

Carolyn Hunt Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
Eugene Zinovyev (SBN 267245)
Philippe M.J. Gaudard (SBN 331744)
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
ezinovyev@schneiderwallace.com
pgaudard@schneiderwallace.com

Brent S. Buchsbaum (SBN 194816)
Laurel N. Haag (SBN 211279)
LAW OFFICES OF BUCHSBAUM & HAAG, LLP
100 Oceangate, Suite 1200
Long Beach, CA 90802
brent@buchsbaumhaag.com
laurel@buchsbaumhaag.com

*Attorneys for Plaintiffs, on behalf of the Class,
the State of California, and Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

LUZ GOMEZ and PHILIP HUGHES,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

4400 WE TECHNOLOGIES, INC. d/b/a
PATTERN JOBS; RADIAL, INC.; and METRO
AIR SERVICE, INC.

Defendants.

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

10/12/2023 1:09 PM

By: Gloria Portillo, DEPUTY

Case No. CIVSB2207056

Assigned to Hon. David Cohn

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 7, 2023

Time: 9:00 a.m.

Dept.: S26

Date Action Filed: April 7, 2022

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SUMMARY OF THE LITIGATION	2
A.	Procedural History.....	2
B.	Discovery and Mediation	3
C.	Preliminary Approval and Settlement Notice	4
D.	Terms of the Settlement	5
III.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT	6
A.	Class Action Settlement Approval Procedure.....	6
B.	Plaintiffs Provided the Best Practicable Notice to the Class in Accordance with the Court-Approved Notice Process.....	6
C.	Final Approval is Appropriate Because the Settlement is Fair, Reasonable, and Adequate.....	7
1.	The Settlement is the result of arm’s length bargaining and extensive investigation, discovery, and analysis of the Class claims	8
2.	Class Counsel are experienced class action litigators.....	8
3.	The Settlement Class approves the Settlement.	9
D.	Plaintiffs Face Substantial Risk of Continued Litigation.....	9
1.	Plaintiffs face procedural hurdles of continued litigation, including Class certification and trial.	9
2.	Defendants would continue to contest liability on all issues.	11
3.	Plaintiffs considered the risk of Defendants’ potential inability to pay a judgment in the future.	11
E.	The Settlement Amount is Fair and Reasonable.	12
IV.	THE COURT SHOULD APPROVE PLAINTIFFS’ SERVICE ENHANCEMENT PAYMENTS.....	14
V.	THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE.	15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI. CONCLUSION.....15

TABLE OF AUTHORITIES

CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	12
<i>Balderas v. Massage Envy Franchising, LLP</i> (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 99966	13
<i>Bellinghausen v. Tractor Supply Co.</i> (N.D. Cal. 2015) 306 F.R.D. 245	13
<i>Benedict v. Reachlocal, Inc.</i> (Cal. Super. Dec. 9, 2011) 2011 WL 9155053	15
<i>Cellphone Termination Fee Cases</i> (2010) 186 Cal.App.4th 1380	14
<i>Chavez v. Teledirect Commc'ns Inc.</i> (Cal. Super. Jun. 11, 2021) 2021 Cal. Super. LEXIS 10020.....	15
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7, 8, 9
<i>Eddings v. Health Net, Inc.</i> (C.D. Cal. 2013) 2013 U.S. Dist. LEXIS 84811	13
<i>Grunin v. Int'l House of Pancakes</i> (8th Cir. 1975) 513 F.2d 114	6
<i>In re Mego Fin. Corp. Sec. Litig.</i> (9th Cir. 2000) 213 F.3d 454	12, 13
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	7
<i>Linney v. Cellular Alaska P'ship</i> (9th Cir. 1998) 151 F.3d 1234	12
<i>Ma v. Covidien Holding, Inc.</i> (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 13296.....	13
<i>Mandujano v. Basic Vegetable Prod., Inc.</i> (9th Cir. 1976) 541 F.2d 832	6

1	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
2	(2010) 186 Cal.App.4th 399	14
3	<i>Nordstrom Com. Cases</i>	
4	(2010) 186 Cal.App.4th 576	7
5	<i>Officers for Justice v. Civil Service Comm'n</i>	
6	(9th Cir. 1982) 688 F.2d 615	13
7	<i>Sano v. Southland Mgmt. Grp., Inc.</i>	
8	(Cal. Super. Dec. 2, 2013) 2013 WL 7231686.....	15
9	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
10	(N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 78671	13
11	<i>Torrissi v. Tucson Elec. Power Co.</i>	
12	(9 th Cir. 1993) 8 F.3d 1370	6
13	<i>Viceral v. Mistras Grp., Inc.</i>	
14	(N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 140759	13
15	<i>Wershba v. Apple Computer, Inc.</i>	
16	(2001) 91 Cal.App.4th 224	6, 7, 8
17	<i>Wilson v. Rock-Tenn Co.</i>	
18	(Cal. Super. Dec. 12, 2017) 2017 WL 9342358.....	15

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Luz Gomez and Philip Hughes on behalf of the putative Class, the State of California,
4 and the Aggrieved Employees (“Plaintiffs”), seek final approval of this wage and hour Class and
5 Private Attorneys’ General Act (“PAGA”) action settlement against Defendants 4400 WE
6 Technologies, Inc. d/b/a Pattern jobs (“Pattern”), Radial, Inc. (“Radial”), and Metro Air Service, Inc.
7 (“Metro”) (collectively “Defendants”).¹

8 Plaintiffs have achieved a fair and reasonable result for the members of the Class and the
9 Aggrieved Employees who are current and former independent contractors and non-exempt employees
10 of Defendant Pattern throughout the State of California. The Settlement resolves the claims of 2,286
11 Class Members and Aggrieved Employees that almost certainly never would have been prosecuted as
12 individual actions, and in so doing provides an excellent benefit to the members of the Class and the
13 Aggrieved Employees.

14 The basic terms of the Settlement are as follows: (1) the Gross Settlement Amount is
15 \$1,900,000.00; (2) no portion of the Gross Settlement Amount will revert to Defendants; (3) a Net
16 Settlement Amount of approximately \$1,156,384.97 will be available for distribution to Participating
17 Individuals; (4) Plaintiffs request Service Enhancement Payments of \$10,000.00 each (or \$20,000.00
18 total); (5) Plaintiffs request one-third of the Gross Settlement Amount, or \$633,333.33, for attorneys’
19 fees; (6) Plaintiffs request reimbursement of out-of-pocket expenses to Class Counsel in the amount
20 of \$28,858.70; (7) the Settlement allocates PAGA penalties in the amount of \$50,000.00 (\$12,500.00
21 of which is payable to the Aggrieved Employees and \$37,500.00 of which is payable to the LWDA);
22 and (8) Plaintiffs request payment of the actual costs and expenses of the Settlement Administrator,
23 ILYM Group Inc. (“ILYM”), in the amount of \$23,923.00.

24 ILYM estimates that the average Individual Settlement Share for each of the Class Members
25 is \$500.39, and the highest Individual Settlement Share to a Class Member is \$5,192.27.

26 The Court granted preliminary approval of this Settlement on July 21, 2023, and the response
27

28 ¹ Plaintiffs previously filed the Settlement Agreement (“Settlement”) as **Exhibit 1** to the Declaration of Carolyn Hunt Cottrell in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement.

1 of the Class has been overwhelmingly positive. There have been no objections and only two opt-outs.

2 For the reasons discussed herein, the Settlement satisfies all the criteria for final settlement
3 approval under California law and falls well within the range of reasonableness. Accordingly, Plaintiffs
4 request that the Court: (1) finally approve the Settlement; (2) finally approve Plaintiffs Gomez and
5 Hughes as Class Representatives and approve service enhancement payments in the amount of
6 \$10,000.00 each; (3) finally approve Schneider Wallace Cottrell Konecky LLP (“SWCK”) and The
7 Law Offices of Buchsbaum & Haag LLP (“B&H”) as Class Counsel; (4) finally certify the Class; (5)
8 finally approve ILYM Group, Inc. (“ILYM”) as Settlement Administrator and settlement
9 administration expenses in the amount of \$23,923.00; (6) finally approve an allocation of \$50,000.00
10 for PAGA penalties; and (7) approve the proposed implementation schedule set forth in the Notice of
11 Motion, for relevant deadlines regarding Settlement administration. Concurrent with this Motion,
12 Plaintiffs request approval of attorneys’ fees and costs.

13 II. SUMMARY OF THE LITIGATION

14 A. Procedural History

15 On December 9, 2021, Plaintiff Philip Hughes filed his complaint in Los Angeles Superior
16 Court (“*Hughes*”), Case No. 21STCV45026. (*See* Declaration of Brent S. Buchsbaum in Support of
17 Motion for Preliminary Approval (“Buchsbaum Decl.”), ¶ 12). Plaintiff Hughes’ complaint was
18 initially filed as a putative class action against Defendants Pattern, Radial, and Metro. (*Id.*) On March
19 23, 2022, Plaintiff Hughes amended his complaint by adding representative claims under PAGA. (*Id.*)

20 On February 14, 2022, Plaintiff Gomez filed her putative class action lawsuit against
21 Defendants Pattern and Radial in the United States District Court for the Central District of California
22 (“*Gomez I*”), Case No. 5:22-cv-00283 JGB (SPx). On April 6, 2022, Plaintiff Gomez filed a separate
23 PAGA-only representative action against Defendants Pattern and Radial in this Court (“*Gomez II*”).
24 During Class Counsel’s initial investigation and preparation of the complaints, Plaintiffs worked with
25 Class Counsel, assisted in the development of the case, and provided extensive information and
26 documents, including but not limited to wage statements and correspondence to and from Defendant.
27 (Declaration of Carolyn H. Cottrell in Support of Motions for Final Approval and Attorneys’ Fees
28 (“Cottrell Decl.”), filed herewith, ¶¶ 55-58; Declarations of Plaintiff Gomez, and Plaintiff Hughes in

1 Support of Motion for Preliminary Approval).

2 **B. Discovery and Mediation**

3 Following substantial meet and confer efforts, the Parties agreed to participate in a global
4 mediation before David A. Rotman, who has extensive experience in labor and employment litigation.
5 (Cottrell Decl., ¶ 16). In the lead-up to the mediation, the Parties engaged in informal mediation
6 discovery during which Defendants produced a significant volume of documents and information. (*Id.*,
7 ¶ 17). The production included hundreds of pages of documents relating to Defendants' policies,
8 practices, and procedures regarding their wage and hour practices, including timekeeping and
9 compensation policies, meal and rest periods policies, meal premiums paid, and payroll and
10 operational policies. (*Id.*) The production also included putative class members' time-punch data
11 (clock-in and clock-out times) and payroll information, employee handbooks, policies applicable to
12 hourly non-exempt employees, and job descriptions. (*Id.*) In preparation for mediation, Plaintiffs also
13 provided answers to Class Counsel's questions and valuable insight into Defendant's operations. (*Id.*,
14 ¶¶ 55-58).

15 On June 1, 2022, the Parties participated in the full day mediation session with David A.
16 Rotman. (*Id.*, ¶ 18). The Parties were not able to resolve their disputes at the mediation. (*Id.*) Following
17 mediation, the Parties engaged in informal settlement discussions for several months while continuing
18 to litigate the lawsuits. (*Id.*, ¶ 19). On October 20, 2022, the Parties agreed to key terms of the
19 Settlement, which were memorialized in a Memorandum of Understanding, signed by all parties on
20 December 11, 2022. (*Id.*, ¶ 20). The Parties executed the long-form Settlement Agreement on March
21 9, 2023. (*Id.*) Plaintiffs took part in the settlement decision as well as remained apprised of the case
22 throughout the litigation. (*Id.*, ¶¶ 55-58).

23 Pursuant to the terms of the Settlement, on April 10, 2023, the Parties filed a joint stipulation
24 to file a First Amended Complaint ("FAC") in *Gomez II*, which added Philip Hughes as a plaintiff to
25 this case, added Metro as a defendant, and consolidates the claims alleged in the *Hughes* action, *Gomez*
26 *I*, and *Gomez II*. (*Id.*, ¶ 27). The Court's May 10, 2023, Order granted *Gomez* leave to amend and the
27 amended consolidated complaint was deemed filed on the same day.² (*Id.*)

28 ² Plaintiffs also filed the First Amended Complaint with the Court on May 15, 2023. (Cottrell Decl., ¶ 27).

1 On May 3, 2023, following the filing of the consolidated FAC, the *Hughes* action was
2 dismissed without prejudice. (*Id.*, ¶ 28).

3 **C. Preliminary Approval and Settlement Notice**

4 On June 13, 2023, Plaintiffs filed their Motion for Preliminary Approval of the Settlement. (*Id.*,
5 ¶ 29). The Court granted preliminary approval on July 21, 2023. (*Id.*)

6 On August 15, 2023 ILYM mailed the Class Notice. (*See* Declaration of Cassandra Polites
7 (“ILYM Decl.”), filed herewith, ¶ 7). The Class Notice, informed Class Members/Aggrieved
8 Employees of: (1) a description of the case and the proposed Settlement, explains how individual
9 settlement shares are calculated, explains how Class Members can receive payment under the
10 Settlement or exercise their right to opt-out, object, or dispute their workweeks, and identifies Class
11 Counsel; (2) the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment
12 payable to the Class Member/Aggrieved Employee; (3) the number of Workweeks and/or PAGA Pay
13 Periods used to calculate these amounts; and (4) information on the requested attorneys’ fees and costs,
14 Plaintiffs’ service enhancement payments, and settlement administration costs. (Cottrell Decl., ¶ 31).

15 ILYM mailed the Class Notice to 2,241 recipients, via U.S. First Class Mail. (ILYM Decl. ¶ 7).
16 Of those 1,643 members who were missing Social Security Numbers, 161 members are estimated to
17 receive over \$600, requiring tax reporting, to allow for proper tax reporting, ILYM mailed a W9 letter
18 and blank W9 form to those Class Members. (*Id.*) To date, 4 W9 forms have been returned (*Id.*, ¶ 11).
19 238 notices were initially returned as undeliverable, one of which was re-mailed to a forwarding
20 address. (*Id.*, ¶ 8). ILYM performed skip tracing and other methods for 237 returned notices and
21 obtained updated address information for 127 of those individuals. (*Id.*) Then ILYM re-mailed those
22 127 notices. (*Id.*) Ultimately, a total of 110 notices were deemed undeliverable. (*Id.*, ¶ 10). ILYM will
23 mail a second round of W9 forms to give the class members an opportunity to submit a complete W9 form. The
24 class members will have until November 1, 2023 to respond. If a class member does not respond, these class
25 members will be subject to backup withholding. ILYM will withhold 24% and report it to the IRS. (*Id.*, ¶ 19).
26 The opt-out and objection deadline was September 29, 2023. (*Id.*, ¶¶ 12-13). To date, there
27 have been no objections and only two requests for exclusion. (*Id.*) ILYM estimates the highest
28 settlement share to be \$5,192.27, and the average payment to be \$500.39. (*Id.*, ¶ 16).

1 **D. Terms of the Settlement**

2 The Settlement provides for a Gross Settlement Amount of \$1,900,000.0, which results in a
3 \$1,156,384.97 Net Settlement Amount for 2,286 Class Members. (Cottrell Decl., ¶ 21; ILYM Decl.,
4 ¶¶ 14-15). Defendants agree to pay the employer payroll taxes owed on the wage portions of the
5 Individual Class Payments separately. (*Id.*) The PAGA settlement totals \$50,000.00, of which
6 \$37,500.00 (or 75%) is to be paid to the Labor and Workforce Development Agency (“LWDA”) and
7 \$12,500.00 (or 25%) will be distributed to Aggrieved Employees *pro rata* as part of the Net Settlement
8 Amount. (*Id.*, ¶ 21). Class Counsel separately seeks fees of one-third of the Gross Settlement Amount,
9 or \$633,333.33, and actual costs in the amount of \$28,858.70. (*Id.*, ¶ 21). Plaintiffs request payment
10 of \$23,923.00 in costs to the Settlement Administrator, and \$10,000.00 each (or \$20,000.00 total) for
11 their service enhancement payments. (*Id.*, ¶ 21).

12 The Effective Date of the Settlement will occur on the later of: (a) the date of final affirmance
13 on appeal of the Judgment; (b) the date of final dismissal of any appeal from the Judgment or the final
14 dismissal of any proceeding to review the Judgment; (c) if no appeal is filed, the expiration date of the
15 time for the filing or noticing of any appeal from the Court’s Judgment; or (d) the date on which the
16 Courts in the *Gomez* Federal Action and *Hughes* State Action have both approved dismissals of those
17 actions. (*Id.*, ¶ 23; Settlement, ¶ 3.11). 45 calendar days thereafter, ILYM will calculate payroll taxes,
18 prepare tax reporting documents, mail individual settlement payments to the Participating Individuals,
19 facilitate payment to the LWDA for its share of PAGA penalties, pay the Service Awards to the Class
20 Representatives, and pay fees and costs to Class Counsel pursuant to the final implementation
21 schedule. (Cottrell Decl., ¶ 23; Settlement, ¶ 10.4).

22 Class Members do not have to submit a claim form to receive an award under the Settlement,
23 and Settlement checks will be negotiable for 180 days following issuance. (Cottrell Decl., ¶ 23;
24 Settlement, ¶ 10.6). If, at the conclusion of the 180-day check cashing period, funds remain from
25 uncashed checks, then the amount will revert to Legal Aid at Work as a *cy pres* recipient. (*Id.*)

26 The Class is defined as all individuals engaged by Pattern as independent contractors and/or
27 non-exempt employees in the State of California, including those who performed services for Radial,
28 Metro, or those assigned to work at a facility operated by Radial or Metro, or at any other facility in

1 California, from December 9, 2017, through July 21, 2023 (“Class Period”). (Cottrell Decl., ¶ 25;
2 Settlement, ¶ 3.3). The Aggrieved Employees are all individuals engaged by Pattern as independent
3 contractors or non-exempt employees in the State of California, including those who performed
4 services for Radial, Metro, or those assigned to work at a facility operated by Radial or Metro, or at
5 any other facility in California, from October 5, 2020, through July 21, 2023 (“PAGA Period”).
6 (Cottrell Decl., ¶ 25; Settlement, ¶ 3.1).

7 **III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

8 **A. Class Action Settlement Approval Procedure.**

9 A class action may not be dismissed, compromised, or settled without the approval of the Court.
10 Here, the Court has already granted preliminary approval and certified a Settlement Class. (Cottrell
11 Decl., ¶ 30). The Settlement Administrator mailed notice to the Settlement Class and the Settlement
12 Class responded favorably with zero objections to the Settlement. ILYM Decl., ¶ 13) With this motion,
13 Plaintiffs request that the Court take the final step in the class action settlement approval process by
14 granting final approval of the Settlement.

15 **B. Plaintiffs Provided the Best Practicable Notice to the Class in Accordance with the** 16 **Court-Approved Notice Process.**

17 Notice of a class action settlement is adequate where the notice is given in a “form and manner
18 that does not systematically leave an identifiable group without notice.” *Mandujano v. Basic Vegetable*
19 *Prod., Inc.* (9th Cir. 1976) 541 F.2d 832, 835. The notice should be the best “practicable under the
20 circumstances including individual notice to all members who can be identified through reasonable
21 effort.” *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370; *Wershba v. Apple Computer,*
22 *Inc.* (2001) 91 Cal.App.4th 224, 251 (the standard is whether the notice has a reasonable chance of
23 reaching a substantial percentage of the class members). Sending individual notices to settlement class
24 members’ last-known addresses constitutes the requisite effort. *Grunin v. Int’l House of Pancakes* (8th
25 Cir. 1975) 513 F.2d 114, 121.

26 Here, pursuant to the Court’s July 21, 2023 order granting preliminary approval and in
27 accordance with the terms of the Settlement, ILYM mailed the Class Notice to the Class. (See ILYM
28 Decl. ¶ 7). The Class Notice provides a description of the case and the proposed Settlement, explains

1 how individual settlement shares are calculated, explains how Class Members can receive payment
2 under the Settlement or exercise their right to opt-out, object, or dispute their workweeks, and
3 identifies Class Counsel. (Cottrell Decl., ¶ 31). Following the initial mailing to all putative Class
4 Members, 238 notices were returned as undeliverable. (ILYM Decl., ¶ 8). After finding new addresses
5 for 127 of those notices and re-mailing the notices, only 110 notices were deemed undeliverable. (*Id.*,
6 ¶¶ 8-10).

7 ILYM followed all procedures set forth in the Court-approved notice plan. (*See* ILYM Decl.,
8 generally). It took reasonable steps to ensure that all members of the putative Class received the Notice
9 Packets. (*Id.*) Accordingly, the notice process satisfies the “best practicable notice” standard.

10 **C. Final Approval is Appropriate Because the Settlement is Fair, Reasonable, and**
11 **Adequate.**

12 For final approval, a Court must ensure that the agreement is not the product of fraud or
13 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
14 whole, is fair, reasonable and adequate to all concerned. *Nordstrom Com. Cases* (2010) 186
15 Cal.App.4th 576, 581. The decision to approve or reject a proposed settlement is committed to a court’s
16 broad discretion. *Wershba*, 91 Cal.App.4th at 234-35. If the Court has sufficient information about the
17 nature and magnitude of the claims being settled, as well as impediments to recovery, the Court should
18 be able to make an independent assessment of the reasonableness of the terms to which the parties
19 have agreed. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. Plaintiffs provide
20 herein an abundance of information regarding the claims being settled and recognize and appreciate
21 the risks of continued litigation.

22 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length
23 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
24 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
25 small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 at 1802. All four of these conditions are
26 satisfied here.

1 **1. The Settlement is the result of arm’s length bargaining and extensive**
2 **investigation, discovery, and analysis of the Class claims.**

3 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
4 reached through arm’s-length bargaining.” *Wershba, supra*, at 224, 245. In addition, fairness exists
5 where the investigation and discovery conducted is sufficient to allow counsel, as well as the Court,
6 to act intelligently. *Dunk, supra*, at 1802.

7 Here, Class Counsel investigated the applicable law and facts and extensively analyzed the
8 potential damages the Class may recover following the exchange of voluminous documents and
9 information with Defendant. (Cottrell Decl., ¶ 34). Class Counsel premised their liability and damages
10 evaluation on a careful and extensive analysis of the effects of Defendant’s compensation policies and
11 practices on Class Members’ pay. (*Id.*) Further, the Settlement was reached after numerous arm’s-
12 length settlement discussions between Class Counsel and Defendant’s counsel. (*Id.*) These
13 negotiations included extensive communications between Class Counsel and Defendant’s Counsel and
14 a mediation conference supervised by an experienced and respected mediator. (*Id.*) During these
15 negotiations, Class Counsel investigated the applicable law and the facts and extensively analyzed the
16 potential damages that might be recovered for the employees. (*Id.*)

17 At mediation, the parties engaged in an intensive discussion regarding their evaluations of the
18 *Hughes* and *Gomez I and II* cases, including the evaluation of the merits, risks, costs and delays of
19 further litigation, the risks of the parties proceeding with class certification, procedural challenges,
20 Defendants’ ability to pay, and estimated exposure at issue. (*Id.*, ¶ 35). During settlement discussions,
21 the parties conducted these negotiations at arm’s length in an adversarial position. (*Id.*) Accordingly,
22 the settlement was agreed upon following arm’s-length negotiations and an extensive review of the
23 facts and law. (*Id.*)

24 **2. Class Counsel are experienced class action litigators.**

25 In reaching the proposed Settlement, Class Counsel also relied on their substantial litigation
26 experience in similar wage-and-hour class actions. (*Id.*, ¶¶ 8-12, 36). Class Counsel are experienced
27 and respected class action litigators. (*Id.*, ¶ 37). Based on Class Counsel’s knowledge and expertise in
28 this area of law, and in light of Defendants’ financial difficulties and limited ability to pay a class-wide

1 settlement, Class Counsel believes this Settlement will provide a substantial benefit to the Class
2 Members and Aggrieved Employees. (*Id.*)

3 **3. The Settlement Class approves the Settlement.**

4 To date, no Class Members have objected to the Settlement and only two have requested
5 exclusion. (ILYM Decl., ¶¶ 12-13). The lack of objections shows widespread support for the
6 Settlement among Class Members and gives rise to a presumption of fairness. *See Dunk*, 48
7 Cal.App.4th at 1801.

8 **D. Plaintiffs Face Substantial Risk of Continued Litigation.**

9 **1. Plaintiffs face procedural hurdles of continued litigation, including Class**
10 **certification and trial.**

11 If this case were to go to trial as a class action, it would require substantial additional
12 preparation and discovery and ultimately would involve the depositions of Plaintiffs, managerial
13 employees and experts, the presentation of witnesses at trial, as well as the consideration, preparation,
14 and presentation of voluminous documentary evidence and the preparation and analysis of expert
15 reports. (Cottrell Decl., ¶ 38). In contrast to the risk and uncertainty of continued litigation, the
16 Settlement will yield a prompt, certain, and substantial recovery for the employees. (*Id.*) Such a result
17 will benefit the parties and the court system. (*Id.*)

18 Plaintiffs would face other significant risks if the litigation were to proceed to trial. (*Id.*, ¶ 39).
19 For example, Plaintiffs would not only face defenses as to the merits of their claims but face
20 considerable challenges in preparing their Motion for Class Certification. (*Id.*) The putative
21 Class/Aggrieved Employees Plaintiffs seek to represent encompass a disparate group of both
22 employees and contractors, who work at different positions, in different California locations for
23 different defendants, in varying work environments, and under numerous managers and supervisors.
24 (*Id.*) Plaintiffs and Class Counsel recognized that all of these issues increase the risk of denial of
25 certification or a dismissal of Plaintiffs' PAGA representative claims. (*Id.*)

26 The Motion for Class Certification would also require extensive investigation and outreach
27 efforts by Class Counsel to obtain supporting evidence and would be vigorously contested by
28 Defendants with significant risk of denial. (*Id.*, ¶ 40). For instance, although Plaintiffs believe that

1 they would have prevailed on their misclassification claim, they recognized the risk that a factfinder
2 could have found for Defendants on the misclassification claim pursuant to the *Dynamex* “ABC Test.”³
3 (*Id.*) Additionally, Plaintiffs’ other claims regarding wage payments, including minimum wages and
4 overtime, meal and rest breaks violations, waiting time penalties and wage statements rise and fall
5 with Plaintiffs’ misclassification claims. (*Id.*) Plaintiffs faced the risk of recovering nothing at all if
6 they were unable to prove the underlying misclassification claims. (*Id.*)

7 Even assuming that the motion is granted, Plaintiffs would then have to establish Class-wide
8 liability and prove up various issues regarding damages and penalties. (*Id.*, ¶ 41). Liability and
9 damages issues have been vigorously disputed by Defendants. (*Id.*) Obtaining class certification,
10 establishing liability, and proving damages would likely take years, and would necessitate expert
11 witness testimony and significant additional litigation. (*Id.*) While Plaintiffs believe that they would
12 prevail on these issues and others, they recognize the risk that a factfinder may find for Defendants on
13 one or more of these issues and or find damages to be significantly less than what Plaintiffs claim.
14 (*Id.*)

15 Plaintiffs would also likely need to move for and defend against motions for summary
16 judgment or adjudication and would have been further required to take their claims to trial. (*Id.*, ¶ 42).
17 Trials are inherently risky for all parties. (*Id.*) Although Plaintiffs believe they could have been
18 successful in proving these claims, and that Defendants’ evidence would not have been as persuasive,
19 a trial on misclassification claims would have carried a high degree of risk. (*Id.*) After all, Defendants,
20 represented by experienced employment lawyers, raised many of the above arguments, and more, in
21 mediation and would have done so in continued litigation. (*Id.*) Despite Plaintiffs’ confidence in their
22 ability to prove their claims on a class-wide basis, any of the defenses, if decided in Defendants’ favor,
23 could have reduced or even eliminated any potential damages award. (*Id.*) Given all these risks, Class
24 Counsel believes that this Settlement is reasonable, and indeed excellent, based on the strength of the
25 claims, the size of the group of Class Members, and the risks of going to trial. (*Id.*)

26
27 ³ Under the ABC test, a worker is generally considered to be an employee unless the putative employer can prove: (a) the
28 worker was not under its direction and control in performance of the work in question; (b) the worker’s business was not
in the hiring company’s usual course of business; and (c) the worker was customarily engaged in an independent trade or
business. See *Dynamex v. Operations W., Inc. v. Superior Court* (2018) 4 Cal.5th 903.

1 In contrast to the risk and uncertainty of continued litigation, the Settlement will yield a
2 prompt, certain, and substantial recovery for the employees. (*Id.*, ¶ 43) Such a result will benefit the
3 parties and the court system. (*Id.*)

4 **2. Defendants would continue to contest liability on all issues.**

5 The reasonableness of the Settlement is further underscored by the fact that it is anticipated
6 Defendants will assert legal and factual grounds to defend this action. (*Id.*, ¶ 44). Defendants take the
7 position that this case is not suitable for class or representative treatment and that they fully complied
8 with their obligations under the California Labor Code. (*Id.*) Defendants further contend that Class
9 Members were properly classified as independent contractors under the *Dynamex* test. (*Id.*) These
10 defenses must be accounted for when considering the reasonableness of the Settlement. (*Id.*)
11 Additionally, Plaintiffs' derivative claims regarding waiting time penalties, accurate records, and wage
12 statements rise and fall with Plaintiffs' other wage payment claims. (*Id.*, ¶ 45). While Plaintiffs believe
13 they would prevail on these issues, they recognize the risk that a fact finder may find for Defendants
14 on one or more issues and may find damages to be significantly less than what Plaintiffs claim. (*Id.*)
15 For example, Defendants would likely argue that no penalties for waiting-time violations can be
16 awarded unless the failure to pay wages is "willful," an element that Plaintiffs acknowledge would
17 have been difficult to prove given Defendants' policies and enforcement. (*Id.*)

18 **3. Plaintiffs considered the risk of Defendants' potential inability to pay a**
19 **judgment in the future.**

20 Plaintiffs also faced the risk of Defendants' potential inability to pay a class-wide settlement.
21 (*Id.*, ¶ 46). Here, the fairness of the Settlement is further underscored by the risk that Pattern would
22 likely not be able to pay a class-wide settlement or judgment in the near future. (*Id.*) Plaintiffs
23 investigated Pattern's ability to pay a settlement and concluded, based on their expert's analysis, that
24 Pattern faced significant financial constraints, which impaired its ability to pay a settlement greater
25 than what they agreed to in this case. (*Id.*)

26 Therefore, Plaintiffs determined that this litigation is well-suited for settlement recognizing the
27 potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class
28 certification and PAGA manageability, summary judgment, at trial and/or on the damages awarded;

1 Defendants' limited ability to pay; and/or an appeal that can take several years to litigate. (*Id.*, ¶ 47).

2 **E. The Settlement Amount is Fair and Reasonable.**

3 A review of the Settlement also reveals the fairness of its terms. (*Id.*, ¶ 48). The Net Settlement
4 Amount of \$1,156,384.97, derived from a Gross Settlement Amount of \$1,900,000.00 will result in
5 fair and just relief to the Participating Individuals. (*Id.*) This amount provides an average recovery of
6 \$500.39 per Class Member/Aggrieved Employee. (*Id.*)

7 This is a recovery that falls within the range of reasonableness. (*Id.*, ¶ 49); *see, e.g., In re Mego*
8 *Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 ("It is well-settled law that a cash settlement
9 amounting to only a fraction of the potential recovery does not *per se* render the settlement inadequate
10 or unfair."). It is equally well-settled that a proposed settlement is not to be measured against a
11 hypothetical ideal result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair*
12 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 (quoting *Linney v. Cellular Alaska*
13 *P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242 with approval: "This court has aptly held that 'it is the very
14 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
15 consensual settlements.' The proposed settlement is not to be judged against a hypothetical or
16 speculative measure of what might have been achieved by the negotiators.").

17 The Gross Settlement Amount 23.8% of the damages owed to the Class for substantive
18 California law violations. (Cottrell Decl., ¶ 50). When adding derivative claims and potential PAGA
19 penalties, the \$1,900,000.00 settlement allocation represents approximately 10.4% of Defendant's
20 total potential exposure of \$18,252,223.23. (*Id.*) This amount is inclusive of Plaintiffs' claims for
21 unpaid wages, meal and rest breaks, expense reimbursements, as well as derivative claims for wage
22 statements and waiting time penalties and PAGA penalties. (*Id.*)

23 Class Counsel estimated the value of Plaintiffs' claim for misclassification at approximately
24 \$7 million, assuming Plaintiffs and the Class fully prevail on their misclassification claim, and could
25 recover a \$5,000 penalty for each misclassified Class Member. (*Id.*, ¶ 52). Further, Class Counsel
26 estimated an additional approximately \$6.8 million in penalties should Plaintiffs and the Class also
27 fully prevail on their claims for wage statement and waiting time penalties. (*Id.*) Finally, Class Counsel
28 estimated approximately \$1.8 million in interest should Plaintiffs and Class Counsel prevail on all

1 their claims. (*Id.*) Thus, approximately \$15.6 million of Defendants' total exposure are estimated
2 penalties and interest. (*Id.*) Assuming success on the misclassification claim, Class Counsel estimated
3 damages for the overtime and meal and rest break claims of \$2.6 million. (*Id.*, ¶ 53). Class Counsel
4 determined that Plaintiffs and the Class can prove up to fifteen minutes of unpaid overtime per shift,
5 and can prove up to five missed meal and rest periods per week for each Class Member. (*Id.*)

6 The PAGA allocation of \$50,000.00 represents 2.6% of the Gross Settlement Amount. (*Id.*, ¶
7 51). The allocation is reasonable given the risks associated with recovering PAGA penalties. (*Id.*)
8 Plaintiffs' PAGA claims are premised on the same underlying wage claims, and thus subject to the
9 same defenses on the merits. (*Id.*) Courts in California considering reasonableness of class action
10 settlements have routinely approved class action settlements that represented between 8% and 25% of
11 the total potential recovery. *See Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245,
12 256 (approving settlement fund that represents between 25.4 and 8.5% of the potential exposure).
13 "Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will
14 produce a prompt, certain, and substantial recovery for the Plaintiff class." *Eddings v. Health Net, Inc.*
15 (C.D. Cal. 2013) 2013 U.S. Dist. LEXIS 84811 at * 12; *see also Officers for Justice v. Civil Service*
16 *Comm'n* (9th Cir. 1982) 688 F.2d 615 at 623; *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459
17 (approving settlement amount that was roughly one-sixth, or 16.6% of the potential recovery); *Viceral*
18 *v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 140759, at *7 (approving wage and hour
19 settlement which represented 8.1% of the total verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*
20 (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 78671, at *4 ("10% gross and 7.3% net figures are 'within
21 the range of reasonableness'"); *Balderas v. Massage Envy Franchising, LLP* (N.D. Cal. 2014) 2014
22 U.S. Dist. LEXIS 99966, at *5 (gross settlement amount of 8% of maximum recovery and net
23 settlement amount of 5%); *Ma v. Covidien Holding, Inc.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS
24 13296, at *4-5 (9.1% of "the total value of the action" is within the range of reasonableness). Here,
25 the Settlement represents 10.4% of the total estimated value of the claims, and 23.8% of the value of
26 the substantive claims. (Cottrell Decl., ¶ 50). Accordingly, the settlement is fair and reasonable.

1 **IV. THE COURT SHOULD APPROVE PLAINTIFFS' SERVICE ENHANCEMENT**
2 **PAYMENTS.**

3 It is well-established that representative plaintiffs are eligible for reasonable incentive
4 payments to compensate them for the expense or risk they have incurred in conferring a benefit on
5 other members of the class. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
6 Cal.App.4th 399, 412. Courts award service payments to advance public policy by encouraging
7 individuals to come forward and perform their civic duty in protecting the rights of the class, as well
8 as to compensate class representatives for their time, effort, and inconvenience. *Cellphone Termination*
9 *Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-94 (explaining that incentive awards “are intended to
10 compensate class representatives for work done on behalf of the class, to make up for financial or
11 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to
12 act as a private attorney general.”)

13 Here, Plaintiffs request service enhancement payments in the amount of \$10,000.00 each (or
14 \$20,000.00 total) for the critical roles they played in this litigation as Class Representatives, and for
15 the time, effort, and risks they undertook in securing the result for the class members. (Cottrell Decl.,
16 ¶ 54).

17 Plaintiffs took the significant risk of coming forward to represent the interests of their fellow
18 employees. (*Id.*, ¶ 55). They have subjected themselves to risk with regard to future employment
19 opportunities and their reputation in the community by their participation in this action. (*Id.*) Their
20 service as the named Plaintiffs in a wage and hour class action lawsuit may be discerned by potential
21 employers and members of the community, creating a very real risk of future repercussions,
22 particularly with respect to future job opportunities. (*Id.*)

23 As a result of Plaintiffs' effort and willingness to step forward, the Class Members will receive
24 significant recoveries if the Court finally approves the Settlement. (Cottrell Decl., ¶ 56). On the other
25 hand, if Plaintiffs did not serve as Class Representatives or assist in the prosecution of this case, the
26 matter likely would not have been brought. (*Id.*) The Class Members would not be getting any
27 recovery, and Defendant's alleged conduct would have gone unchecked. (*Id.*) Plaintiffs have
28 committed their time to this case and assumed significant risk to obtain the favorable result. (*Id.*)

1 Payment to the Plaintiffs in the amount of \$10,000.00 each is reasonable considering the effort they
2 made and the risk they took in filing and prosecuting this action to obtain this Settlement. (*Id.*, ¶ 57).

3 This figure is also well within the range of service awards approved in comparable cases. *See*,
4 *e.g.*, *Sano v. Southland Mgmt. Grp., Inc.* (Cal. Super. Dec. 2, 2013) 2013 WL 7231686, at *3
5 (approving two \$15,000 service awards in context of class action settlement); *Benedict v. Reachlocal,*
6 *Inc.* (Cal. Super. Dec. 9, 2011) 2011 WL 9155053 (approving \$12,500 and \$10,000 service awards);
7 *Wilson v. Rock-Tenn Co.* (Cal. Super. Dec. 12, 2017) 2017 WL 9342358, at *2 (approving five \$10,000
8 service awards); *Chavez v. Teledirect Commc'ns Inc.* (Cal. Super. Jun. 11, 2021) 2021 Cal. Super.
9 LEXIS 10020, *9 (approving service award of \$7,500 to each of the plaintiffs).

10 Defendant does not oppose this request, nor does the Class as there were no objections to the
11 Settlement. (*Id.*, ¶ 58). Therefore, payment to Plaintiffs in the amount of \$10,000.00 each is reasonable.
12 (*Id.*)

13 **V. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE.**

14 Plaintiffs also request that this Court approve payment of \$23,923.00 for the costs ILYM
15 incurred to administer the Settlement. (*Id.*, ¶ 77; ILYM Decl., ¶¶ 14, 19). These settlement
16 administration costs are reasonable, uncontested, and the Court should approve them. (*Id.*)

17 **VI. CONCLUSION**

18 For the foregoing reasons, Plaintiffs respectfully request that this Court grant this Motion.

19 Dated: October 12, 2023

Respectfully Submitted,

20 
21 _____
22 Carolyn Hunt Cottrell
23 Ori Edelstein
24 Eugene Zinovyev
25 Philippe M. Gaudard
26 **SCHNEIDER WALLACE**
27 **COTTRELL KONECKY LLP**

28 Brent S. Buchsbaum
Laurel N. Haag
LAW OFFICES OF
BUCHSBAUM & HAAG, LLP

*Attorneys for Plaintiffs, on behalf of the Class,
the State of California, and Aggrieved Employees*

1 **PROOF OF SERVICE**

2 I, the undersigned, declare that I am, and was at the time of service of the papers herein
3 referred to, over the age of 18 years and not a party to the within action or proceeding. I am
4 employed at Schneider Wallace Cottrell Konecky LLP located at 300 S Grand Avenue, Suite
2700, Los Angeles, California 90071.

5 On October 12, 2023 I served the following document(s):

6 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
7 **FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

8 on the following person(s) listed below, as follows:

9 Andrew R Livingston (SBN 148646)
10 Alexandra Stathopoulos (SBN 286681)
11 ORRICK, HERRINGTON &
12 SUTCLIFFE LLP
405 Howard Street
San Francisco CA 94105-2669
Tel: (415) 773-5700
Fax: (415) 773-5759

Attorneys for Defendants

**4400 WE TECHNOLOGIES, INC. d/b/a
PATTERN JOBS**

Email: alivingston@orrick.com
Email: astathopoulos@orrick.com

13 Annie H. Chen (SBN 292032)
14 Paul Rodriguez (SBN 307139)
15 ORRICK, HERRINGTON &
16 SUTCLIFFE LLP
777 S Figueroa Street, Suite 3200
Los Angeles CA 90017-5855
Tel: (213) 612-2337

Email: annie.chen@orrick.com
Email: prodriguez@orrick.com

17 Caroline P. Donelan (SBN 268762)
18 BLANK ROME LLP
19 2029 Century Park East, 6th Floor
20 Los Angeles CA 90067
Tel: (424) 239-3400
Fax: (424) 239-3434

Attorneys for Defendants

RADIAL, INC.

Email: caroline.donelan@blankrome.com

21 Tae Kim (SBN 210465)
22 COLLINS KIM LLP
23 515 S Flower Street, 18th Floor
24 Los Angeles CA 90071
Tel: (213) 341-0238
Fax: (213) 341-0242

Attorneys for Defendants

METRO AIR SERVICE, INC.

Email: tkim@collinskim.com

25 ☒ **BY ELECTRONIC SERVICE:** Eugene Huffman, Paralegal, has submitted an
26 electronic version of the above-referenced document to the person(s) whose email
27 address(es) are known to me as listed above.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on October 12, 2023, in North Hollywood, California.


Eugene Huffman