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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

VERNON BARNETT, individually and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA") on behalf of
the State of California and other aggrieved
employees,

Plaintiffs,

vs.

QW INSURANCE SOLUTIONS, LLC, a
Washington limited liability company;
LENDINGTREE INC., a Delaware corporation;
LENDINGTREE LLC, a Delaware limited
liability company; and DOES 3 through 50,

Defendants.

Case No.: 37-2022-00019924-CU-OE-CTL

Judge: Hon. Katherine Bacal
Dept. C-69

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS AND
PAGA SETTLEMENT AND FOR
ATTORNEYS' FEES, COSTS,
REPRESENTATIVE ENHANCEMENT
PAYMENT, ADMINISTRATION
EXPENSES, AND ENTRY OF JUDGMENT**

Judge: Hon. Katherine Bacal
Dept.: C-69
Hearing Date: Sept. 6, 2024
Hearing Time: 1:30 p.m.

Complaint Filed: May 25, 2022
Trial Date: NA
Discovery Cutoff: NA

[[Prop.] Order, Not. of Mot., and Decs. of
Thomas D. Rutledge, Settlement Administrator
(Kevin Lee), and Vernon Barnett filed
concurrently herewith]

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff Vernon Barnett (the “Named Plaintiff”), on behalf of himself, the provisionally certified FCRA Class and Wage and Hour Class (collectively, “Class Members”), which have been certified for settlement purposes only, the Aggrieved Employees, and the State of California as its designated proxy (collectively, “Plaintiffs”), very respectfully moves the Court for final approval of the Settlement¹ of this class and representative action for wage and hour and claims under the Fair Credit Reporting Act (FCRA), the terms of which are set forth in the preliminarily Court-approved Class Action and PAGA Settlement Agreement and Class Notice, a copy of which is attached as **Exhibit 1** to the Declaration of Thomas D. Rutledge served and filed concurrently with this Motion. Plaintiffs also move the Court to approve Class Counsel’s fees and costs, representative enhancement payment to the Named Plaintiff, and settlement administration expenses.

By this Motion, Defendants QW Insurance Solutions (QWIS), LLC, LendingTree Inc. and LendingTree, LLC (collectively, “Defendants”) agree to pay the non-reversionary sum of \$450,000, which is inclusive of: (1) a Class Representative Enhancement Payment to the Class Representative of \$10,000 and General Release Payment to the Named Plaintiff for \$15,000; (2) an Administrator Expenses Payment not to exceed \$12,000; (3) a Class Counsel’s Fee Payment not to exceed 1/3 of the gross settlement (\$148,500) and a Class Counsel Litigation Expenses Payment not to exceed \$20,000. The resulting amount is the Net Settlement Fund (NSF), of which \$20,000 constitutes the PAGA Award for civil penalties for Plaintiffs’ California Labor Code Private Attorney General Act (PAGA) claim, 75% of which is payable to the Labor and Workforce Development Agency (LWDA) and 25% payable to the Aggrieved Employees. After the PAGA Award, 90% of the NSF is considered settlement payments to the Wage and Hour Class, and ten percent is considered settlement payments to the FCRA Class. Rutledge Decl., Ex. 1, ¶¶ 1.5, 1.19, 1.54, 1.57, and 4.3.5.

In addition, Defendants agree to pay the employer's portion of payroll taxes on settlement

¹ Unless otherwise defined herein, capitalized terms have the same meanings as those set forth in the Parties’ Class Action Settlement Agreement (“Agreement,” “Settlement,” or “Settlement Agreement”), attached to the Declaration of Thomas D. Rutledge as Exhibit 1.

1 payments attributed as wages for the Wage and Hour Class. Uncashed checks are payable to
2 California Controller's Unclaimed Property Fund. Rutledge Decl., Ex. 1, ¶¶ 1.5, 1.19, 1.54, 1.57,
3 and 4.3.5.

4 There are 1749 Class Members in "Subclass A" (the FCRA Class) who will receive about
5 \$13 per person from the NSF. In "Subclass B" (the Wage and Hour Class), 52 Class Members will
6 receive approximately \$3,954 per person and 37 Aggrieved Employees will receive about \$135 per
7 person from the PAGA Award. If Aggrieved Employees are members of both subclasses, they will
8 receive about \$4,102 per person. Class Members and Aggrieved Employees will be paid
9 *automatically*—no need to submit a claim. Decl. of Kevin Lee, ¶ 11.

10 In total, only one Class Member opted out of the Settlement, resulting in a non-exclusion
11 rate of 99.04%. No objections to the Settlement were filed. Lee Dec., ¶¶ 1-15. Based on these
12 circumstances, the settlement is fair, adequate, and reasonable for Class Members and Aggrieved
13 Employees and Plaintiffs very respectfully request this Honorable Court to finally approve the
14 settlement.

15 **II. FACTUAL BACKGROUND.**

16 Plaintiff Vernon Barnett applied to work for the Defendants. During the application process,
17 Plaintiff Barnett alleges the Defendants used an unlawful disclosure form to procure Plaintiff's
18 investigative consumer report in violation of the Fair Credit Reporting Act (FCRA) 15 U.S.C. §
19 1681, *et seq.* and the Investigative Consumer Reporting Agencies Act (ICRAA), Civ. Code § 1786,
20 *et seq.* As alleged in the Third Amended Complaint (TAC), Defendants provided Plaintiff Barnett
21 with a document containing unlawful extraneous information in violation of the FCRA and ICRAA.
22 Plaintiff Barnett alleges the Defendants used the same or similar form to procure consumer reports
23 on other FCRA Class Members as part of its standard practice and policy. ROA #42; TAC, ¶¶ 1-58,
24 149-162.

25 The TAC also alleges that Plaintiff Barnett is Defendants' former employee. During his
26 employment, Plaintiff Barnett contends that Defendants committed a number of Labor Code
27 violations. ROA #42; TAC, ¶¶ 1-21, 59-114, 171-267.

1 **III. PROCEDURAL HISTORY & SETTLEMENT NEGOTIATIONS.**

2 On May 25, 2022, Plaintiffs filed a letter with the LWDA alleging that Defendant QWIS
3 violated numerous provisions of the California Labor Code and was seeking to recover penalties
4 under PAGA and simultaneously commenced this action against Defendant QWIS. ROA #1.
5 Plaintiffs' Complaint alleged individual and class claims for California Labor Code violations and
6 an individual claim under the ICRAA. *Ibid.*

7 On May 1, 2023, Plaintiffs filed a First Amended Complaint. ROA #32. On July 18, 2022,
8 Defendant QWIS timely answered denying all allegations. ROA #9.

9 On August 16, 2022, Plaintiffs filed an amended letter with the LWDA, alleging that
10 Defendants LendingTree, Inc. and LendingTree, LLC, also violated the PAGA by failing to comply
11 with numerous provisions of the California Labor Code. On August 18, 2022, Plaintiffs filed DOE
12 amendments in the wage and hour class action naming Defendants LendingTree, Inc. and
13 LendingTree, LLC as DOES 1 and 2 respectively. ROA #s 10, 11. On September 20, 2022,
14 Defendants LendingTree, Inc. and Lending Tree, LLC, timely answered, denying all allegations.
15 ROA #13.

16 On October 4, 2022, Plaintiff Barnett commenced another action in the same court under
17 case number 37-2022-00039614-CU-OE-CTL (ROA #1) alleging individual and class claims for
18 willful violations of the FCRA by Defendants in connection with its procurement and use of
19 consumer reports procured on its employees. Originally, the case was pending in Department 65, but
20 this Court, on October 19, 2022, granted Plaintiffs' *Ex Parte* Application and reassigned this case to
21 this Court per Local Rule 2.1.3.1. ROA #24.

22 On November 28, 2022, Defendants filed a Demurrer. ROA #17. On May 1, 2023, Plaintiffs
23 filed a First Amended Complaint to avoid the Demurrer. ROA #21.

24 Meanwhile, the parties agreed to attend an all-day private mediation to try and resolve both
25 cases on a global basis. The parties thereafter engaged in meaningful, informal confidential
26 discovery pursuant to the mediation privilege and had multiple discussions over a significant period
27 regarding the merits of Plaintiffs' claims, the underlying facts, and Defendants' defenses. As part of
28 their exchange of information before mediation under the mediation privilege, Defendants provided

1 information concerning the FCRA disclosure forms Defendants used; Defendants' employee
2 handbooks; a sizable sampling of Class Members' payroll information, timesheets, and similar
3 records; records concerning Defendants' hiring practices including, the type of correspondence
4 Defendants sent to Plaintiffs and Class Members regarding the background check process; the
5 number of individuals in the putative Class; and the number of workweeks putative Class Members
6 worked and how many consumer reports the Defendants procured, among other things. This
7 information was critical for Plaintiffs' analysis of liability and damages. Rutledge Decl., ¶¶ 25-28.

8 On May 23, 2023, the parties participated in an all-day private mediation before Mr. Mark
9 Rudy, Esquire, a (now retired) highly sought and reputable private mediator based out of San
10 Francisco. Before mediation, the parties submitted detailed briefs outlining their respective
11 positions. At mediation, the parties agreed to resolve the cases and entered into a Memorandum of
12 Agreement (MOU), which was fully executed as of May 25, 2023. By August 30, 2023, all parties
13 had signed a long-form Class Action and PAGA Settlement Agreement and Class Notice. Rutledge
14 Decl., ¶¶ 29-32 and Ex. 1.

15 As part of their settlement, Plaintiffs agreed to file an amended complaint that included all
16 individual, class and/or representative claims that have been asserted or that have threatened to be
17 asserted in the action. In addition, the amended complaint also had to include all other amendments
18 necessary to give full effect to this settlement. Defendants stipulated to the filing of an amended
19 complaint for settlement purposes only, and reserved their rights and declared they would and will
20 oppose Plaintiffs' attempt to file an amended complaint for other than settlement purposes should
21 the Court fail to issue its Final Approval. Rutledge Decl., ¶¶ 23-35.

22 On or about July 18, 2023, the parties filed a joint stipulation, which included the filing of
23 Plaintiffs' Second Amended Complaint. On July 21, 2023, the Court signed the accompanying Order
24 ordering that (1) Case No. 37-2022-00019924-CU-OE-CTL and Case No. 37-2022-00039614-CU-
25 OE-CTL be consolidated for settlement purposes only, with Case No. 37-2022-00019924-CU-OE-
26 CTL being the Lead Case (the "Consolidated Action"); (2) the Second Amended Complaint was filed
27 for settlement purposes only; and (3) Defendants are not required to answer or otherwise respond to
28 the Second Amended Complaint because of the pending settlement of the Consolidated Action. On

1 or about August 1, 2023, the parties filed another joint stipulation, which included the filing of
2 Plaintiffs' Third Amended Complaint; this was filed to correct an error in the Second Amended
3 Complaint. On August 3, 2023, the Court signed the accompanying Order, which stated that (1) the
4 Third Amended Complaint was filed for settlement purposes; and (2) Defendants are not required to
5 answer or otherwise respond to the Third Amended Complaint because of the pending settlement of
6 the Consolidated Action. This is the operative Complaint. ROA #s 35-39.

7 On March 22, 2024, the Court heard and granted Plaintiffs' motion for preliminary approval
8 of the Class action and PAGA settlement. ROA #s 49-52. On March 25, 2024, the Court signed an
9 order granting preliminary approval. ROA #53.

10 On June 4, 2024, Phoenix Settlement Administrators, the Settlement Administrator, mailed
11 notice of the settlement to the Class of 1,749 eligible Class Members. Of the total number of Notice
12 Packets mailed, 13 were returned undeliverable. The 13 returned packets were skip traced and
13 remailed, and, to date, zero (0) notices are undeliverable. No one filed objections to the Settlement.
14 Only one Class Member opted out of the Settlement. See Decl., ¶¶ 1-24.

15 **IV. SUMMARY OF THE SETTLEMENT.**

16 **A. Overview Of the Settlement Terms.**

17 The Parties have agreed to a full and complete Settlement of this matter that provides relief
18 for members of the proposed Settlement Class. The Settlement Class consist of the following two
19 classes:

20 a. The FCRA Class means all persons who are or were applicants and/or
21 employees of QWIS and/or LendingTree, LLC, anywhere in the United
22 States who completed background check disclosures at any time from May
23 25, 2020, to March 25, 2024.

24 b. The Wage and Hour Class means all persons who are employed or were
25 previously employed by QWIS, LendingTree, LLC, or both, and who
26 worked in California as a non-exempt employee at any time from May 25,
27 2018, to March 25, 2024.

28 In addition to these two classes, the Aggrieved Employees are defined as all persons who are
employed or were previously employed by Defendants QWIS and/or LendingTree, LLC, and who

1 worked in California as a non-exempt employee at any time from May 25, 2021, to March 25, 2024.
2 Rutledge Decl., Ex. 1, ¶¶ 1.5, 1.19, 1.54, 1.57.

3 In consideration for the release of the Class Members' and Aggrieved Employee's claims,
4 Court preliminarily approved Defendants' agreement to pay the gross sum of \$450,000 into a Gross
5 Settlement Fund for the benefit of the Class and Aggrieved Employees. After Court-approved
6 deductions for attorneys' fees, expenses, claims administration costs, Class Representative
7 Enhancement Payment and General Release Payment, the NSF will be automatically distributed *pro*
8 *rata* to all Class Members who do not timely and validly exclude themselves from the Class, and the
9 PAGA Award will be distributed to the Aggrieved Employees and LWDA. Uncashed checks shall
10 be distributed to the California Controller's Unclaimed Property Fund per Code of Civil Procedure
11 § 384. The Court likewise preliminarily approved the parties' selection of Phoenix Settlement
12 Administrators, an experienced and independent third party, to serve as the Settlement
13 Administrator. Rutledge Decl., Ex. 1, ¶¶ 1.5, 1.19, 1.54, 1.57, 4.3.5.

14 **B. Fairness of Allocation to the Classes.**

15 The Settlement Agreement provides that allocation of the NSF shall be distributed as
16 follows: 10% of the Net Settlement Fund will be allocated equally among the participating FCRA
17 Class Members, 90% of the Net Settlement Fund will be allocated to the Wage and Hour Class
18 Members on a pro-rata basis per workweek during the Wage and Hour Class Period, and \$15,000 of
19 the PAGA Award will be distributed to the LWDA, and \$5,000 of the PAGA Award will be
20 distributed to the Aggrieved Employees. Rutledge Decl., ¶¶ 36-39; Ex. 1, ¶¶ 1.5, 1.19, 1.54, 1.57.

21 The 10% allocation to the FCRA Class is based on the low damage provisions of the FCRA,
22 which generally provides only \$100 to \$1,000 per negatively affected person unless Class Member
23 can prove actual damages (very difficult in FCRA cases). The lower allocation to the FCRA Class is
24 also attributed to the recent case law on this subject that requires plaintiff-consumers to prove
25 concrete harm. *See Limon v. Circle K Stores Inc.*, 84 Cal. App. 5th 671 (2022). These concerns were
26 accounted for in the settlement negotiations and provide fair and reasonable respective allocations to
27 Class Members. Rutledge Decl., ¶¶ 36-39.

1 **C. The Common Fund and its Allocation and Apportionment.**

2 The net settlement fund is \$233,542. The net settlement fund was determined by subtracting
3 Class Counsel requested attorneys' fees (\$148,500), Class Counsel's requested costs (\$16,028), the
4 requested Class Representative Enhancement payment and Civil Code § 1542 payment in the total
5 sum of \$25,000 to the named Plaintiff, PAGA Penalties payable to the LWDA and Aggrieved
6 Employees (\$20,000), and the requested Settlement Administrator costs (\$12,000) from the Net
7 Settlement Amount (\$450,000). The Employer's side of payroll taxes (e.g., FICA, FUTA, SUTA,
8 ETT, etc.) are the separate responsibility of Defendants. Rutledge Decl., Ex. 1 ¶ 3.3.2.2.

9 **1. Settlement Payments to Class Members.**

10 Wage and Hour Class.

11 The Settlement Payments to participating Wage and Hour Class Member will be calculated
12 based on the Class Member's *pro rata* share of pay periods they worked during the Wage and Hour
13 Class Period. Rutledge Decl., Ex. 1, ¶¶ 9.1. Based on the estimated net settlement fund, the average
14 net individual settlement payment to Wage and Hour Class members is \$3,954. Lee Decl., ¶ 21.

15 The FCRA Class.

16 Settlement payments to the participating FCRA Class Members will be divided equally
17 among the Participating FCRA Class Members. Rutledge Decl., Ex. 1, ¶¶ 9.2. Their estimated
18 payment is \$13 per Class Member. Lee Decl., ¶ 22.

19 **2. Notice & Payments to the LWDA.**

20 Before filing this motion for final approval with the Court, nonconformed copies of this final
21 approval motion and supporting papers were provided to the LWDA by upload to the PAGA portal
22 and Class Counsel has complied with all aspects of the exhaustion requirements under the PAGA.
23 Rutledge Decl., ¶¶ 76-78. From the NSF, \$15,000 is payable to the LWDA as penalties under the
24 PAGA and \$5,000 is payable to the Aggrieved Employees on a pro rata payroll period basis. All
25 such PAGA Award amounts shall be reported by the Settlement Administrator by year's end via an
26 IRS Form 1099.

27 **3. Payment of the Settlement Administrator's Costs**

28 Upon court approval, the Settlement Administrator will pay itself \$12,000 from the Gross

Settlement Fund for its services. Rutledge Decl., Ex. 1 ¶ 4.3.

V. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR FINAL APPROVAL.

A. Standard of Review for Class Settlements.

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. Cal. Rules of Court, Rules 3.760, *et seq.* Courts take three steps during the settlement approval process:

- (1) Preliminary review and approval of the proposed settlement at an informal hearing;
- (2) Dissemination of notice of the settlement to all affected Class Members; and
- (3) Conducting a formal “fairness hearing” at which Class Members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.

This three-step settlement approval process is widely followed by federal courts and has been adopted by California courts as the method by which class action settlements are resolved. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).

As demonstrated, the first two steps of the settlement approval process were satisfied. On March 25, 2024, for example, this Court entered an Order granting Plaintiffs’ Motion for Preliminary Approval of the Class Settlement. On June 4, 2024 (and as required for returned mailings) the Claims Administrator disseminated notice of the settlement to all affected Class Members. Lee Decl., *supra*.

The only remaining question for the Court to consider is whether the settlement is a “fair and reasonable resolution of a bona fide dispute.” Cal. Rules of Court, Rules 3.769(g); *Dunk, supra*, 48 Cal. App. 4th at 1801; *Wershba, supra*, 91 Cal. App. 4th at 240. In making this determination, courts normally consider the following factors:

- (1) The existence of fraud or collusion behind the settlement;

- (2) The complexity, risk, expense, and likely duration of the litigation;
- (3) The stage of the proceedings and the amount of discovery completed;
- (4) The probability of plaintiff's success on the merits;
- (5) The range of possible recovery and the settlement amount; and
- (6) The opinions of the counsel, class representatives, and absent Class Members.

Ibid.

When considering these factors, courts generally defer to the "strong presumption" of finding a settlement fair. *Kullar v. Footlocker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008). There is a presumption of fairness where: (1) settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the Court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Wershba, supra*, 91 Cal. App. 4th at 224; *Dunk, supra*, 48 Cal. App. 4th at 1802; *Munoz v. BCI CocaCola Bottling Company of Los Angeles*, 186 Cal. App. 4th 399, 408-409 (2010).

B. The Reasons the Settlement is Fair, Reasonable, and Adequate.

The declaration submitted by Class Counsel explains the reasons in support of this settlement in detail. The monetary relief obtained from this Settlement Agreement is excellent compared to the possible outcome if this case went to trial. (Rutledge Decl., ¶ 79.)

In summary, Plaintiffs allege that Defendants committed a wide range of Labor Code and FCRA violations, but many of the violations are highly technical and, as to the Wage and Hour Class, affected only a small group of workers. It appears the cause of many of the violations began during COVID lockdowns, unusual working conditions caused by the unprecedented global pandemic. As to the FCRA Class, until *Limon v. Circle K Stores Inc.* is overruled, viability of FCRA class claims is unlikely. Rutledge Decl., ¶¶ 36-75.

Further, no fraud or collusion exists regarding this settlement. The settlement was procured after an arm's length setting via experienced counsel using an experienced mediator after a significant exchange of documents and data occurred between the parties. Rutledge Decl., ¶¶ 25-32.

Moreover, the complexity, expense, and likely duration of the litigation support the

1 settlement. Defendants have asserted, and continue to assert, many defenses, and have expressly
2 denied and continue to deny any wrongdoing and assert their liability is, at most, minimal.
3 Notwithstanding the asserted defenses, the Defendants here have concluded that, because of the
4 substantial expense of litigating the action, the length of time necessary to resolve the issues
5 presented herein, the inconvenience involved, and the concomitant disruption to their business
6 operations, that settlement will avoid the burden, expense, and uncertainty of continuing litigation.
7 The same can be said for the Plaintiffs. Rutledge Decl., ¶¶ 36-75.

8 Further, the stage of the litigation and amount of discovery completed demonstrates the
9 parties had enough information to make informed decisions. The parties, after all, exchanged
10 thousands of pages of documents, policy handbooks, payroll records, FCRA disclosure forms,
11 among other things. Class Counsel and various staff members reviewed the foregoing records and
12 data and made an assessment regarding a range of possible recoveries. Counsel for the respective
13 parties created a meaningful mediation environment, exchanging sufficient documentation to enable
14 Class Counsel to make an assessment concerning the range of possible recoveries and intelligent
15 decision making concerning the reasonable settlement value of this case. Rutledge Decl., ¶¶ 36-75.

16 Additionally, the probability of success on the merits suggest that settlement was in the best
17 interest of the parties and the Class. At the time of the Settlement, both sides faced considerable risk
18 going forward with a trial. Notwithstanding the defenses, Class Counsel is optimistic that Plaintiffs
19 would have been able to make the required commonality showing. But Class Counsel acknowledges
20 the difficulty of making such a showing when confronted with claims that Defendants never broke the
21 law. Rutledge Decl., ¶¶ 36-75.

22 In further considering the factor of the range of possible recoveries and the settlement
23 reached, this Settlement is outstanding. Indeed, all Settlement Class Members will receive cash
24 payments from an economically viable company, not coupons, days off, or some other unusual form
25 of remuneration. Wage and Hour class members, for example, will receive an average of \$3,954,
26 which, in Class Counsel's experience, is an excellent outcome. Additionally, the nearly \$13 per
27 person for the FCRA Class Members is similarly outstanding in Class Counsel's experience.
28 Additional evidence the Settlement is reasonable is that only one class member opted out of the

1 settlement and there are no objectors. Lee Decl., ¶¶ 1-24.

2 The last important factor the courts normally consider is the opinion and experience of
3 counsel. For 29 years Class Counsel has proudly served the public in one form or another as an
4 attorney, the last 20 years of which have been spent specializing in class action, PAGA, and
5 employment litigation. Class Counsel has been the originating attorney on more than five dozen wage
6 and hour class and representative actions. When the counsel who is recommending the proposed
7 settlement for approval is known to the court as a competent and experienced attorney, significant
8 weight is normally given to his/her opinion. *Wershba, supra*, 91 Cal. App. 4th at pp. 240-242; *Dunk,*
9 *supra*, 48 Cal. App. 4th at p. 1802. Here, Class Counsel undoubtedly believes the Settlement is fair,
10 reasonable, and adequate. Rutledge Decl., ¶¶ 79-82.

11 **VI. THE PAGA SETTLEMENT IS FAIR AND REASONABLE.**

12 **A. Standard of Review for PAGA Settlements.**

13 Labor Code § 2699(l), provides, “[t]he superior court shall review and approve any
14 settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted
15 to the agency at the same time that it is submitted to the court.” Court review of PAGA settlements is
16 significantly different from the review of class action settlements, the former of which typically
17 focus on the amount received by the Aggrieved Employees, compares the settlement amount to the
18 reasonable range of potential outcomes in the case, and does not require a preliminary and final
19 approval. *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Judicial review of PAGA settlements
20 normally is to determine whether the settlement is fair and reasonable and supports the PAGA’s
21 remedial objectives. *Ibid*.

22 **B. Reasons to Approve the PAGA Settlement.**

23 The declaration submitted by Class Counsel explains the reasons in support of the PAGA
24 Settlement in detail. In short, based on virtually the same reasons the settlement amount obtained for
25 the Wage and Hour Class is reasonable, the monetary relief obtained from this Settlement
26 Agreement for the State of California and Aggrieved Employees here is fair and reasonable. Indeed,
27 many courts substantially discount PAGA penalties when parties cannot settle and cases must go to
28 trial unless the violations are wanton, willful, and flagrant. The general norm of judicial leniency

combined with the recent amendments to the PAGA demonstrate a trend against “punishing” small employers, like the Defendants here. Rutledge Decl., ¶¶ 36-75.

**VII. THE CLASS REPRESENTATIVE EARNED A REPRESENTATIVE
ENHANCEMENT PAYMENT.**

Plaintiffs very respectfully request the Court to award him a representative enhancement payment of \$10,000 to the named Plaintiff. Defendants do not oppose this request and it is well-deserved.

Generally, a representative enhancement payment is appropriate to encourage people to step forward and assume the burdens and obligations of representing the class. In deciding the amount of a service award for a class representative, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 405 (2010).

As Class Representative, the named Plaintiff here admirably performed his duty to the Class. He provided detailed information that enabled Class Counsel to competently prosecute this case, explained employment related documents, assisted in the preparation of the factual portion of the mediation briefs, and provided Class Counsel with pertinent information. He also assumed the risk, such as, being held liable for costs incurred in connection with this case if he lost. He also risked (and continues to risk) the potential stigma in his industry associated with suing a former employer. In short, without the named Plaintiff’s participation and hard work, there would be no case and no recovery for the Class. Accordingly, Plaintiffs very respectfully request the Court to approve the requested representative enhancement payment. Barnett Decl., ¶¶ 1-34; Rutledge Decl., ¶¶ 83-97.

**VIII. CLASS COUNSEL’S ATTORNEYS’ FEE AND COSTS REQUEST IS
REASONABLE.**

As noted above, Class Counsel moves for final approval of a fee award of \$148,500 (1/3 of the Gross Settlement Amount) and \$16,028 in actual costs, sums authorized per the terms of the Settlement Agreement and preliminarily approved by this Honorable Court. The request is uncontested and no one objects.

A. The Amount Sought for Class Counsel’s Fees is a Reasonable Percentage of the Gross Settlement.

In California state courts, attorneys’ fees are normally calculated using one of two methods: the percentage method (a percentage of the common fund or settlement value) or the lodestar-multiplier method (reasonable hours multiplied by reasonable hourly rates multiplied by an amount more or less than 1.0 to account for factors such as the risks taken and results achieved). *Laffitte v. Robert Half International Inc.*, 1 Cal. 5th 480 (2016). The general rule in the case of a common fund, like the one in this case where there is no reversion to the Defendants or a claims process where the common fund may diminish based on a lack of qualified claims, i.e., a ‘constructive fund,’ is application of the percentage method. *Ibid.*

Here, the requested award of 1/3 of the Gross Settlement is based on the percentage method, a sum that comports with the general practice in California state courts. *Laffitte; Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008) (“fee awards in class actions average around one-third of the recovery.”)

B. A Lodestar Cross-Check Also Supports Class Counsel’s Fee Request.

The nature of work performed by Class Counsel is documented in Class Counsel’s Declaration filed concurrently herewith. The time records reflect billing practices on a minimum of one tenth of the hour. This time is summarized as follows (time rounded to the closest dollar):

Attorneys	YEAR ADMITTED	RATE	HRS.	LODESTAR
Thomas D. Rutledge, Partner	Sep. 1995	\$1,057	199.30	\$210,660
Total Hours and Lodestar:				\$210,660

Rutledge Decl., Exs. 3 and 4.

C. Class Counsel’s Cost Request is Reasonable.

Class Counsel also seeks, and Defendants do not oppose, reimbursement of litigation expenses. *Laffitte App.*, 231 Cal. App. 4th at 871; *Rider v. Cty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n. 6 (1992) (attorneys may recover costs). As set forth in the accompanying declaration, Class Counsel’s request reimbursement of \$16,028 for litigation expenses. These expenses generally include, *inter alia*, fees for: (1) court filings; (2) service; (3) postage; and (4) mediation. Class

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1 Counsel's expenses were ordinary and necessary for the successful prosecution of this litigation.
2 Rutledge Decl., **Ex. 5**.
3 **IX. CONCLUSION.**
4 For the reasons described in these moving papers, Plaintiffs very respectfully request that the
5 Court sign the proposed Order submitted herewith.
6 Dated: August 12, 2024 Law Office of Thomas D. Rutledge
7
8 By: Thomas D. Rutledge
9 /s/Thomas D. Rutledge
10 Attorneys for the Plaintiffs and the Provisionally
11 Certified Class
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On August 12, 2024, I served the foregoing document(s) described as:

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS AND PAGA SETTLEMENT
AND FOR ATTORNEYS' FEES, COSTS, REPRESENTATIVE ENHANCEMENT
PAYMENT, ADMINISTRATION EXPENSES, AND ENTRY OF JUDGMENT**

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒ **(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email via this third-party vendor pursuant to the vendor's policies and practices.

☐ **(BY OVERNIGHT DELIVERY SERVICE)** I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ **(BY FACSIMILE)** I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed August 12, 2024, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

THOMAS D. RUTLEDGE
/s/THOMAS D. RUTLEDGE

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