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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

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| HEATHER REED, an individual,<br><br>Plaintiff,<br><br>v.<br><br>Centria Healthcare, LLC, a Michigan Limited Liability Company, Centria Home Rehabilitation LLC, a Michigan Limited Liability Company, Luis LNU, an individual, and DOES 1 through 50,<br><br>Defendants. | Case No.: 37-2023-00017173-CU-OE-CTL<br><br>Judge: Wendy M. Behan<br>Dept.-C-66<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES ISO PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**<br><br>Hearing Date: 8/1/25<br>Time: 10:15 a.m. |

# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION.

Class Counsel has achieved an excellent result in this litigation, shown in the Settlement Agreement. The proposed Settlement preliminarily approved by the Court provides substantial benefits to the Class and aggrieved employees, after substantial and robust exchange of relevant discovery and arm's-length mediation.

This is a non-reversion settlement, with all money directed to the class and representative members, and any remainder directed to the designated *cy pres* recipient, Hire Heroes, USA, a non-profit organization whose purpose is to help United States veterans find employment. What is especially notable about the notice period for this settlement is that every single notice was delivered to every class member. There were no exclusions, no opt-outs, no objections, no workweek disputes, after <u>every</u> notice was delivered.

At the time of preliminary approval on February 14, 2025, the estimated number of workweeks was 42,023. After data was delivered to Phoenix, the administrator, the number of workweeks increased by 24%, to 52,278. The Settlement contains an escalator clause after a 10% grace allowance, which increased the gross settlement amount from $275,000 to $314,600. There was a greater number of class memb ers in the data delivered to the administrator (initially estimated to be 898, but actually 1803), but the settlement payment was tied to the number of workweeks, not the number of class members, thus the increase was in proportion (after the grace allowance) to the increase in pay periods. Other amounts, tied to the gross settlement sum, including attorneys' fees and administrative costs, also increased slightly, but did not affect the application of the preliminarily approved settlement. The *net* workweek value is $2.77, applied to 52,278 workweeks. With this, the average individual settlement payment is approximately $82.50.

As the Court found in the motion for preliminary approval, the settlement is fair, adequate and reasonable, and should grant final approval. The fact that every class member received notice, and not one question came from any class member, indicates 100% approval from the class.

## II. PROCEDURAL HISTORY

On April 25, 2023, Plaintiff Reed, filed an individual, class, and representative action alleging violations of Labor Code § 226, Labor Code § 2802, and Business & Professions Code 17200 et seq., as well as an individual claim for rest period violations. Plaintiff's complaint alleged business expenses were incurred by employees as a result of cellular phone use and as a result of employees' purchase of work-related items, specifically the toys necessary to engage with autistic children. Plaintiff alleged that Plaintiff as an individual (but not as a class claim) that she was being deprived of her rest breaks. Plaintiff further alleged that Defendant failed to provide accurate itemized wage statements to Plaintiff and class members because no paper statements were provided, no facilities to access online wage statements were provided, and no adequate procedures were in place for employees to receive copies of their wage statements on request. (Pancer Decl., ¶¶ 11-14)

On May 31, 2023, Plaintiff, via counsel, sent a letter via certified mail to the Defendants and via online submission to the LWDA to exhaust administrative remedies via PAGA. On June 7, 2023, Plaintiff Reed filed her First Amended Complaint continuing the allegations contained in the original complaint and adding representative PAGA action alleging PAGA claims for wage statement violations, and business expense reimbursements, as reflected in her class claims. On August 25, 2023, Plaintiff filed her Second Amended Complaint, removing "Luis LNU" as a named Defendant and clarifying what entities the allegations applied to. (Pancer Decl., ¶ 14)

Following a series of discussions between the parties via counsel, the parties agreed to attend private mediation. To this end, Defendants agreed to provide counsel for Plaintiff pertinent employment policy documents as well as data concerning the number of individuals employed during the subclass periods and the corresponding number of workweeks, among other material facts. (Pancer Decl., ¶¶ 15-16)

Defendants subsequently complied with their agreement by providing Plaintiff with a thorough supply of policy documents and their operating manual, the total number of unique employees employed by Defendant in California during the PAGA period, the total number of pay periods worked by all California employees during the PAGA period, the total number of unique California employees in the Unreimbursed Expense Class during the Unreimbursed Expense Class Period, and the total number of pay periods worked by California employees in the Unreimbursed Expense Class during the Unreimbursed Expense Class Period. Plaintiffs' Counsel reviewed the foregoing records and data and made an assessment regarding the potential penalties owed as a result of the failure to provide hard copy wage statements, and the potential amount of unreimbursed expenses. (Pancer Decl., ¶ 17)

On February 2, 2024, the parties via Zoom attended private mediation before Jill Sperber, Esquire of Judicate West. The mediation lasted all day, but the parties were unable to reach an agreement. Instead, Ms. Sperber continued to work with the parties in an attempt to facilitate a resolution. Finally, Ms. Sperber issued a mediator's proposal, which was eventually accepted and consummated as a memorandum of understanding that was fully executed by March 10, 2024. (Pancer Decl., ¶¶ 18-21) After a series of delays, a fully executed copy of the settlement agreement was exchanged on January 13, 2025. Also on January 13, 2025, the parties exchanged a fully executed copy of a stipulation to permit Plaintiff Reed to file a Third Amended Complaint (TAC), which was filed on March 6, 2025 (ROA 39). Defendants filed their answer on April 16, 2025 (ROA 40). Pursuant to the stipulation, and subject to the approval of the Court, the Third Amended Complaint will be stricken if the Court does not approve the settlement. (Pancer Decl., ¶¶ 22-24)

## III. ACTUAL SETTLEMENT VALUE

The Settlement changed slightly from the one approved by the Court in February, due to the escalator clause at section 9. (Attached again for the Court's convenience at Exhibit 1 to the Pancer Decl.)

While the gross settlement amount was $275,000 at preliminary approval and before a refreshed data dump, due to the escalator clause, the gross settlement amount is now $314,600.

The workweeks, which were 42,023 at preliminary approval, were actually 52,278. $39,600 was added. (Burns Decl. ¶11)

The number of class members, initially estimated at 898, was actually 1803. (Burns Decl. ¶11)

The initial gross estimate per class member, per workweek, was $6.16 ($12.32 per pay period), and due to the additional workweeks, class members and gross sum, the new gross estimate per class member, is $5.26 per workweek. (Burns Decl. ¶11)

Applying the deductions to the gross settlement amount of $314,600 the net settlement amount is calculated as follows:

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| $314,600 | gross settlement amount |
| $104,856.18 | 33.33% attorneys' fees |
| $20,000 | costs |
| $5,000 | individual plaintiff settlement for 1542 waiver |
| $5,000 | service award to plaintiff |
| $15,000 | PAGA allocation |
| $16,533.27 | administrative costs |

**NET: $148,210.55**.

The costs, 33.33% fees, individual settlement amount, service award, and PAGA allocation were previously approved by the Court in the preliminary approval order dated February 14, 2025. The other amounts increased incrementally consistent with the increase in workweeks and class members.

The actual amount of costs was only $13,943.31, as compared to the $20,000 amount preliminarily approved by the Court in February. So, while the administrator's declaration did not take into account the $13,943.31 value, but rather the $20,000 value, the Net Settlement amount available for distribution to the class will actually increase by approximately $6,000, leaving a Net Amount of approximately $154,000. We will advise the administrator (Phoenix) to recalculate the net workweek value (in the class members' favor) once the Settlement is approved.

## IV. PRELIMINARY APPROVAL

The Court granted preliminary approval on February 14, 2025. The increased amounts in the gross amount, attorneys' fees, and administrative costs are consistent with section 9 of the Settlement agreement, the escalator clause, which provides:

> Based on a review of its records to date, Centria estimates there are 898 Class Members who collectively worked a total of 42,023 Workweeks during the period of April 25, 2019 to December 31, 2023. If the number of pay period during this time period exceeds by more than 10% (ten percent), there will be a *pro rata* increase to the Gross Settlement Amount. Defendant shall have a 10% grace allowance in the pay period estimate during this time period, such that if the number of pay periods in this time period exceeds the estimates by 11% (eleven percent), the Gross Settlement Amount shall increase by 1% (one percent).

Consistent with the Court's Preliminary Approval Order, the Administrator accepted class data and mailed notice to the putative class members. (Burns Decl. ¶¶ 2-3)

Plaintiff included the requisite *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, analysis in her motion for preliminary approval. (See ROA 31, Memorandum of Points and Authorities ISO Motion for Preliminary Approval, pp. 5-10; See ROA 32, Declaration of Ian Pancer ISO Motion for Preliminary Approval, ¶¶ 30 - 73. ) Based upon that analysis, and given the reaction from the class (no opt-outs, no objections, *and no undelivered notices,* the *Kullar* analysis in the motion for preliminary approval should stand here and support final approval.

## V. <u>FINAL SETTLEMENT APPROVAL IS APPROPRIATE</u>

Under both state and federal rules of civil procedure, "a class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the Court directs." California Code Civ. Proc. §1781(f); Fed. R. Civ. Proc. §23(e). In deciding whether to grant final approval to a proposed class action settlement under Code of Civil Procedure section 382, the Court's overriding concern is whether the proposed settlement is 'fair, adequate, and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4$^{th}$ 1794, 1801 (citation omitted).

In practical terms, the settlement of a class action follows three parts: 1) preliminary approval; 2) notice to class members; 3) final approval hearing, or "fairness hearing," at which evidence and argument may be heard on the fairness, adequacy and reasonableness. The Court has given preliminary approval, notice has been sent, and the claims procedure has been completed. (Burns Decl. ¶15)

### A. The Settlement is Entitled to a Presumption of Fairness

A presumption of fairness exists where: 1) the 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. *Dunk, supra,* at 1802.

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. *Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79. The purpose of the requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. *Officers for Justice v. Civil Service Cmmn,* 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied* 459 U.S. 1217.

The Court has broad powers to determine whether a proposed settlement in a class action is fair. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434.

At the Final Approval hearing, the Court should consider the relevant factors, including the strength of the plaintiff's case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel and the reaction of the class members to the proposed settlement. *Officers for Justice, supra,* 688 F.2d at 624. "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra,* at 1801. The extensive and comprehensive *Kullar* analysis, as mentioned, is included in the motion for preliminary approval, and need not be recounted here as the analysis remains the same.

**B. The Settlement was Reached Through Arm's-Length Negotiations**

The Settlement was reached through arm's length negotiations, after sufficient discovery to make damage models contained for the Court's consideration in the Motion for Preliminary Approval, including the potential values of each claim and the risks in continuing litigation, including class certification and additional discovery. The Parties attended a full-day mediation with Jill Sperber, which did not result in a settlement on that date, but caused negotiations to continue, with the mediator's assistance, well after the mediation date. With Ms. Sperber's continued involvement, her mediator's proposal was ultimately accepted by both Parties. (Pancer Decl. ¶ 21)

### C. Sufficient Discovery and Investigation has been Completed to Warrant Settlement

The stage of the proceedings and the amount of discovery completed is an important factor which courts consider in determining the fairness, reasonableness and adequacy of a settlement. *In re Warner Communications Sec. Litig.,* 618 F.Supp. 735, 741 (S.D.N.Y. 1985), *aff'd,* 198 F.2d 35 (2d Cir. 1986). Plaintiff's counsel conducted meaningful discovery informally with a view toward a successful mediation. This is borne out from the *Kullar* analysis in the preliminary approval.

To sum it up, Plaintiff's counsel reviewed hundreds of pages of documents, including employment policies, Plaintiff Reed's wage statements, records of Plaintiff Reed's expense reimbursement, operating procedures, total number of unique employees in California during the PAGA period, total number of pay periods, and total number of employees in the putative classes, as well as various data points concerning the size of the class and pay periods. From this, Plaintiffs' Counsel was able to determine the strength of the class claims Plaintiff had alleged, together with a damage model and projected penalties at issue. Some claims were more tenable than others, such as the reimbursement and wage statement claims, which faced difficulties in class certification and damages. (Pancer Decl., ¶¶ 25-30)

The case settled on the terms set forth in the Settlement Agreement in part because Defendants believe that because of the substantial expense of litigating the Action, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to their business operations, that settlement was in their best interest. The issues in the case are contested, and the evidence conflicting. Defendants deny any wrongdoing, maintain their conduct was entirely lawful, and contend the violations, if any, were trivial. (Pancer Decl., ¶¶ 31-33)

Nonetheless, Defendants have concluded that further litigation would be protracted and expensive, and it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement. (Pancer Decl., ¶ 43) Defendants likewise maintained that class certification would be difficult due to excessive individual inquiries over where, how often, and why the violations allegedly occurred. (Pancer Decl., ¶ 44)

After the investigation undertaken and analysis performed by Plaintiff, through Class Counsel,  into the claims of the putative Class, the potential recovery, the sharply disputed factual and legal issues involved in this litigation, the risks of continuing the litigation and potential appellate issues in complex actions such as this, the difficulty of maintaining a class action, and the meaningful payments members of the Settlement Class will receive because of this Agreement, that settlement is in the best interest of the Settlement Class. This settlement is the result of extensive, arms' length negotiations and is fair and reasonable to the Settlement Class. (Pancer Decl., ¶¶ 45-46)

**D. Class Counsel is Experienced and Endorses the Settlement**

Experienced Counsel, operating at arm's-length, have weighed all of the foregoing factors and endorse the proposed settlement.  The view of the attorneys actively conducting the litigation, is "entitled to significant weight."  *Fisher Bros. v. Cambridge-Lee Indust., Inc.,* 630 F.Supp.482, 488 (E.D.Pa. 1985).

Class Counsel has experience in class actions and employment litigation, and specifically in wage and hour litigation.  (Pancer Decl. ¶¶ 83-88)  Class Counsel is experienced and qualified to evaluate the class claims and viability of defenses.  (Pancer Decl. ¶¶ 85-89)  The class recovery per class member is substantial, given the risks inherent in litigation and the defenses asserted.  (Pancer Decl. ¶ 89)

**E.  There are no Objectors, Opt-Outs, or Workweek Disputes**

The reaction of the class to the settlement can only be interpreted as positive.  As attested in the administrator's declaration filed herewith, after the opt-out and objection deadline, <u>all</u> class members received notice (there were no undeliverable or returned notices), and <u>no</u> class member disputed the number of workweeks presented in the notice, and <u>no</u> class member opted out or filed an objection.  (Burns Decl. ¶¶ 5-9)

**F.  Class Counsel's Fee and Cost Application will be Treated in a separate Fee Motion**

**G.  The Class Representative Service Award is Reasonable and is Standard in Class Actions**

The request for a Service Award of $5,000 for the Class Representative is fair and reasonable. The Service Award payment is separate from her individual $5,000 settlement for her individual claims accompanied by a section 1542 waiver.

This award is based upon her contribution to the Class, risks incurred, stress, execution of a general release, benefit of the settlement to the class members, and all other factors presented to the Court and set forth in her declaration. Such payments are intended to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the putative class, as well as to compensate putative class representatives for their time, effort, and inconvenience. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380 (court granted enhancement fees awards in the amount of $10,000 to each of the four named class representatives).

The $5,000 amount requested is reasonable, and within the range of incentive awards regularly approved by California courts. *Weeks v. Kellogg Co.*, 2013 WL 6531177 at *39 (C.D. Cal. Nov. 23, 2013) (incentive awards of $5,000 approved); *Anderson et al. v. Oracle Corp.*, Alameda Super. Ct., Case No. JCCP 4597 ($6,000 in service awards in wage and hour action found reasonable), *Garcia v. Oracle*, Alameda Super. Ct., Case No. JCCP 4597, March 9, 2012, Order at ¶6(c) ($30,000 for each named plaintiff approved); *Vasquez v. Coast Valley Roofing, Inc.,* 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of $10,000 each from a $300,000 settlement fund in a wage/hour class action); *Glass v. UBS Fin. Servs*., 2007 WL 221862 at *17 (N.D. Cal. Jan. 26, 2007) ($25,000 for each class representative in wage and hour action); *Smith v. CRST Van Expedited, Inc*., 2013 WL 163293, at *6 (S.D. Cal. Jan. 14, 2013) ($15,000); *Martin v. AmeriPride Servs.,* 2011 WL 2313604, at *9 (S.D. Cal. June 9, 2011) ($18,500); *Ross v. US Bank Nat'l Ass'n*, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) ($20,000).

Plaintiff Reed risked having to succumb to extensive discovery and to the payment of Defendant's costs if she lost this case. Plaintiff also assumed the risk of negative opinion by future prospective employers from suing a former employer. Through this settlement, Plaintiff will cause members of the Settlement Class to receive money they otherwise would not have received but for this litigation. Plaintiff served a substantial role in bringing about this settlement and has the right to receive an Enhancement Award. Likewise, the $5,000 in consideration for the individual release is also reasonable, for a total payment of $10,000 to Plaintiff Reed. Defendants do not oppose the requested Enhancement Award. Because the requested service payment and settlement payment are reasonable, Plaintiffs very respectfully request the Court to approve the Enhancement Award. (Pancer Dec., ¶¶ 70-76)

## VI. CONCLUSION

The results of the Notice procedure after preliminary approval were extraordinary. The Court has already examined, in the Motion for Preliminary Approval, the exact values and discounts applicable to each claim, and found it reasonable before the Notice period. The Court already examined the Settlement Agreement, and found it suitable for preliminary approval.

None of the factors approved by the Court on February 15, 2025, have been compromised; in fact, the gross settlement amount and additional class weeks have been added to the settlement, and concomitantly to the class members.

The Parties respectfully request final settlement approval of the Settlement Agreement.

Dated: July 9, 2025

Pancer Law Corporation

By: *Ian Pancer*
/s/Ian Pancer
Attorneys for Plaintiffs