the calculations
7 were complete. Plaintiff, on the other hand, argues that eight months taken to issue retro
8 payments is unreasonable and that there are thus triable issues of whether the delayed payment
9 for employees who left their jobs after *Ferra* was wilfull. (Stiller Decl. ¶ 42.)

10 This claim presented significant risk because, to prevail on it, Plaintiff would need to
11 prove both that the underlying wages were owed and that the delayed payment was wilfull based
12 on the time taken for Defendant to issue retro payments after *Ferra*. Plaintiff recognized risk
13 from Defendant’s argument that it possessed a good faith belief that the wages were not owed
14 until *Ferra* was decided, and after that point, it acted diligently to complete retroactive payments.
15 (Stiller Decl. ¶ 43.)

16 Defendant also argued that the text of Labor Code section 203 establishes a penalty that
17 starts upon termination or within three days of resignation, but that only continues until the
18 underlying wages are paid “or until an action therefor is commenced...” (Lab. Code § 203.)
19 Defendant argued that the class’s right to recover waiting time penalties cut off upon the filing of
20 this action on November 19, 2021. (See, e.g., *Triad Data Services, Inc. v. Jackson* (1984) 153
21 Cal.App.3d Supp. 1 [“penalty wages as provided under the Labor Code are cut off . . . when such
22 action is filed with a competent court”]; *Medrano v. D’Arrigo Bros. Co.* (N.D. Cal. Mar. 17,
23 2004) 2004 U.S. Dist. LEXIS 4807, *20 [in a class action, “waiting time penalties are applicable
24 to any employees who were permanently discharged after the Morillon decision and *before this*
25 *suit was filed*....”].) Plaintiff disagrees with the *Medrino* analysis and that the filing of this
26 lawsuit cut off waiting time penalties as to absent class members. There are no published cases
27 cutting off 203 penalties of class members when a class action for the underlying wages is
28 commenced. Putative class members still have the right to initiate their own actions and to opt

1 out of any class after the case is filed, so the cutoff would not apply to them—and the PAGA
2 penalties continue regardless. (Stiller Decl. ¶ 44.) Despite disagreeing with Defendant’s position,
3 Plaintiff still recognized the significant risk posed by its arguments. (Stiller Decl. ¶45.)

4 b) The Risks Associated with the PAGA Claim

5 Plaintiff also perceived risk in continuing with his PAGA claim. California’s Private
6 Attorneys General Act (“PAGA”), Labor Code § 2698, et seq., permits private litigants to
7 recover civil penalties for violations of the Labor Code. PAGA provides that plaintiffs may
8 recover any civil penalties specified in an underlying statute (section 2699(a)) or, if none are
9 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
10 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

11 The Parties discounted the PAGA claim for multiple reasons. First, the PAGA claim
12 asserts the same 203 violation as the previously discussed class claims. The same risk on the
13 merits that justifies a settlement of the class 203 claims also supports settlement of PAGA. The
14 203 claim itself was derivative of an underlying wage claim. It is uncertain whether the Court
15 would award significant PAGA penalties supported only by a derivative violation.

16 Second, a court has discretion to award less than the maximum penalty. Labor Code §
17 2699(e)(2) provides that “a court may award a lesser amount than the maximum civil penalty
18 amount specified by this part if, based on the facts and circumstances of the particular case, to do
19 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
20 (Lab. Code § 2699(e)(2); see e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th
21 504, 241 [affirming award of 10% of maximum PAGA penalty].) Finally, the Settlement Class is
22 compensated for these violations in the proposed Agreement, and thus the Court may see any
23 PAGA recovery for these same violations as duplicative. The Agreement’s contemplated PAGA
24 payment of \$10,000.00 is appropriate. (Stiller Decl. ¶46; see *Nordstrom Commissions Cases*
25 (2010) 186 Cal.App.4th 576, 589 [affirming settlement allocating \$0 of \$6.4 million settlement
26 to PAGA penalties].)

27 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

28 Even though the Court granted class certification on October 21, 2022, trial of a case

1 involving over 40 Settlement Class Members would require extensive litigation costs, and a
2 significant time investment by the parties. (Stiller Decl. ¶47.) Given the complexity and unsettled
3 nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and
4 costly appeal, further delaying any relief to the class. (Stiller Decl. ¶48.)

5 3. The Risk of Maintaining Class Action Status through Trial

6 Plaintiff does not believe that decertification is likely. (Stiller Decl. ¶49.)

7 4. The Amount Offered in Settlement

8 It was very difficult for the Parties to reach this Settlement of \$105,000.00. (Stiller Decl.
9 ¶50.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
10 (Stiller Decl. ¶51.) The Parties arrived at it after extensive investigation and discovery, careful
11 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
12 likely to be awarded to the class were the trier of fact to find Defendant liable. (*Id.*)

13 a) Plaintiff's Assessment of Defendant's Maximum Exposure

14 Plaintiff valued the Waiting Time Claim at \$271,224.98. (Stiller Decl. ¶51.) Plaintiff
15 determined that accepting a discount on this claim was appropriate because, if the Court accepted
16 Defendant's "good faith belief" defense, the class would recover nothing. (Stiller Decl. ¶52.)

17 Finally, Plaintiff calculated the value of the PAGA claim at \$237,900 for Settlement
18 Class Members (using \$100 per pay period). (Stiller Decl. ¶53.) The main risk taken into account
19 with PAGA is the discretionary nature of the penalty award. (Stiller Decl. ¶54.) A judge can
20 award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory
21 – one cent per wage statement. (Stiller Decl. ¶55.) While there is a dearth of available authority,
22 in Plaintiff's view, were he to succeed on the underlying Labor Code 203 violation, it is not
23 likely that the Court would also award a large amount of penalties of top of any 203 penalties,
24 which are themselves derivative of the underlying wage violation. (Stiller Decl. ¶56.)

25 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
26 Settlement Class Members' and Aggrieved Employees' claims was approximately \$509,124.98.
27 (Stiller Decl. ¶57.) However, as a result of the forgoing risks on the merits, Class Counsel
28 believes the Gross Settlement Amount of \$105,000.00 is fair and reasonable. (Stiller Decl. ¶58.)

1 5. The Extent of Discovery Completed and Stage of the Proceedings

2 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
3 claims alleged. (Stiller Decl. ¶59.) The agreement to settle did not occur until Class Counsel
4 exchanged and possessed sufficient information to make an informed judgement regarding the
5 likelihood of success on the merits and the results that could be obtained through further
6 litigation. (*Id.*)

7 6. The Experience and Views of Counsel

8 Kingsley & Kingsley is very experienced in prosecuting and defending employment
9 litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition
10 violations. (Stiller Decl. ¶¶60-62.) The firm is well versed in class action litigation and has
11 diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently
12 serves as Class Counsel for dozens of pending class action lawsuits throughout California. (*Ibid.*)
13 A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
14 accompanying declaration of Ari J. Stiller. (*Ibid.*) After factoring in the risks explained above,
15 Class Counsel believes that the proposed settlement is fair and reasonable. (Stiller Decl. ¶62.)

16 7. The Presence of a Governmental Participant

17 There is no governmental participant in this action, aside from the Labor and Workforce
18 Development Agency's oversight of the PAGA claim. (Stiller Decl. ¶63.) The LWDA has not
19 responded to the notices provided regarding preliminary approval, and as noted below, Plaintiff
20 is serving the present motion on the LWDA concurrently with this filing. (Stiller Decl. ¶64.)

21 8. The Proposed Plan of Allocation Is Fair and Reasonable

22 Plans of allocation are subject to the same standard of review as class action settlements;
23 they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service*
24 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
25 compensates Settlement Class Members pro rata based on the number of compensable
26 Workweeks worked by the Settlement Class Member during the Class Period. The lump sum
27 payment to each Settlement Class Member not excluding him/ herself will be determined on an
28 individualized basis based upon the Workweeks worked by the Settlement Class Member. (Ex. 1

at ¶3.2.4.) This allocation distributes funds proportionally to each class member’s potential damages and should therefore be approved as fair, adequate, and reasonable. (Stiller Decl. ¶65.)

9. The Reaction of the Class Members to the Proposed Settlement

To date, there are zero (0) request to be excluded from the proposed Agreement and zero (0) objections. Salinas Decl. ¶¶8-9.) This indicates that the reaction of Class Members is positive and weighs in favor of approval.

V. ENHANCEMENT TO PLAINTIFF

Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Class Representative Daniel Alcaraz for his work on behalf of the Class. (Stiller Decl. ¶104.) “Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of \$300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

Mr. Alcaraz is an adequate class representative because he has diligently, adequately and fairly represented the Class and has not placed his interests above any member of the Class. (*see* Declaration of Daniel Alcaraz (“Alcaraz Decl.”) ¶¶4-11.)

Here, Class Counsel requests an enhancement for Mr. Alcaraz’s valiant effort and time expended in this matter. The time spent by Daniel Alcaraz is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Settlement Class

1 Members; providing formal discovery responses; sitting for his deposition; and responding
2 promptly to Class Counsel's communications regarding settlement. (Stiller Decl. ¶105.) Thus, in
3 addition to the sums paid to Settlement Class Members, Plaintiff requests a proposed litigation
4 enhancement in the amount of \$5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1
5 at ¶3.2.1.) (Stiller Decl. ¶106; Alcaraz Decl. ¶12.) As set forth in the Agreement, Plaintiff will
6 also be entering into a general release of liability pursuant to Civil Code Section 1542. (Stiller
7 Decl. ¶107; Ex. 1 at ¶5.1.1.)

8 Class Counsel considers this to be a fair and reasonable enhancement. (Stiller Decl.
9 ¶108.) The enhancement takes into consideration the time, effort, and expense incurred by Mr.
10 Alcaraz in coming forward to litigate this matter on behalf of all Class Members. (Stiller Decl.
11 ¶109.) Additionally, the Class Representative was at risk for paying for Defendant's costs in the
12 event that Defendant prevailed at trial. (Stiller Decl. ¶110.)

13 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

14 As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class
15 Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce
16 Development Agency's ("LWDA") website on the date this Motion is filed, as required by
17 statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email
18 from the LWDA confirming receipt is attached to the Declaration of Ari J. Stiller as Exhibit "6."
19 (Stiller Decl. ¶115.)

20 **VII. CONCLUSION**

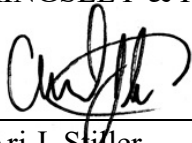
21 Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable,
22 and in the best interest of the Class Members. Therefore, Plaintiff respectfully requests that the
23 Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees
24 and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs;
25 (3) award Phoenix Settlement Administrators claims administration fees of \$5,500.00; (4) award
26 the Class Representative an enhancement of \$5,000.00; and (5) enter judgment.

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28 ///

1 DATED: March 13, 2024

KINGSLEY & KINGSLEY, APC

2
3 By: 

4 Ari J. Stiller

5 Attorneys for Plaintiff DANIEL ALCARAZ and the
6 proposed class
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(PROOF OF SERVICE)

[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On March 13, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Daniel J. McQueen, Esq.
daniel.mcqueen@afslaw.com
ArentFox Schiff
555 W 5th St Fl 48
Los Angeles, CA 90013

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 13, 2024, at Chino, California.



Leslie Sanchez