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

MAY 25 2023


BY:  Stephanie Paniagua, Deputy

**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.

Case No. CIVSB2207056

Assigned to Hon. David Cohn

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

Date: June 7, 2023

Time: 8:30 a.m.

Dept.: S26

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Luz Gomez and Philip Hughes (collectively “Plaintiffs”), on behalf of the putative
4 Class, the State of California, and the Aggrieved Employees, seek preliminary approval of this wage
5 and hour Class and Private Attorneys’ General Act (“PAGA”) action 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. These putative Class Members and Aggrieved
11 Employees include those who provided services for Radial and Metro, or those assigned to work at a
12 facility operated by Radial or Metro or at any other facility in California. The Settlement resolves the
13 claims of approximately 1930 putative Class Members and Aggrieved Employees that almost certainly
14 never would have been prosecuted as individual actions, and in so doing provides an excellent benefit
15 to the members of the Class and the Aggrieved Employees. The basic financial terms of the Settlement
16 are summarized below:

17

Financial Term	Amount
Non-reversionary Gross Settlement Amount	\$1,900,000.00
Attorneys’ Fees	One-third of non-reversionary Gross Settlement Amount, or \$633,333.33
Reimbursement of actual costs to Class Counsel	Currently amount to approximately \$26,178.71.
Actual costs and expenses of the Settlement Administration	Not to exceed \$25,000.00.
PAGA Penalties	\$50,000.00 - 75% of the PAGA Penalty, \$37,500.00, to be distributed to the LWDA, and 25% of the PAGA Penalty, \$12,500.00, to be distributed to the Aggrieved Employees.
Service Enhancement Payments to Plaintiffs	\$10,000.00 each, or \$20,000.00 total

26

27 _____
28 ¹ A true and correct copy of the Settlement Agreement (“Settlement”) is attached as **Exhibit 1** to the accompanying Declaration of Carolyn Hunt Cottrell in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Cottrell Decl.”).

Financial Term	Amount
Net Settlement Amount	\$1,157,987.96 (inclusive of the PAGA penalty to be allocated to Aggrieved Employees)

The Settlement satisfies the criteria for preliminary approval under California law and falls well within the range of reasonableness. The average award for each of the around 1,930 proposed Class Members/Aggrieved Employee is approximately \$599.99. This is a strong recovery for a wage and hour class action, particularly considering the risks and factual circumstances described herein.

Plaintiffs request that the Court: (1) grant preliminary approval of the Settlement; (2) appoint ILYM Group, Inc. (“ILYM”) as Settlement Administrator for the Settlement and approve the costs of settlement administration not to exceed \$25,000.00; (3) appoint Schneider Wallace Cottrell Konecky LLP (“SWCK”) and The Law Offices of Buchsbaum & Haag LLP (“B&H”) as Class Counsel for the Settlement Class; (4) appoint Plaintiffs Gomez and Hughes as Representative for the Settlement Class; (5) provisionally certify the Class for settlement purposes only; (6) preliminarily approve a service award of \$10,000.00 to each Plaintiff for their efforts on behalf of the Class; (7) preliminarily approve an allocation of \$50,000.00 for PAGA penalties; (8) preliminarily approve an award of attorneys’ fees to Class Counsel in the amount of one-third of the Gross Settlement Amount, or \$633,333.33, plus reimbursement of Class Counsel’s out-of-pocket expenses currently amounting to approximately \$26,178.71; (9) approve the Notice of Class Action Settlement and Final Approval Hearing (“Class Notice”) attached as **Exhibit 2** to Cottrell Decl.; and (10) approve the proposed notice administration schedule, set forth in Plaintiffs’ Notice of Motion and Motion for Preliminary Approval of the Class Action Settlement filed concurrently.

II. SUMMARY OF THE LITIGATION

A. Plaintiffs’ Allegations in Their Operative Complaint

Plaintiff Gomez alleges that she worked for Defendants as a warehouse associate in Rialto, California from approximately September 2021 until December 2021. FAC ¶ 8. Plaintiff Hughes worked for Defendants as a warehouse associate in Montebello, California from approximately November 2021 until December 2021. *Id.*

Plaintiffs alleged that Defendants misclassified the putative Class Members and Aggrieved

1 Employees as Independent Contractors. *See id.*, ¶¶ 20-21. Specifically, Plaintiffs allege that
2 Defendants systematically violated California wage and hour law by misclassifying non-exempt
3 warehouse employees as independent contractors in violations of applicable regulations, and as a result
4 violating California’s minimum wage, overtime, sick pay and meal and rest break requirements. *See*
5 *id.* ¶¶ 18-22.

6 As a result of these violations, Plaintiffs assert claims for (1) failure to pay for all hours worked;
7 (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide paid sick
8 days; (5) failure to authorize and permit and/or make available meal and rest periods; (6) failure to
9 reimburse for necessary business expenses; (7) failure to provide accurate itemized wage statements,
10 (8) waiting time penalties; (9) unlawful business practices; and (10) penalties pursuant to PAGA. *See,*
11 *generally, id.*

12 **B. Procedural History**

13 On December 9, 2021, Plaintiff Philip Hughes filed his complaint in Los Angeles Superior
14 Court (“*Hughes*”), Case No. 21STCV45026. Declaration of Brent S. Buchsbaum (“Buchsbaum
15 Decl.”), ¶ 12. Plaintiff Hughes’s complaint was initially filed as a putative class action against
16 Defendants Pattern, Radial and Metro. *Id.* On March 23, 2022, Plaintiff Hughes amended his
17 complaint by adding representative claims under PAGA. *Id.* ¶ 13.

18 On February 14, 2022, Plaintiff Gomez filed her putative class action lawsuit against
19 Defendants Pattern and Radial in the United States District Court for the Central District of California
20 (“*Gomez I*”), Case No. 5:22-cv-00283 JGB (SPx). Declaration of Carolyn Hunt Cottrell (“Cottrell
21 Decl.”), ¶ 16. On April 6, 2022, Plaintiff Gomez filed a separate PAGA-only representative action
22 against Defendants Pattern and Radial in this Court (“*Gomez II*”). Cottrell Decl., ¶ 18.

23 Following substantial meet and confer efforts, the Parties agreed to participate in a global
24 mediation before David A. Rotman, who has extensive experience in labor and employment litigation.
25 Cottrell Decl., ¶ 23. In the lead-up to the mediation, the Parties engaged in informal mediation
26 discovery during which Defendants produced a significant volume of documents and information. *Id.*,
27 ¶ 21. The production included hundreds of pages of documents relating to Defendants’ policies,
28 practices, and procedures regarding their wage and hour practices, including timekeeping and

1 compensation policies, meal and rest periods policies, meal premiums paid, and payroll and
2 operational policies. *Id.* The production also included putative class members' time-punch data (clock-
3 in and clock-out times) and payroll information, employee handbooks, policies applicable to hourly
4 non-exempt employees, and job descriptions. *Id.*

5 Defendants denied any and all liability or wrongdoing of any sort with regards to Plaintiffs'
6 claims and argued that Plaintiffs' claims on behalf of an overly broad class and aggrieved individuals
7 are not appropriate for class treatment and a PAGA trial would be unmanageable.

8 On June 1, 2022, the Parties participated in the full day mediation session with David A.
9 Rotman. *Id.*, ¶ 23. The Parties were not able to resolve their disputes at the mediation. *Id.* Following
10 mediation, the Parties engaged in informal settlement discussions for several months while continuing
11 to litigate the lawsuits. *Id.*, ¶ 24. On October 20, 2022, the Parties agreed to key terms of the Settlement,
12 which were memorialized in a Memorandum of Understanding, signed by all parties on December 11,
13 2022. The Parties executed the long-form Settlement Agreement on March 9, 2023. *Id.*, ¶ 26.

14 In reaching the Settlement, Plaintiffs considered Defendants' financial condition and their
15 ability to pay a settlement and/or a judgment in the future. **Class Counsel identified certain risks**
16 **associated with Defendant Pattern's ability to pay.** Plaintiffs concluded, based on their expert's
17 analysis, that **Defendant Pattern faced significant financial constraints, which impaired their**
18 **ability to pay a settlement greater than the amount agreed to in the settlement in this case.** *Id.*, ¶
19 25.

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

25 On May 3, 2023, following the filing of the consolidated FAC, the *Hughes* action was
26 dismissed without prejudice.

27
28 ² Plaintiffs also filed the First Amended Complaint with the Court on May 15, 2023.

1
2 **III. SUMMARY OF THE SETTLEMENT**

3 **A. Terms of the Settlement**

4 The Settlement provides that Defendants will pay a non-reversionary total sum of
5 \$1,900,000.00 (“Gross Settlement Amount”), exclusive of employer payroll taxes owed on the wage
6 portions of the Individual Class Payments. Settlement, ¶ 3.13, 8.1. The Settlement covers, as of the
7 date of the Parties’ mediation, approximately 1,930 Class members who collectively worked a total of
8 8,921 workweeks during the Class Period, and 1,930 Aggrieved Employees who collectively worked
9 a total of 8,921 PAGA pay periods during the PAGA Period.³

10 With the Motion for Final Approval, Class Counsel will seek fees of up to one-third of the
11 Gross Settlement Amount, \$633,333.33, and actual costs currently amounting to approximately
12 \$26,178.71. Settlement ¶ 8.2; Cottrell Decl. ¶ 93. The Settlement also sets aside the costs of the
13 settlement administration not to exceed \$25,000.00 (*Id.*, ¶ 8.3); \$10,000.00 each for service awards to
14 Plaintiffs (Settlement ¶ 8.4); and \$37,500.00 for PAGA penalties to be allocated to the LWDA (75%
15 of the \$50,000 PAGA allocation with the remaining 25% to be distributed to Aggrieved Employees).
16 (*Id.* ¶ 3.25). After all Court approved deductions, the estimated amount available to Settlement Class
17 Members/Aggrieved Employees is approximately \$1,157,987.96 (“Net Settlement Amount”).

18 **B. Proposed Class Notice**

19 The Parties have jointly selected ILYM as the Settlement Administrator. During the
20 administration process, the Settlement Administrator will send out the proposed Class Notice, which
21 informs Class Members/Aggrieved Employees of: (1) the dollar amounts of any Individual Class
22 Payment and/or Individual PAGA Payment payable to the Class Member/Aggrieved Employee; and
23 (2) the number of Workweeks and/or PAGA Pay Periods used to calculate these amounts. Settlement,
24 ¶ 9.5; Cottrell Decl. Ex. 2. Each Class Member and Aggrieved Employee shall have the opportunity
25 to challenge the number of Workweeks allocated to the Class Member in the Class Notice, and/or the
26 number of PAGA Pay Periods allocated to the Aggrieved Employee in the Class Notice. Settlement, ¶

27
28 ³ Because of the limited time periods during which Pattern operated in California and therefore, the limited time periods
at issue in this Action, the Class Members and Aggrieved Employees include the same population of individuals.

1 9.5. Class Members who wish to exclude themselves from the Settlement must submit a written request
2 for exclusion from the Settlement by the Response deadline. *Id.*, ¶ 9.6.

3 **C. Proposed Release**

4 Upon the Effective Date of the Settlement, Plaintiffs will be deemed to have waived, released,
5 acquitted, and forever discharged Defendants and the other Released Parties from any and all claims,
6 actions, charges, complaints, grievances, and causes of action, of any nature arising from or related to
7 Plaintiffs' employment with Defendants, whether known or unknown, which exist or may exist as of
8 the Parties' execution of the Settlement Agreement. *Id.*, ¶ 11.3.

9 Upon the Effective Date, the Settlement Class Members will be deemed to have fully, finally,
10 and forever released, relinquished, and discharged Defendants and the other Released Parties from all
11 claims, demands, rights, liabilities, penalties, fees, and causes of action that were or could have been
12 asserted by reason of or in connection with any matter or fact set forth or referred to in the operative
13 complaints in the lawsuits separately brought by *Hughes* and *Gomez* and now asserted in the FAC.
14 *Id.*, ¶ 11.1.

15 Upon the Effective Date, Plaintiffs will release, and the State of California and all Allegedly
16 Aggrieved Individuals will be deemed to release Defendants and the other Released Parties from all
17 claims for civil penalties under PAGA during the PAGA Period based on or reasonably related to the
18 factual allegations in the operative complaints in the lawsuits separately brought by *Hughes* and
19 *Gomez* and now asserted in the FAC or Plaintiffs' PAGA notices to the LWDA. *Id.*, ¶ 11.2.

20 **D. Proposed Service Award**

21 The Agreement provides for payments to Plaintiffs in the amount of up to \$10,000.00 each
22 based on the efforts they made and the risks they took in filing and prosecuting this action and
23 obtaining this \$1,900,000.00 settlement. In addition, Plaintiffs, unlike the Class Members, also agree
24 to a general release of claims.

25 Throughout this litigation, Plaintiffs worked with Class Counsel and assisted the development
26 of the case. They provided extensive information and documents during Class Counsel's initial
27 investigation and the preparation of the complaints. They also provided responses to Class Counsel's
28 question as the case progressed and provided valuable insight into Defendants' operations. Plaintiffs

1 took part in the Settlement decision and remained apprised of the case throughout litigation. Cottrell
2 Decl., ¶ 85; Buchsbaum Decl., ¶ 17.

3 Plaintiffs also took the significant risk of coming forward to represent the interests of their
4 fellow employees. They have subjected themselves to risk with regards to future employment
5 opportunities and their reputation in the community by their participation in this action. (Their service
6 as the named Plaintiffs in a wage and hour class action lawsuit may be discerned by potential
7 employers and members of the community, creating a very real risk of future repercussions,
8 particularly with respect to future job opportunities. Cottrell Decl., ¶ 84; Buchsbaum Decl., ¶ 18.

9 **E. Proposed Attorneys' Fees and Costs**

10 Plaintiffs seek reasonable attorneys' fees and costs to be paid from the \$1,900,000.00 non-
11 reversionary Gross Settlement Amount. Settlement, ¶ 8.2. Under the terms of the Settlement, Class
12 Counsel may seek a fee award of one-third of the non-reversionary Gross Settlement Amount, or
13 \$633,333.33 and reasonable litigation expenses incurred in connection with the Action, currently
14 estimated at \$26,178.71. Settlement, ¶ 8.2; Cottrell Decl. ¶ 93. The requested attorneys' fees are to be
15 divided between Class Counsel as set forth in their Fee-Sharing Agreement. Settlement, ¶ 8.2.

16 **IV. ARGUMENT**

17 **A. The Settlement Meets the Standards for Preliminary Approval**

18 The decision to approve or reject a proposed settlement is within a court's discretion. *Wershba*
19 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. To grant preliminary approval of a class
20 action settlement, courts need only find that the settlement falls within the range of possible final
21 approval, also described as "the range of reasonableness." *See, e.g., North County Contractor's Assn.,*
22 *Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal.App.4th 1085, 1090; *see also Newberg on Class Actions* at
23 §11:25.

24 To make this determination, courts must consider several relevant factors, including "the
25 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the
26 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
27 discovery completed and the stage of the proceedings, [and] the experience and views of counsel."
28 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive, and

1 the court is free to engage in a balancing and weighing of the factors depending on the circumstances
2 of each case.” *Wershba, supra*, at 245.

3 **1. The Terms of the Proposed Settlement are Fair, Reasonable, and**
4 **Adequate.**

5 Courts make an initial evaluation of the fairness, reasonableness, and adequacy of the proposed
6 settlement based on information already known, supplemented as necessary by briefs, motions, or
7 information presented by the settling parties. *See Manual for Complex Litigation* at § 21:632. Courts
8 must ensure that “the agreement is not the product of fraud or overreaching by, or collusion between,
9 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
10 concerned.” *Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1027. A presumption of fairness exists
11 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery
12 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
13 litigation; and (4) the percentage of objectors is small. *Dunk, supra*, at 1802. The first three of these
14 conditions are satisfied here, and Plaintiffs expect that the fourth condition will also be satisfied.

15 **a. The Settlement is the result of arm’s-length negotiations.**

16 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
17 reached through arm’s-length bargaining.” *Wershba, supra*, at 224, 245. The Settlement was reached
18 after numerous arm’s-length settlement discussions between Class Counsel and Defendant’s counsel.
19 Cottrell Decl., ¶ 62. This negotiation included extensive communications between Class Counsel and
20 Defendant’s Counsel and a mediation conference supervised by an experienced and respected
21 mediator. *Id.* ¶¶ 23, 24. During these negotiations, Class Counsel investigated the applicable law and
22 the facts and extensively analyzed the potential damages that might be recovered for the employees.
23 At mediation, the parties engaged in an intensive discussion regarding their evaluations of the *Hughes*
24 and *Gomez I and II* cases, including the evaluation of the merits, risks, costs and delays of further
25 litigation, the risks of the parties proceeding with class certification, procedural challenges,
26 **Defendants’ ability to pay**, and estimated exposure at issue. During settlement discussions, the
27 parties conducted these negotiations at arm’s length in an adversarial position. Accordingly, the
28 settlement was agreed upon following arm’s-length negotiations. *Id.* ¶¶ 22, 62.

1 **b. The Settlement was reached after extensive investigation,**
2 **discovery, and analysis of the class claims.**

3 Preliminary approval is warranted where the Court is provided sufficient information regarding
4 the discovery process and the facts developed, so that the Court may form “an understanding of the
5 amount that is in controversy and the realistic range of outcomes of the litigation.” *Kullar v. Foot*
6 *Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 129-31; *Clark v. Am. Residential Servs. LLC* (2009)
7 175 Cal.App.4th 785, 801.

8 In the lead up to mediation, the parties agreed to exchange robust informal discovery.
9 Specifically, Defendants produced hundreds of pages of documents relating to their policies and
10 procedures regarding their wage and hour practices, time and payroll records for all Class
11 Members/Aggrieved Employees, and information relating to the size and scope of the Class (including
12 breakdown of contractors versus employees, breakdown of current versus former
13 contractors/employees, total number of workweeks, average hourly pay rates), during the Class Period
14 and PAGA Period. *Id.* ¶ 21. As described above, Plaintiffs used this information to perform a careful
15 and extensive analysis of the effects of Defendants’ classification, compensation, meal and rest break
16 and timekeeping policies and practices on the employees’ pay. *Id.*, ¶¶ 66-68.

17 **c. Class Counsel are experienced class action litigators.**

18 Class Counsel are experienced and respected employment class action litigators. *Id.*, ¶ 80.
19 Based on Class Counsel’s knowledge and expertise in this area of law and **in light of Defendants’**
20 **financial difficulties and limited ability to pay a class-wide settlement**, Class Counsel believe this
21 Settlement will provide an excellent benefit to the Class Members and Aggrieved Employees. *Id.*, ¶¶
22 73, 77. The Settlement is well within the range of reasonableness. As analyzed below under section 3,
23 the Net Settlement to be fully distributed to Class Members and Aggrieved Employees is an excellent
24 result which recovers approximately 10.4% of Plaintiff’s calculation of maximum potential damages
25 owed to the Class and satisfies these standards.

26 **2. Plaintiffs Face Substantial Risk of Continued Litigation.**

27 In contrast to the risk and uncertainty of continued litigation, the Settlement will yield a
28 prompt, certain, and substantial recovery for the employees. Such a result will benefit the parties and

1 the court system.

2 If this case were to go to trial as a class action, it would require substantial additional
3 preparation and discovery and ultimately would involve the depositions of Plaintiffs, managerial
4 employees and experts, the presentation of witnesses at trial, as well as the consideration, preparation,
5 and presentation of voluminous documentary evidence and the preparation and analysis of expert
6 reports. The Plaintiffs would face other significant risks if the litigation were to proceed to trial. For
7 example, Plaintiffs would not only face defenses as to the merits of their claims but face considerable
8 challenges in preparing their Motion for Class Certification as well as opposing Defendants' Motion
9 to Strike Plaintiffs' PAGA Representative Allegations on manageability grounds. The putative
10 Class/Aggrieved Employees Plaintiffs seek to represent encompass a disparate group of both
11 employees and contractors, who work at different positions, in different California locations for
12 different defendants, in varying work environments, and under numerous managers and supervisors.
13 The Plaintiffs and Class Counsel recognized that all of these issues increase the risk of denial of
14 certification or a dismissal of Plaintiffs' PAGA representative claims.

15 The Motion for Class Certification would also require extensive investigation and outreach
16 efforts by Class Counsel to obtain supporting evidence and would be vigorously contested by
17 Defendants with significant risk of denial. For instance, although Plaintiffs believe that they would
18 have prevailed on their misclassification claim, they recognized the risk that a factfinder could have
19 found for Defendants on the misclassification claim pursuant to the *Dynamex* "ABC Test."⁴
20 Additionally, Plaintiffs' other claims regarding wage payments, including minimum wages and
21 overtime, meal and rest breaks violations, waiting time penalties and wage statements rise and fall
22 with Plaintiffs' misclassification claims. *Id.* Plaintiffs faced the risk of recovering nothing at all if they
23 were unable to prove the underlying misclassification claims. *Id.*

24 Even assuming that the motion is granted, the Plaintiffs would then have to establish Class-
25 wide liability and prove up various issues regarding damages and penalties. Liability and damages
26

27 ⁴ 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 issues have been vigorously disputed by Defendants. Obtaining class certification, establishing
2 liability, and proving damages would likely take years, and would necessitate expert witness testimony
3 and significant additional litigation. While the Plaintiffs believe that they would prevail on these issues
4 and others, they recognize the risk that a factfinder may find for Defendants on one or more of these
5 issues and or find damages to be significantly less than what the Plaintiffs claim.

6 Moreover, the Court may consider Defendants' financial resources and ability to pay a larger
7 settlement when deciding whether to approve a class settlement. *See, e.g., Dunk, supra*, at 1801 (noting
8 a court must include the risk of insolvency and inability to pay a larger settlement in its assessment of
9 the reasonableness of a class action settlement). Here, the fairness of the Settlement is further
10 underscored by the risk that Pattern may not be able to pay a larger class-wide settlement in the near
11 future. *Id.*, ¶ 73. **Plaintiff investigated Defendants' ability to pay a settlement and concluded,**
12 **based on their expert's analysis, that Defendants faced significant financial constraints, which**
13 **impaired their ability to pay a settlement greater than what they agreed to in this case.**

14 Therefore, the parties have agreed that this litigation is well-suited for settlement recognizing
15 the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class
16 certification and PAGA manageability, summary judgment, at trial and/or on the damages awarded;
17 Defendants' limited ability to pay; and/or an appeal that can take several years to litigate.

18 3. The Settlement Amount is Fair and Reasonable.

19 A preliminary review of the Settlement reveals the fairness of its terms. The estimated Net
20 Settlement Amount of \$1,157,987.96 derived from a Gross Settlement Amount of \$1,900,000.00 will
21 result in fair and just relief to the Class Members and Aggrieved Employees. This amount provides an
22 estimated average recovery of \$599.99 per Class Member/Aggrieved Employee, assuming 100%
23 participation in the Settlement for the Class Members.

24 The Settlement is reasonable particularly when considering the nature of Plaintiffs' claims, and
25 the difficulty and risks presented by continuing this litigation as explained above. The \$1,900,000.00
26 settlement represents approximately 23.8% of the total assessed value of \$7,991,719.75 for
27 unliquidated, core claims for unpaid wages, meal and rest breaks, and expense reimbursements. When
28 adding derivative claims and potential PAGA penalties, the \$1,900,000.00 settlement allocation

1 represents approximately 10.4% of Defendants' total potential exposure of \$18,252,223.23. This
2 amount is inclusive of Plaintiff's claims for unpaid wages, meal and rest breaks, expense
3 reimbursements, as well as derivative claims for wage statements and waiting time penalties and
4 PAGA penalties.

5 Further, the PAGA allocation of \$50,000.00 represents 2.6% of the Gross Settlement Amount,
6 well within the settlements previously approved in this and other California courts.⁵ The allocation is
7 reasonable given the risks associated with recovering PAGA penalties. Plaintiffs' PAGA claims are
8 premised on the same underlying wage claims, and thus subject to the same defenses on the merits.

9 In light of the challenges that Plaintiffs would likely face in protracted litigation on both
10 liability and damages, the ability to certify the class, the potential for the Court to significantly discount
11 PAGA penalties, and **the risks associated with Pattern's ability to pay**, the \$1,900,000.00 settlement
12 is reasonable and fair. *See, e.g., In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459
13 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery
14 does not per se render the settlement inadequate or unfair."); *Bellinghausen v. Tractor Supply Co.*
15 (N.D. Cal. 2015) 306 F.R.D. 245, 256 ("Settlement avoids the complexity, delay, risk and expense of
16 continuing with the litigation and will produce a prompt, certain, and substantial recovery for the
17 Plaintiff class;" approving settlement that provided 9% recovery based on estimated liability
18 exposure).

19 **B. Conditional Class Certification is Appropriate**

20 This Court should certify the proposed Class for settlement purposes pursuant to Cal. Code
21 Civ. Proc. § 382. As part of the Settlement, the Parties stipulated to the certification of the Settlement
22 Class for settlement purposes only. *See* Settlement, ¶ 13.2. California has a strong public policy in
23 favor of broad enforcement of wage and hour laws for the benefit of workers and in favor of using the
24 class action device. *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340. A party
25 seeking class certification has the burden to establish the existence of both an ascertainable class and
26

27 ⁵ *See Hartley v. On My Own, Inc.* (E.D. Cal. Aug. 25, 2020) 2020 U.S. Dist. LEXIS 154315, 2020 WL 5017608 at * 4
28 (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of \$61); *see also Haralson v U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959 at 972-74 (citing cases reflecting approval of settlements at 0.2% to 1.1% of verdict value of PAGA penalty).

1 a well-defined community of interest among class members. The community of interest requirement
2 embodies three factors: (1) predominant common questions of law or fact; (2) class representatives
3 with claims or defenses typical of the class; and (3) class representatives who can adequately represent
4 the class. *Id.* at 326.

5 The Settlement defines the Class for settlement purposes as: all individuals engaged by Pattern
6 as independent contractors or non-exempt employees in the State of California, including those who
7 performed services for Radial, Metro, or those assigned to work at a facility operated by Radial or
8 Metro, or at any other facility in California, from December 9, 2017, through the date of the Court
9 granting preliminary approval or within 120 days of the execution of the Settlement by all Parties,
10 whichever is sooner (“Class Period”). Settlement, ¶¶ 3.3, 3.5. Applying the standards outlined herein,
11 the Court should certify the proposed Class as defined herein.

12 **1. Plaintiffs Satisfy the Ascertainability and Numerosity Requirements.**

13 In determining whether a class is “ascertainable,” courts “examine the class definition, the size
14 of the class, and the means of identifying the class members.” *Reyes v. Bd. of Supervisors*
15 (1987) 196 Cal.App.3d 1263, 1274-75. Plaintiffs have defined the Class according to objective criteria.
16 The Class Members are easily identifiable, and Defendants will provide the Settlement Administrator
17 and Class Counsel with a Class list. Cottrell Decl., ¶ 40; Settlement, ¶ 9.3.

18 To be certified, a class must be numerous in size such that it is impracticable to bring them all
19 before the court. Cal. Code Civ. Proc. § 382. The requirement of § 382 that there be many parties to a
20 class action suit is indefinite and has been construed liberally. No set number is required as a matter
21 of law for the maintenance of a class action. The ultimate issue in evaluating this factor is whether the
22 class is too large to make joinder practicable. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
23 934; *Collins v. Rocha* (1972) 7 Cal.3d 232. Plaintiffs satisfy the numerosity element with
24 approximately 1,930 Class Members who would likely not have pursued their individual rights absent
25 a class mechanism, making joinder impracticable. Cottrell Decl., ¶ 78; *Rose, supra* at 934; *Collins,*
26 *supra*, at 238.

27 **2. Common Questions of Law and Fact Predominate in this Action.**

28 “[T]he focus in a certification dispute is on what type of questions – common or individual –

1 are likely to arise in the action[.]” *Sav-on, supra*, at 427. The California Supreme Court has expressly
2 held that predominance does not require that all questions of law and fact be uniform for all members
3 of the class. *Id.* at 338.

4 Here, Plaintiffs contend that Defendants’ company-wide policies and procedures raise common
5 issues of law and fact that are applicable to the claims of Plaintiffs and Class Members. Cottrell Decl.,
6 ¶ 88. Where, as in this case, uniform policies and procedures apply on a class-wide basis, “the legal
7 question to be resolved is not an individual one. To the contrary, the common legal question remains
8 the overall impact of [Defendants’] policies on its [employees] . . .” *Jaimez v. Daiohs USA, Inc.* (2010)
9 181 Cal.App.4th 1286, 1299. Plaintiffs allege that Defendants have uniform wage-and-hour policies
10 applicable to all employees/contractors. Cottrell Decl. ¶ 13. Specifically, they are subject to the same
11 misclassification policies; the same meal and rest period policies and practices; the same timekeeping,
12 payroll, compensation, and overtime policies; and the same hiring and training processes. Plaintiffs
13 also contend that common factual issues apply to the Class Members, such as whether Defendants
14 misclassified the employees as independent contractors and whether Defendants’ labor model and
15 operational standards force the employees to work off-the-clock and miss meal and rest breaks.
16 Plaintiffs allege that these standardized policies and procedures are dictated by Defendants and apply
17 to all Class Members.

18 **3. The Typicality Requirement is Satisfied.**

19 A representative plaintiff’s claims are “typical” if they arise from the same event, practice, or
20 course of conduct that gives rise to the claims of the other class members and if their claims are based
21 on the same legal theory. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. The typicality
22 requirement is not onerous and does not require the claims to be identical. *Id.*

23 Here, Plaintiffs contend that they, like other Class Members, were subject to the policies and
24 practices that form the basis of the claims asserted in this case. Cottrell Decl., ¶ 79. Plaintiffs claim
25 they were misclassified as independent contractors and therefore denied meal and rest breaks,
26 overtime, and minimum wage compensation. *Id.* Plaintiffs also claim that the Class Members were
27 subjected to the same illegal policies and practices to which Plaintiffs were subjected and the Class
28 claims are based on the same legal theory as Plaintiffs’ individual claims. *Id.* Accordingly, Plaintiffs’

1 claims are “typical” of those asserted by other Class Members as Plaintiffs allege they arise from the
2 same employment practices and are based on the same legal theories as those applicable to the Class.
3 *Id.*; see *Classen, supra*, at 46-7.

4 **4. The Adequacy Requirement is Satisfied.**

5 A plaintiff is an adequate class representative if his or her claims are not inconsistent with or
6 antagonistic to the claims of the class members. See *Johnson v. GlaxoSmithKline, Inc.* (2008) 166
7 Cal.App.4th 1497, 1509. In the instant case, there is no conflict between Plaintiffs and the proposed
8 Class. Cottrell Decl., ¶ 80. Plaintiffs’ claims are in line with those of the Class and Plaintiffs have
9 prosecuted this case with the interests of the Class in mind. *Id.* Furthermore, Plaintiffs have selected
10 counsel with extensive experience in class action and employment litigation, including wage and hour
11 class actions, and who do not have any conflict with the Class. *Id.* For the foregoing reasons, Plaintiffs
12 are adequate class representatives, and Counsel are appropriate Class Counsel.

13 **C. The Proposed Service Award Is Reasonable.**

14 Courts award service payments to advance public policy by encouraging individuals to come
15 forward and perform their civic duty in protecting the rights of the class, as well as to compensate
16 class representatives for their time, effort, and inconvenience. *In re California Indirect Purchases*
17 (1998) 1998 WL 1031494 at *11. It is well-established that representative plaintiffs are eligible for
18 reasonable incentive payments to compensate them for the expense or risk they have incurred in
19 conferring a benefit on other members of the class. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
20 *Angeles* (2010) 186 Cal.App.4th 399, 412.

21 Payments to Plaintiffs in the amount of \$10,000.00 each are reasonable in light of the efforts
22 they made and the risks they took in filing and prosecuting this action and obtaining this \$1,900,000.00
23 settlement. Incentive awards “are intended to compensate class representatives for work done on
24 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and,
25 sometimes, to recognize their willingness to act as a private attorney general.” *Cellphone Termination*
26 *Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–94. Throughout this litigation, Plaintiffs worked with
27 Class Counsel and assisted in the development of the case. *Id.*, ¶ 85; Buchsbaum Decl. ¶ 17. They
28 provided extensive information and documents during Class Counsel’s initial investigation and the

1 preparation of the complaints. They also provided responses to Class Counsel’s questions as the case
2 progressed and provided valuable insight into Defendants’ operations. Cottrell Decl., ¶ 85. Plaintiffs
3 have taken part in the Settlement decision and remained apprised of the case throughout litigation. *Id.*
4 In exchange for the Service Enhancement Award, Plaintiff will also execute a general release of claims
5 and Cal. Code Civ. Proc. § 1542 waiver with respect to Defendants. *Id.*, ¶¶ 47, 86; Settlement, ¶ 8.4.

6 As a result of the Plaintiffs’ efforts and willingness to step forward, the employees will receive
7 significant recoveries if the Settlement is approved. On the other hand, if the Plaintiffs did not serve
8 as Class Representatives or assist in the prosecution of this case, it is likely that the claims of the
9 employees would never have been asserted. Defendants’ alleged conduct would have gone unchecked.
10 The Plaintiffs have committed their time to this case and assumed significant risk to obtain the
11 favorable result.

12 **D. The Proposed Notice of Settlement Provides Adequate Notice to the Class**

13 “Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*,
14 *supra*, at 1025. A class action settlement notice “is satisfactory if it ‘generally describes the terms of
15 the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
16 forward and be heard.’” *Churchill Village LLC v. General Electric* (9th Cir. 2004) 361 F.3d 566, 575

17 Here, Defendants will provide, if available, the names, Social Security number, last known
18 residential address, last known telephone number, and number of workweeks worked foreach Class
19 Members and Allegedly Aggrieved Individuals to the Settlement Administrator within 10 days of the
20 Court’s Order granting preliminary approval of the Settlement, and the Settlement Administrator will
21 mail the Notice Packet directly to each Class Member or Allegedly Aggrieved Individual at their last
22 known residential address provided by Defendants. Settlement, ¶ 9.3. The envelope containing the
23 Notice Packet shall include the following language: “Important Legal Document – You May Get
24 Money From A Class Action Settlement.” Settlement, ¶ 9.4. If the Notice Packet is returned as
25 undeliverable, the Settlement Administrator will perform a skip trace and resend the Notice.
26 Settlement, ¶ 9.4. Thus, reasonable steps will be taken to ensure that all Class Members receive the
27 Notice Packet. *Id.*

28 The Class Notice is clear and straightforward and provides information on the claims, the terms

1 of the proposed Settlement, the rights of the Class Members to participate, opt out, and object, the
2 anticipated monetary awards that the Settlement will provide to Participating Individuals, and the
3 identity and contact information for Class Counsel. Cottrell Decl., ¶ 97, Ex. 2.

4 The Class Notice summarizes the proceedings necessary to provide context for the Settlement
5 and summarizes the terms and conditions of the Settlement, including an explanation of how the
6 Settlement amount will be allocated between the Plaintiffs, Class Counsel, the Settlement
7 Administrator, and Participating Individuals. Cottrell Decl., ¶101. The Class Notice also describes the
8 release of claims to which Class Members will be subject if they participate in the Settlement. *Id.*, ¶
9 99. Moreover, this summary is presented in an informative, coherent, and easy-to-understand manner,
10 all in compliance with the Manual for Complex Litigation’s recommendation that “the notice contain
11 a clear, accurate description of the terms of the settlement.”

12 The Class Notice clearly explains the procedures and deadlines for opting out of the Settlement
13 and submitting objections and disputes, the consequences of taking or foregoing the various options
14 available to Class Members, and the date, time, and place of the Final Approval Hearing. *Id.*, ¶ 100.
15 The proposed Notice also sets forth the amount of attorneys’ fees and costs sought by Class Counsel
16 and explains that Class Members can object to Class Counsel’s requests for fees and costs. *Id.* In
17 addition, the Class Notice clearly states that the Settlement does not constitute an admission of liability
18 by Defendant. *Id.* Finally, it makes clear that the final settlement approval decision has yet to be made.
19 *Id.* The Class Notice also fulfills the requirement of neutrality in class notices so that sufficient
20 information about the case is provided to enable class members to make informed decisions about
21 their participation. *Id.*, ¶ 102; *see Newberg on Class Actions* at §§ 8:21 and 8:39; *Manual for Complex*
22 *Litigation* at §§ 21:311 and 21:312. Based on the foregoing, the Class Notice complies with the
23 standards of fairness, completeness, and neutrality required of a settlement class notice disseminated
24 under authority of the Court.

25 **E. The Requested Attorneys’ Fees and Costs are Reasonable.**

26 Plaintiffs seek reasonable attorneys’ fees and expenses from the \$1,900,000.00 Gross
27 Settlement Amount. Settlement., ¶ 8.2. Under the terms of the Settlement, Class Counsel may seek an
28 award of up to one-third of the Gross Settlement Amount, or \$633,333.33. *Id.* The requested attorneys’

1 fees are reasonable when compared to Class Counsel's lodestar amount, currently estimated to be at
2 least \$582,327.00 for all Class Counsel. Cottrell Decl., ¶ 89; Buchsbaum Decl. ¶ 20. This amount
3 would only increase with preparation and attendance at the preliminary and final approval hearings,
4 further correspondence with Class Members, and Settlement administration.

5 In this case, there was no guarantee of compensation. Rather, Class Counsel have undertaken
6 all the risks of this litigation on a completely contingent fee basis. The inherent risk of proving liability
7 and damages on a Class-wide basis and Defendants' representation by skillful counsel confront Class
8 Counsel with the prospect of recovering nothing or close to nothing for their commitment to and
9 investment in the case. Cottrell Decl., ¶ 90. Nevertheless, Plaintiffs and Class Counsel have committed
10 themselves to developing and pressing Plaintiffs' legal claims to enforce the employees' rights and
11 maximize the Class recovery. *Id.*, ¶ 91.

12 Class Counsel's fee request of one-third of the settlement fund is well within the range
13 customarily approved by California courts in comparable class actions.⁶ California Superior Courts
14 frequently grant common fund awards of up to 33 percent or more.⁷ The California Supreme Court
15 has upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half*
16 *Inter. Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the settlement created a common fund of \$19 million.
17 The Court approved attorneys' fees in the amount of one-third of the gross settlement under the
18 common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based
19 on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the
20 best results possible for the class. *Id.* at 492-94. Indeed, the "percentage-of-recovery method is
21 generally favored in common fund cases because it allows courts to award fees from the fund 'in a

22 _____
23 ⁶ See, e.g., *Newberg on Class Actions* at §11:24; *Manual for Complex Litigation* at §14:6; *Laffitte v. Robert Half Int'l Inc.*
(2014) 180 Cal.Rptr.3d 136, 149, as modified (Nov. 21, 2014) ("...the trial court's use of a percentage of 33 1/3 percent
of the common fund is consistent with, and in the range of, awards in other class action lawsuits.").

24 ⁷ See, e.g., *Asalati v. Intel Corp.* (Santa Clara Super. Ct., Oct. 29, 2018) No. 16cv302615 (approving 33.3% fee award, at
a multiplier of 3.98 over lodestar); *Ochoa v. Haralambos Beverage Co.* (Los Angeles Super. Ct., Feb. 1, 2007) No.
25 BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck); *Big Lots Overtime Cases* (San Bernardino
Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (approving award of attorneys' fees of 33% of the recovery); *Barela*
26 *v. Ralph's Grocery Company* (Los Angeles Super. Ct., No. BC070061, June 5, 1998) (same); *Davis v. The Money Store,*
Inc. (Sacramento Super. Ct., No. 99AS01716, Dec. 26, 2000) (same); *Miskell v. Auto. Club of Southern Cal.* (Orange
County Super. Ct., No. 01CC09035, May 27, 2003) (same); *Sconce/Lamb Cremation Cases* (Los Angeles Super. Ct., JCC
27 Proceeding No. 2085, March 24, 1992) (same); *Jones v. Alliance Imaging, Inc.* (Alameda County Super. Ct., No.
RG05210418, Nov. 27, 2006) (approving 33% fee award with no mention of lodestar crosscheck); *Garcia v. Save Mart*
28 *Supermarkets* (Stanislaus County Super. Ct., No. 312026, Aug. 3, 2004) (approving 33% fee award with no mention of
lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.* (San Diego County Super. Ct., No. G1C795732, Feb. 10, 2004)
(approving 33% fee award with no mention of lodestar crosscheck).

1 manner that rewards counsel for success and penalizes it for failure.” *Id.* at p. 493 (*quoting In re Rite*
2 *Aid Corp. Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, *300 (internal quotations omitted).)

3 Furthermore, reasonable litigation expenses are ordinarily included in an award of attorneys’
4 fees pursuant to California wage and hour law. *Id.*, ¶ 93; *Rider v. County of San Diego* (1992) 11
5 Cal.App.4th 1410, 1424. Class Counsel’s litigation costs are currently estimated at approximately
6 \$26,178.71. *Id.*; Buchsbaum Decl., ¶ 22. Plaintiffs’ counsel incurred costs including, inter alia, filing
7 and service fees, costs for remote appearances, document retrieval, and mediation fees. These expenses
8 were incidental and necessary to the effective representation of the Class and Aggrieved Employees.
9 Cottrell Decl. ¶ 93. They are reasonable and uncontested and should be approved.

10 **V. CONCLUSION**

11 For the foregoing reasons, Plaintiffs respectfully request that this Court grant preliminary
12 approval of the Settlement Agreement, conditionally certify the Class for settlement purposes only,
13 and approve the Class Notice.

14 Dated: May 25, 2023

Respectfully Submitted,

15
16 

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