

FILED
Superior Court of California
County of Los Angeles

DEC 14 2023

David W. Slayton, Executive Officer/Clerk of Court

By: N. Navarro, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

KEITH HAYNES, individually, and on
behalf of all others similarly situated,

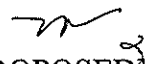
Plaintiff,

v.

CAPSULE CORPORATION, a Delaware
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21STCV47285


**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: December 14, 2023

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiff Keith Haynes sues his former employer, Defendant Capsule Corporation ("Defendant" or "Capsule"), for alleged wage and hour violations. Defendant is a Delaware corporation that operates as a mail order pharmacy with

1 locations across the United States, including California. Plaintiff seeks to represent a
2 class of Defendant's current and former non-exempt employees.

3 On December 28, 2021, Plaintiff filed a class action complaint against Defendant
4 alleging causes of action for: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§
5 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab.
6 Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7,
7 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5)
8 Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure
9 to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to
10 Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair
11 Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.].

12 On June 7, 2022, Plaintiff filed the operative First Amended Complaint, adding a
13 ninth cause of action for Civil Penalties Under the Private Attorneys General Act
14 ("PAGA") (Cal. Lab. Code §§ 2699, et seq.).

15 On December 13, 2023, the parties participated in a mediation presided over by
16 Steven G. Mehta, Esq., at which the parties drafted and executed a Memorandum of
17 Understanding. The terms of settlement were finalized in a Class Action and PAGA
18 Settlement Agreement, a copy of which was filed with the Court on June 6, 2023.

19 On June 20, 2023, the Court issued a "checklist" regarding deficiencies in
20 Plaintiff's Motion for Preliminary Approval to be remedied by additional briefing. On
21 June 21, 2023, the Court called the matter for hearing and discussed the issues set forth
22 in the checklist with counsel. In response, on July 14, 2023, counsel filed further
23 briefing as well as an Amended Class Action and PAGA Settlement Agreement.

24 On July 21, 2023, the Court issued a tentative ruling on the parties via Case
25 Anywhere and called the matter for hearing. Pursuant to the request of the parties, the

1 matter of Plaintiff's Motion for Preliminary Approval was continued to August 7, 2023.
2 Prior to that hearing, Plaintiff's counsel filed additional briefing and a further revised
3 settlement agreement to address remaining issues raised by the Court. All references
4 below are to the Amended Class Action and PAGA Settlement Agreement attached to
5 the Declaration of Allen Feghali filed July 27, 2023.

6 The settlement was preliminarily approved on August 7, 2023. Notice was given
7 to the Class Members as ordered (see Declaration of Gillian McCreedy ("McCreedy
8 Decl.")).

9 Before the Court is Plaintiff's motion for final approval of the Settlement
10 Agreement, including for payment of fees, costs, and a service award to the named
11 plaintiff.

12 13 **II. THE TERMS OF THE SETTLEMENT**

14 15 **A. SETTLEMENT CLASS DEFINITION**

16 "Class" means all individuals who worked for Capsule in the State of California
17 as non-exempt, hourly-paid employees at any time during the period from December
18 28, 2017 to February 23, 2023. (§1.5)

19 "Class Period" means the period from December 28, 2017 to February 23, 2023.
20 (§1.12)

21 "Aggrieved Employee" means all individuals who worked for Capsule in the
22 State of California as non-exempt, hourly-paid employees at any time during the period
23 from December 28, 2020 to February 23, 2023. (§1.4)

24 "PAGA Period" means the period from December 28, 2020 to February 23,
25 2023. (§1.32)

1 "Participating Class Member" means a Class Member who does not submit a
2 valid and timely Request for Exclusion. (¶1.35)

3
4 **B. THE MONETARY TERMS OF SETTLEMENT**

5 The essential monetary terms are as follows:

- 6 • The Gross Settlement Amount ("GSA") is **\$162,500** (¶3.1). This includes
7 payment of a PAGA penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000)
8 and 25% to the Aggrieved Employees (\$5,000) (¶3.2.5).
 - 9 ○ Escalator Clause: If the actual number of Workweeks for the Class
10 Members during the Class Period increases by more than 15% beyond
11 3,035 Workweeks, the Gross Settlement Amount will be increased by the
12 additional percentage difference in excess of 15% beyond 3,035
13 Workweeks. Capsule will have the sole option, at its discretion, to select a
14 date marking the end of the Class Period that may prevent the triggering
15 of this escalation clause. (¶8)
 - 16 ○ At final approval, the settlement administrator represents that the Class
17 List contained data for 94 Class Members and the sum of all Workweeks
18 worked by the Class amounted to 3,758, which is 23.8% higher than the
19 estimate of 3,035 month provided in the Agreement. Pursuant to
20 Settlement Agreement ¶8, Defendant Capsule exercised its option to
21 shorten the Class Period to end on January 14, 2023. The administrator
22 represents that the updated Workweek total for the Class up to January
23 14, 2023 is 3,478, which is 14.6% higher than the estimate of 3,035
24 months provided in the agreement and therefore falls below the 15%
25 threshold set by the escalator clause. (McCreedy Decl. ¶7; see also Supp.

Decl. of Kane Moon filed November 21, 2023, ¶3.) The revised Class Period end date of January 14, 2023 was disclosed to the Class on the Notice form. (McCreedy Decl., Exhibit A.)

- The Net Settlement Amount (“Net”) (\$51,833.33) estimated at preliminary approval is the GSA less:
 - Up to \$54,166.67 (33 1/3%) for attorney fees (¶3.2.2);
 - Up to \$20,000 for attorney costs (*Ibid.*);
 - Up to \$7,500 for a service award to the proposed class representative (¶3.2.1); and
 - Up to \$9,000 for settlement administration costs (¶3.2.3).
- Defendant will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments (¶3.1).
- Assuming the Court approves all maximum requested deductions, approximately \$57,810.76 will be available for automatic distribution to participating class members. The average settlement share will be approximately \$615.01. (\$57,810.76 Net ÷ 94 class members = \$615.01). In addition, each Aggrieved Employee will receive a portion of the PAGA penalty (\$5,000 or 25% of \$20,000 PAGA penalty). The highest amount payable is \$1616.19, with the lowest being \$17.58. Haynes’ settlement share is approximately \$165.10. (McCreedy Decl. ¶ 16)
- There is no Claim Requirement (¶3.1).
- The settlement is not reversionary (¶3.1).
- Individual Settlement Share Calculation: Each Participating Class Member’s Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class

Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (§3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (§3.2.4.2)

- **PAGA Payment Calculation:** The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (§3.2.5.1)
- **Tax Withholdings:** Each Participating Class Member's Individual Class Payment will be allocated as 33% to wages; 67% to non-wages, expense reimbursement, interest and penalties (§3.2.4.1). The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (§3.2.5.2)
- **Funding of Settlement:** Capsule shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Capsule's share of payroll taxes by transmitting the funds to the Administrator no later than business 14 days after the Effective Date. (§4.3)
- **Distribution:** Within 14 days after Capsule funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

(¶4.3) The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (¶4.3.1)

- Uncashed Settlement Payment Checks: The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided.

(¶4.3.1) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (¶4.3.3)

C. TERMS OF RELEASES

- Releases of Claims: Effective on the date when Capsule fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows: (¶5)
- Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims, demands, rights, liabilities, and/or causes of action, in law or in equity, that were alleged, or reasonably could have been alleged, based on the facts and allegations stated in the Operative Complaint, and ascertained in

1 the course of the Action, for unpaid wages (including premiums) or other
2 compensation allegedly owed, or for damages, penalties (including without
3 limitation waiting time penalties under Labor Code section 203), restitution,
4 interest, liquidated damages, attorneys' fees, or costs, or any other recovery
5 based on or arising out of the claims and allegations alleged in the Action,
6 including under the California Labor Code and corresponding provisions of
7 Wage Orders, for: failure to pay wages including minimum or overtime wages;
8 failure to provide meal periods; failure to provide rest periods; failure to
9 indemnify necessary business expenditures; failure to timely pay final wages at
10 termination; failure to provide accurate itemized wage statements; unfair
11 business practices; and any and all corresponding claims that could have been
12 brought under California or federal law including without limitation under the
13 Fair Labor Standards Act (FLSA), which Participating Class Members shall be
14 deemed to have consented to in writing by negotiating their Individual Class
15 Payment checks, which shall include the following language, on the face of each
16 check and above the Participating Class Members' endorsement line on the back
17 of the check: "My signature on the endorsement line of this check and/or my
18 action in cashing, depositing or otherwise negotiating this check signifies my
19 consent to join the Action for purposes of releasing all claims arising under the
20 FLSA" in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 899 F.3d
21 1106, 1110-11 (9th Cir. 2018) (holding opt-out release of California state law
22 claims was res judicata against FLSA claims "which were direct federal law
23 counterparts to the state law claims settled"); accord *Richardson v. Wells Fargo*
24 *Bank, N.A.*, 839 F.3d 442, 451-52 (5th Cir. 2016) (plaintiff who became party to
25 the opt-out Rule 23 settlement was bound by all settlement terms, including

1 release of FLSA claims), that might have occurred during the Class Period,
2 including claims for failure to pay wages (including overtime or premium
3 wages). It is the intent of the Parties that the judgment entered by the Court upon
4 final approval of the Settlement shall have res judicata effect and be final and
5 binding upon Plaintiff and all Class Members who have not expressly opted out
6 of the settlement (including, e.g., “(a) any and all claims involving any alleged
7 failure to pay minimum wage; etc.). (§5.2)

- 8 • Participating Class Members do not release any other claims, including claims
9 for vested benefits, wrongful termination, violation of the Fair Employment and
10 Housing Act, unemployment insurance, disability, social security, workers’
11 compensation, or claims based on facts occurring outside the Class Period. (§5.2)
- 12 • Release by Aggrieved Employees: All Aggrieved Employees, Plaintiff, and the
13 State of California are deemed to release, on behalf of themselves and their
14 respective former and present representatives, agents, attorneys, heirs,
15 administrators, successors, and assigns, the Released Parties from all claims,
16 demands, rights, liabilities, and/or causes of action, for PAGA penalties under
17 the California Private Attorneys General Act, Labor Code section 2698, et seq.,
18 that were alleged, or reasonably could have been alleged, based on the PAGA
19 Period facts or allegations stated in the Operative Complaint and alleged in the
20 PAGA Notice or ascertained in the course of the Action including for: failure to
21 pay wages including minimum or overtime wages; failure to provide meal
22 periods; failure to provide rest periods; failure to indemnify necessary business
23 expenditures; failure to timely pay final wages at termination; and failure to
24 provide accurate itemized wage statements. (§5.3)

- “PAGA Notice” means Plaintiff’s December 24, 2021 letter to Capsule and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a). (§1.33)
- “Released Parties” means: Capsule and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates, parents, charitable organizations, partners, trustees, agents, representatives, attorneys, and servants, past and present and each of them. (§1.41)
- The named Plaintiff will also provide a general release and a waiver of the protections of Cal. Civ. Code §1542. (§5.1)
- The releases are effective on the date when Defendant fully funds the entire Gross Settlement Amount, which will occur no later than business 14 days after the Effective Date. (§4.3)

III. ANALYSIS OF SETTLEMENT AGREEMENT

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” Cal. Rules of Court, rule 3.769(h).

As discussed more fully in the Order conditionally approving the settlement, “[i]n a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class

1 action. The purpose of the requirement [of court review] is the protection of those class
2 members, including the named plaintiffs, whose rights may not have been given due
3 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
4 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
5 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
6 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
7 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
8 extent necessary to reach a reasoned judgment that the agreement is not the product of
9 fraud or overreaching by, or collusion between, the negotiating parties, and that the
10 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
11 quotation marks omitted].

12 “The burden is on the proponent of the settlement to show that it is fair and
13 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
14 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
15 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
16 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
17 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
18 1802. Notwithstanding an initial presumption of fairness, “the court should not give
19 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
20 116, 130. “Rather, to protect the interests of absent class members, the court must
21 independently and objectively analyze the evidence and circumstances before it in order
22 to determine whether the settlement is in the best interests of those whose claims will be
23 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
24 that determination, the court should consider factors such as “the strength of plaintiffs’
25 case, the risk, expense, complexity and likely duration of further litigation, the risk of

1 maintaining class action status through trial, the amount offered in settlement, the extent
2 of discovery completed and stage of the proceedings, the experience and views of
3 counsel, the presence of a governmental participant, and the reaction of the class
4 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
5 the court is free to engage in a balancing and weighing of factors depending on the
6 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

7 **A. A PRESUMPTION OF FAIRNESS EXISTS**

8 The Court preliminarily found in its Order of August 7, 2023 that the presumption
9 of fairness should be applied. No facts have come to the Court’s attention that would
10 alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption
11 of fairness as set forth in the preliminary approval order.

12 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

13 The settlement was preliminarily found to be fair, adequate and reasonable.
14 Notice has now been given to the Class and the LWDA. The notice process resulted in
15 the following:

16 Number of class members: 94

17 Number of notices mailed: 94

18 Number of undeliverable notices: 0

19 Number of opt-outs: 0

20 Number of objections: 0

21 Number of participating class members: **94**

22 (McCreedy Decl. ¶¶7-16.)

23 The Court finds that the notice was given as directed and conforms to due process
24 requirements. Given the reactions of the Class Members and the LWDA to the proposed
25

1 settlement and for the reasons set for in the Preliminary Approval order, the settlement is
2 found to be fair, adequate, and reasonable.

3
4 **C. CLASS CERTIFICATION IS PROPER**

5 For the reasons set forth in the preliminary approval order, certification of the
6 Class for purposes of settlement is appropriate.

7 **D. ATTORNEY FEES AND COSTS**

8 Class Counsel requests **\$54,166.67** (33 1/3%) for attorney fees and **\$14,022.57** for
9 costs. (MFA at 16:24-26, 17:5-6.)

10 Courts have an independent responsibility to review an attorney fee provision and
11 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
12 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
13 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
14 503.

15 In the instant case, fees are sought pursuant to the percentage method, as cross-
16 checked by lodestar. (MFA at pp. 12-16.) The \$54,166.67 fee request is approximately
17 one-third of the Gross Settlement Amount.

18 A lodestar is calculated by multiplying the number of hours reasonably expended
19 by the reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
20 1095-1096 (*PLCM*). “Generally, ‘[t]he lodestar is calculated using the reasonable rate
21 for comparable legal services in *the local community* for noncontingent litigation of the
22 same type, multiplied by the reasonable number of hours spent on the case.’ ”
23 *Environmental Protection Information Center v. Dept. of Forestry & Fire Protection*
24 (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155
25 Cal.App.4th 1233, 1242-1243.

1 As to the reasonableness of the rate and hours charged, trial courts consider
2 factors such as “the nature of the litigation, its difficulty, the amount involved, the skill
3 required in its handling, the skill employed, the attention given, the success or failure,
4 and other circumstances.” *PLCM, supra*, 22 Cal.4th at p. 1096. “The evidence should
5 allow the court to consider whether the case was overstaffed, how much time the
6 attorneys spent on particular claims, and whether the hours were reasonably expended.”
7 *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

8 Attorney Moon represents that four attorneys at his firm spent a total of 110.75
9 hours on the action. (Declaration of Kane Moon ISO Final ¶50.) At hourly rates ranging
10 from \$395 to \$725, Class Counsel incurred a lodestar of \$73,611.25, which implies a
11 multiplier of 0.74 to reach the requested fees. (*Ibid.*) Moon provides summaries of the
12 attorneys’ experience (*id.* at ¶¶37-48) and contends that their hourly rates are reasonable
13 (*id.* at ¶50.a), though he does not specify whether their rates were approved by other
14 courts. He also summarizes the tasks performed on the case (*id.* at ¶54), but does not
15 attach billing records so that the Court can make an informed decision as to how much
16 time was spent on claims and the like. No lodestar is therefore calculated.

17 Nonetheless, the **\$54,166.67** fee request represents a reasonable percentage of the
18 total funds paid by Defendant. Further, the notice expressly advised class members of
19 the fee request, and no one objected. (McCreedy Decl. ¶14, Exhibit A thereto.)
20 Accordingly, the Court awards fees in the amount of **\$54,166.67**.

21 Class Counsel requests **\$14,022.57** in costs. This is less than the \$20,000 cap
22 provided in the settlement agreement (¶3.2.2). The amount was disclosed to Class
23 Members in the Notice, and no objections were received. (McCreedy Decl. ¶14, Exhibit
24 A thereto.) Costs include: Mediation (\$8,750), Complaint Fee (\$1,481.72), and Berger
25 Consulting (\$1,450). (Moon Decl. ISO Final, Exhibit 5.)

1 The costs appear to be reasonable and necessary to the litigation, are reasonable
2 in amount, and were not objected to by the class.

3 For all of the foregoing reasons, costs of **\$14,022.57** are approved.

4 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

5 Service awards are established in California and the Ninth Circuit in class
6 actions. See *Cellphone Termination Fee Case* (2010), 186 Cal.App.4th 1380, 1393-
7 1394 (noting the "scholarly debate about the propriety of individual awards to named
8 plaintiffs" and the "surprising dearth of California authority directly addressing this
9 question"); *In re Apple Device Litigation* (9th Cir. 2022) 50 F. 4th 769, 785; *Roes, 1-2 v.*
10 *SFBSC Mgmt., LLC* (9th Cir. 2019) 944 F.3d 1035, 1057 (reasonable incentive
11 awards are permitted to compensate class representatives for work on behalf of the class
12 and financial or reputational risk undertaken in bringing the action).

13 Their apparent purpose is to reimburse actual expenses or to compensate a plaintiff
14 where the market would not otherwise produce a plaintiff. *In Re Continental Securities*
15 *Litigation* (7th Cir. 1992) 962 F. 2d 566, 571-572. Under existing California and Ninth
16 Circuit authority they are permitted where there is a showing of the time and effort
17 expended by the individual and a reasoned explanation of financial or other risks
18 undertaken by the class representative. See *Clark v. American Residential Services LLC*
19 (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186
20 Cal.App.4th 1380, 1394-1395 ["Criteria courts may consider in determining whether to
21 make an incentive award include: (1) the risk to the class representative in commencing
22 suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered
23 by the class representative; (3) the amount of time and effort spent by the class
24 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack
25 thereof) enjoyed by the class representative as a result of the litigation.

(Citations.)”]. Although no amount is set, in the Ninth Circuit many courts have found \$5,000 presumptively reasonable. See *Morrison v. Am. Nat’l Red Cross* (N.D.Cal. Jan. 8, 2021, No. 19-cv-02855-HSG) 2021 U.S.Dist.LEXIS 4043, at *24 (citing cases).

In determining the reasonableness of a requested incentive award, some courts have considered, among other factors, the proportionality between the incentive award requested and the average class member's recovery. *Id.* See also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412-413. (Service award that was approximately twice what was paid to class members was appropriate exercise of Court’s discretion). In addition, a service award is not additional consideration for a release of additional claims. See *Grady v. RCM Techs., Inc.* (C.D.Cal. May 2, 2023, No. 5:22-cv-00842 JLS-SHK) 2023 U.S.Dist.LEXIS 84145, at *24-32 and cases cited therein.

Class Representative Keith Haynes requests an enhancement award of **\$7,500**. (MFA at 18:9-10.) He represents that his contributions to this action include: engaging in conversations with his attorneys about the case, identifying witnesses and providing documents to his attorneys, responding to his attorneys’ inquiries about his employment with Defendant, requesting case updates from his attorneys, asking them questions, discussing the mediation and proposed settlement terms with his attorneys, and reviewing and signing the settlement agreement. He estimates spending 25 hours on the action. (Declaration of Keith Haynes ISO Final ¶14.) He asserts that he undertook the risk that serving as a class representative would have a negative impact on his future employability, though he has not shown that this has occurred. (*Id.* at ¶15.)

In light of the above-described contributions to this action, and in acknowledgment of the benefits obtained on behalf of the class, a **\$5,000** service award to Plaintiff is reasonable and approved.

//

1 **F. SETTLEMENT ADMINISTRATION COSTS**

2 The Settlement Administrator, Simpluris, Inc., requests **\$9,000** in compensation
3 for its work in administering this case. (McCreedy Decl. ¶17.) At the time of
4 preliminary approval, costs of settlement administration were capped at \$9,000 (¶3.2.3).
5 Class Members were provided with notice of this amount and did not object. (McCreedy
6 Decl. ¶14, Exhibit A thereto.)

7 Accordingly, settlement administration costs are approved in the amount of
8 **\$9,000.**

9
10 **IV. CONCLUSION AND ORDER**

11 The Court hereby:

- 12 (1) Grants class certification for purposes of settlement;
13 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
14 (3) Awards **\$54,166.67** in attorney fees to Class Counsel, Moon Law Group, PC;
15 (4) Awards **\$14,022.57** in litigation costs to Class Counsel;
16 (5) Approves payment of **\$15,000** (75% of \$20,000 PAGA penalty) to the LWDA;
17 (6) Awards **\$5,000** as a Class Representative Service Award to Keith Haynes;
18 (7) Awards **\$9,000** in settlement administration costs to Simpluris, Inc.;
19 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
20 and containing the class definition, full release language, and a statement that no
21 class members opted out by 12 / 26 / 23 ;
22 (9) Orders class counsel to provide notice to the class members pursuant to
23 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
24 Code §2699 (l)(3); and
25

(10) Sets a Non-Appeal Case Review re: Final Report re: Distribution of
Settlement Funds for

9/19/24, at 8:30.

Final Report is to be filed by

9/12/24.

Dated: 12/14/23

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court