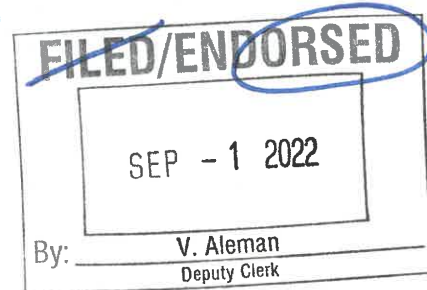


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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

11 TRAVIS BLAIR, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 CLARK WAGAMAN DESIGNS, a California
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.

Case No. 34-2021-00313156

CLASS ACTION

[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

Reservation No. 2657149

Date: August 26, 2022

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: December 22, 2021

FAC Filed: March 10, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on August 26, 2022 at 9:00 a.m., in Department 28
4 before the Honorable Lauri A. Damrell, presiding. Justin Rodriguez was present for Plaintiff and
5 Ryan Larocca for Defendant.

6 Plaintiff Travis Blair's ("Plaintiff") motion for Preliminary Approval of Class Action and
7 PAGA Settlement is UNOPPOSED AND GRANTED as follows.

8 **Background**

9 Plaintiff filed the operative complaint in this action on March 10, 2022. The First Amended
10 Complaint ("FAC") is a putative class action and PAGA representative action against Defendant Clark
11 Wagaman Designs ("Defendant"). According to the FAC, Plaintiff worked for Defendant from July 7,
12 2020 to December 3, 2020 and then again from May 17, 2021 to November 5, 2021 as a non-exempt
13 employee. (FAC, ¶ 15.) Defendant paid Plaintiff and similarly situated employees ("employees")
14 hourly wages in addition to non-discretionary remuneration, such as incentive bonuses. (*Id.*, ¶ 16.)
15 Plaintiff alleges that Defendant failed to incorporate the value of the nondiscretionary remuneration
16 into employees' regular rates of pay for purposes of paying overtime wages and paid sick time; failed
17 to permit employees to take the requisite meal and rest periods; required employees to download
18 applications on their personal cell phones and required them to use their cell phones to speak with the
19 project manager and owner while on jobsites, but failed to reimburse employees for this cell phone
20 use; required employees to purchase tools needed to perform their work without reimbursement; and
21 failed to provide employees accurate, itemized wage statements. (*Id.*, ¶¶ 16-20.) Plaintiff moves for
22 preliminary approval of the parties' Joint Stipulation Regarding Class Action and PAGA Settlement.
23 (Index of Exhibits ("IOE"), Exh. A ("Settlement Agreement").)

24 **Legal Standard**

25 The law favors the settlement of lawsuits, particularly in class actions and other complex cases
26 where substantial resources can be conserved by avoiding the time, expense, and rigors of formal
27 litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial*
28 *California, Inc.* (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed,

1 compromised, or settled without approval of the court, and the decision to approve or reject a proposed
2 settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba*
3 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).)

4 In determining whether to approve a class settlement, the court's responsibility is to "prevent
5 fraud, collusion or unfairness to the class" through settlement because the rights of the class members,
6 including the named plaintiffs, "may not have been given due regard by the negotiating parties."
7 (*Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 60.) The court
8 must independently determine "whether the settlement is in the best interests of those whose claims
9 will be extinguished" and "make an independent assessment of the reasonableness of the terms to
10 which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130,
11 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent.
12 (*Wershba, supra*, 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v.*
13 *Southland Corp.* (2000) 85 Cal.App.4th 1135 1165-1166 (*7-Eleven*).) The Court does not rubber stamp
14 these motions, but rather serves as a guardian of absent class members' rights to ensure the settlement
15 is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) "Ultimately, the [trial] court's
16 determination is nothing more than 'an amalgam of delicate balancing, gross approximations and
17 rough justice.'" (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) The court's primary objective for
18 preliminary approval is to establish whether to direct notice of the proposed settlement to the class,
19 invite the class's reaction, and schedule a final fairness hearing. (Rubenstein et al., *Newberg on Class*
20 *Actions* (5th ed. 2021) § 13:10 (Newberg).)

21 **Provisional Settlement Class Certification**

22 If the class has not yet been certified, part of the motion for preliminary approval will include a
23 request for provisional certification for purposes of settlement only. (See CRC 3.769.) Although the
24 provisional process is less demanding than a traditional motion for class certification, a trial court
25 reviewing an application for preliminary approval of a settlement must still find that the normal class
26 prerequisites have been met. (See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997);
27 in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.) Here, Plaintiff seeks
28 preliminary approval of the following proposed class for settlement purposes:

1 "[A]ll non-exempt, hourly employees who have worked, or continue to work, for Defendants
2 in California during the Class Period," which is the period from December 27, 2017 to the Preliminary
3 Approval Date or August 27, 2022, whichever is earlier. (Settlement Agreement, §§ 1.8, 1.9.)

4 There are approximately 86 Class Members. (*Id.*, § 1.8.) The parties conditionally stipulate to
5 class certification of the Settlement Class for purposes of settlement only. (Settlement Agreement, §§
6 5.12-5.13.) Plaintiff argues provisional certification is appropriate because: (1) all putative class
7 members can be readily identified through employee personnel and payroll files; (2) there are 86
8 individuals who fall within the definition, making joinder of all members impracticable; (3) common
9 questions in this case stem from the allegations that Defendant failed to pay the correct regular rates of
10 pay, failed to pay overtime wages to employees paid under a piece rate compensation system prior to
11 January 2020, failed to comply with meal and rest period requirements, and failed to reimburse
12 employees for the use of personal items for work; (4) Plaintiff alleges he suffered from the same
13 unlawful policies, treatment, and circumstances as the class; (5) Plaintiff and Class Counsel have no
14 interests adverse to those of the putative class; and (6) Class Counsel is experienced in this type of
15 litigation and has vigorously pursued the claims at issue. Plaintiff's arguments are persuasive.
16 Accordingly, the Court finds that the proposed Settlement Class preliminarily satisfies the requisites of
17 provisional class certification for the reasons stated in Plaintiff's moving papers. (Mov. Mot. P&A, pp.
18 13-15)

19 **Class Representative & Class Counsel**

20 Plaintiff is preliminarily approved as Class Representative. (Settlement Agreement, § 1.10.)
21 Galen T. Shimoda, Justin P. Rodriguez, and Brittany V. Berzin of Shimoda & Rodriguez Law, PC are
22 preliminarily approved as Class Counsel. (*Id.*, § 1.7.)

23 **Fair, Adequate, and Reasonable Settlement**

24 Before approving a class action settlement, the Court must find that the settlement is "fair,
25 adequate, and reasonable." (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245.) "[A] presumption of
26 fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation
27 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
28 experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk v. Ford Motor*

1 *Company* (1996) 48 Cal.App.4th 1794, 1802.) The Court considers such factors as "the strength of
2 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
3 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
4 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
5 governmental participant, and the reaction of class members to the proposed settlement." (*Id.* at p.
6 1801.)

7 Under the terms of the Settlement, Defendant (defined to include Clark Wagaman the
8 individual) agrees to pay a non-reversionary Gross Settlement Amount ("GSA") of \$220,000.
9 (Settlement Agreement, §§ 1.18.) The Net Settlement Amount ("NSA") is the GSA minus the
10 following amounts: (a) attorneys' fees in the amount of 35% of the GSA (or \$77,000); (b)
11 reimbursement of litigation costs not to exceed \$10,000; (c) settlement administration costs not to
12 exceed \$10,000; (d) a PAGA payment in the amount of \$10,000; (e) an enhancement payment to
13 Plaintiff in the amount of \$15,000; and (f) any monies necessary to satisfy Defendant's tax obligations.
14 (*Id.*, §§ 5.1-5.5.)

15 Each participating Class Member will be paid a pro-rata share of the NSA determined by
16 comparing that member's workweeks during the class period to the total workweeks of the class. (*Id.*,
17 § 5.8.) Class Members will also receive a payment from the \$10,000 reserved for the PAGA penalties,
18 as discussed below. (*Ibid.*) The average net award is approximately \$1,140. (Berzin Decl., ¶ 10.) For
19 tax purposes, settlement payments will be allocated as follows: one-third as wages and two-thirds as
20 penalties and interest. (Settlement Agreement, § 5.9.) At the preliminary approval hearing, Plaintiff
21 explained that inclusion of the employer's share of payroll taxes in the MSA provides certainty to
22 Defendant as to the settlement figure. Plaintiff also represented that the effect of that deduction on the
23 average net award to Class Members is largely de minimis based on the amount allocated to wages and
24 likely reductions of other allocations from the MSA.

25 Class Members will have 45 days to opt out of or object to the Settlement and 120 days to cash
26 their checks. (*Id.*, §§ 1.22, 7.9.) While the Court generally prefers 60-day opt out / objection periods
27 and 180-day cashing periods, Plaintiff justified the shorter periods at the preliminary approval hearing
28 based on Plaintiff's objective of getting money to Class Members sooner and Class Counsel's

1 experience with cashing periods. Funds from uncashed settlement checks will be donated equally to
2 Capital Pro Bono, Inc. and the Center for Workers' Rights. (*Id.*, § 5.6.) Participating Class Members
3 release the Released Parties (Defendant and its past and present owners, affiliated or related
4 companies, officers, shareholders, directors, agents, employees, attorneys, insurers, successors and
5 assigns, and any individual that could have been jointly and severally liable with Defendant) from all
6 claims contained in the operative complaint and any additional wage and hour claims that could have
7 been brought based on the facts alleged in the operative Complaint through the Class Period. (*Id.*, §§
8 1.30, 1.33, 6.1.)

9 Class Counsel explains that the parties engaged in informal discovery and exchange of
10 documents, including a representative sampling of employee data and relevant policies for the entirety
11 of the statute of limitations applicable to the alleged claims. (Berzin Decl., ¶ 7.) From that information,
12 Class Counsel was able to determine information critical to a reliable damages analysis. (*Ibid.*)
13 Reaching a settlement required five months of arm's length negotiations and a full-day mediation with
14 David L. Perrault, Esq. on May 18, 2022. (*Id.*, ¶ 8.) Accordingly, the moving papers demonstrate that
15 the settlement was reached after sufficient investigation by both parties and arm's length negotiations.
16 Class Counsel determined the maximum damages for the asserted class claims is approximately
17 \$2,889,064.88, including PAGA penalties in the amount of \$547,315.20. (*Id.*, ¶ 9.) However, Class
18 Counsel estimates that civil penalties may be cut to approximately \$98,516.74, resulting in a
19 maximum total recovery of \$2,099,515.46. (*Id.*, ¶ 10.) Thus, the \$220,000 settlement reflects
20 approximately 10% of the maximum likely value. (*Ibid.*) Class Counsel has extensive experience in
21 litigation of this type and maintains that the Settlement is in the best interest of the class based on the
22 uncertainty of class certification, difficulties of complex litigation, the lengthy process of establishing
23 damages, and various possible delays and appeals. (*Id.*, ¶¶ 6, 10, 12-15.) Subject to the final fairness
24 hearing, the Court preliminarily finds that the settlement is within the ballpark of reasonableness and is
25 entitled to a presumption to fairness. The Court will again evaluate the fairness of the settlement at the
26 final approval stage.

27 **Class Representative Enhancement Payment**

28 "[N]amed plaintiffs are eligible for reasonable incentive payments to compensate them for the

1 expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v.*
2 *BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Plaintiff seeks an
3 enhancement payment of no more than \$15,000. (*Id.*, § 5.4) The Court finds the \$15,000 maximum
4 high in view of Plaintiff's fairly conclusory declaration and in comparison to the overall settlement and
5 other incentive payments this Court typically approves. (See Blair Decl., ¶¶ 3-5; see also Berzin Decl.,
6 ¶ 7.) In moving for final approval, the Court expects Plaintiff to provide more specificity in the form
7 of quantification of time expended on this case and reasoned explanation of the financial or other risks
8 he incurred. (See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807.)

9 **PAGA Payment**

10 The Settlement provides for a \$10,000 PAGA allocation, 75 percent of which will be paid to
11 the Labor Workforce Development Agency ("LWDA") and 25 percent of which will be distributed to
12 Aggrieved Employees. (Settlement Agreement, § 5.5.) Aggrieved Employees are all non-exempt,
13 hourly employees who have, or continue to, work for Defendant in California during the PAGA Claim
14 Period, which is the period from December 22, 2020 up to the Preliminary Approval Date or August
15 27, 2022, whichever is earlier. (*Id.*, § 1.25.) The payment to Aggrieved Employees will be based on
16 each employee's pro rata share based on the number of workweeks worked. (*Id.*, § 5.8.) The entire
17 PAGA payment to Aggrieved Employees will be considered penalties for tax purposes. (*Id.*, § 5.9.)
18 Uncashed checks (after 120 days) will be sent 50/50 to Capital Pro Bono, Inc. and the Center for
19 Workers' Rights. (*Id.*, § 5.6.) This payment is provided in exchange for release of Released Parties of
20 all claims that were brought under PAGA contained in the operative Complaint or any additional wage
21 and hour claims that could have been brought based on the facts alleged in the operative Complaint
22 during the PAGA Claim Period. (*Id.*, § 1.32, 6.2.) The briefing reflects that Plaintiff provided notice of
23 the Settlement Agreement to the LWDA. (Berzin Decl., ¶ 18; IOE, Exh. G.)

24 Class Counsel estimates that the likely exposure for PAGA penalties is approximately
25 \$547,315.20 based on an "initial violation" valuation. (Berzin Decl., ¶ 9.) However, Class Counsel
26 believes it possible the penalties would be reduced due to the following factors: (1) the penalties
27 would be in addition to amounts owed for substantive violations; (2) much of the penalties are based
28 on technical non-compliance with the Labor Code; (3) Defendant produced documents that a court

1 may find demonstrates a good faith attempt at compliance. (*Id.*, ¶ 10.) As a result, Class Counsel
2 estimates civil penalties could be cut by 82%, or to \$98,516.74. (*Ibid.*) The \$10,000 PAGA Payment
3 represents over 10% of that amount. The Court finds Class Counsel's valuation well-reasoned and
4 persuasive and the PAGA Payment reasonable.

5 **Class Notice**

6 The Notice to Class Members must fairly apprise the prospective members of the terms of the
7 settlement without expressing an opinion on the merits of the settlement. (*7-Eleven Owners for Fair*
8 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164; see also CRC 3.769(f).) "Whether
9 a claimant would want to accept or reject the proposed settlement is a decision to be made by him
10 independently and without influence or pressure from those competing parties who either favor or
11 oppose the settlement." (*Phila. Hous. Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323
12 F.Supp. 364, 378.)

13 Here, Plaintiff's Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for
14 Final Court Approval of Settlement (Settlement Agreement, Exh. 1 ("Class Notice" or "Notice"))
15 fairly apprises the Class Members of the terms of the proposed settlement and their rights as
16 prospective class members. At the preliminary approval hearing, Defendant's Counsel represented that
17 there is no need for the notice to be provided in languages other than English. Plaintiff is instructed to
18 delete the following text from the notice on p. 3:

19 "F. Reasonableness of Settlement

20 The Parties and their counsel believe the amounts payable to Class Members, Aggrieved Employees,
21 and amounts for attorneys and costs requested are fair and reasonable. The Class Representative and
22 Class Counsel support this Settlement. Among the reasons for support are the defenses to liability
23 potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class
24 certification, and the delays associated with litigation."

25 The Court finds this language is unnecessary and may improperly discourage class members
26 from objecting to the settlement. With that modification, the Class Notice is approved.

27 **Settlement Administrator**

28 ILYM Group Inc. is appointed to act as the Settlement Administrator and will perform the

1 administration duties described in the Settlement Agreement. (Settlement Agreement, § 1.5, 7.1)
2 Plaintiff seeks a maximum allocation of \$10,000 for administration costs, which the Court
3 preliminarily approves. (*Id.*, § 5.2; Berzin Decl., ¶ 17; IOE, Exh. D.)

4 **Class Counsel Award & Litigation Costs**

5 A fee award is justified where the legal action produces benefits by a voluntary settlement.
6 (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-1291; *Westside Community for Independent Living,*
7 *Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-353.) Courts generally recognize two methods for
8 calculating fees in civil class actions: the lodestar/multiplier method and the percentage-of-recovery
9 method. (*Wershba, supra*, 91 Cal.App.4th at 254.) "The lodestar method better accounts for the
10 amount of work done, while the
11 percentage of the fund method more accurately reflects the results achieved." (*Laffitte v. Robert Half*
12 *Internat. Inc.* (2016) 1 Cal.5th 480, 489, quoting *Rawlings v. Prudential-Bache Properties, Inc.* (6th
13 Cir. 1993) 9 F.3d 513, 516.) Thus, courts often start with the percentage of recovery method and use a
14 lodestar as a cross-check. "A lodestar cross-check ... provides a mechanism for bringing an objective
15 measure of the work performed into the calculation of a reasonable attorney fee. If a comparison
16 between the percentage and lodestar calculations produces an imputed multiplier far outside the
17 normal range, indicating that the percentage fee will reward counsel for their services at an
18 extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial
19 court will have reason to reexamine its choice of a percentage." (*Id.* at p. 504, quoting Walker &
20 Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About "Reasonable*
21 *Percentage" Fees in Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.)

22 Class Counsel requests an award of attorney fees in the amount of 35% of the GSA, or
23 \$77,000. (Settlement Agreement, § 21c.) The attorney fee award sought is higher than the average
24 recognized by some authorities. (See Newberg, *supra*, § 15:83 [noting average hovers around 25%];
25 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 & fn. 13; *Chavez v. Netflix, Inc.* (2008)
26 162 Cal.App.4th 43, 66 & n.11.) Plaintiff argues this percent is appropriate because awards ranging
27 between 30% and 40% are generally approved and the quality of Class Counsel and average size of
28 individual payments supports the request. The Court finds Class Counsel's justification relatively thin.

1 Nevertheless, the proposed attorney fee award is preliminarily approved with the expectation that
2 Class Counsel will provide additional justification in moving for final approval, including information
3 necessary to perform a lodestar analysis in moving for final approval. The maximum of \$10,000 for
4 reimbursement of litigation costs is approved with the expectation that Plaintiff's motion for final
5 approval includes an updated declaration in support of actual litigation costs.

6 **Final Approval Hearing**

7 The Court will again review and consider the terms of this settlement at the time of the final
8 approval hearing. Class Counsel is directed to contact the Clerk for Department 28 with a requested
9 date for the final approval hearing to be heard in this department. The briefing shall be filed in
10 conformity with Code of Civil Procedure § 1005.

11
12 **IT IS SO ORDERED.**

13
14 Date: SEP - 1 2022

By: LAURI A. DAMRELL
Judge of the Superior Court

16 LAURI A. DAMRELL
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1 *Blair v. Clark Wagaman Designs*
2 *Sacramento County Superior Court of California 34-2021-00313156*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Estefania Rodriguez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 above-entitled action.

8 On August 31, 2022, I served the following documents on the party below:

- 9
 - Letter to Court re Proposed Order
 - [Proposed] Order Granting Plaintiff's Motion for Preliminary Approval of Class
10 Action and PAGA Settlement

11 Laura C. McHugh (SBN: 180930) 12 Ryan D. Larocca (SBN: 343635) 13 Duggan McHugh Law Corporation 14 641 Fulton Avenue Suite 100 15 Sacramento, CA 95825 16 Phone: (916) 550-5309 17 Facsimile: (916) 404-5900 18 Email: laura@dugganmchugh.com 19 ryan@dugganmchugh.com 20 samantha@dugganmchugh.com 21 jason@dugganmchugh.com	
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22 [] [By Mail] I am familiar with my employer's practice for the collection and
23 processing of correspondence for mailing with the United States Postal
24 Service and that each day's mail is deposited with the United States Postal
25 Service that same day in the ordinary course of business. On the date set forth
26 above, I served the aforementioned document(s) on the parties in said action
27 by placing a true copy thereof enclosed in a sealed envelope with postage
28 thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Elk Grove, California, addressed as set forth
above.

[] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: _____.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is
28 true and correct, and that this declaration was executed on August 31, 2022, at Elk Grove, California.



Estefania Rodriguez

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