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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

COLLEEN SHARP, BARBARA MIZE, ANGELA PODNIZHNYY, SHONTELLE MOORE, and TRACY LYNN CRENSHAW, individuals in their capacities as the State of California's designated proxies under the Private Attorneys General Act (PAGA) and on behalf of others,

Plaintiffs,

vs.

SHIFTSMART, INC., a Delaware corporation; and DOES 1 through 10 inclusive,

Defendants.

Case No.: 37-2023-00021163-CU-OE-CTL

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 AND FULL RELEASE PAYMENTS, ADMINISTRATION EXPENSES, AND ENTRY OF JUDGMENT

Judge: Hon. Wendy M. Behan
Dept.: C-66
Hearing Date: March 6, 2026
Hearing Time: 10:15 a.m.

Complaint Filed: May 15, 2023

[[Prop.] Order, Not. of Mot., and Decs. of Thomas D. Rutledge, Settlement Administrator Taylor Mitzner, Colleen Sharp, Barbara Mize, Angela Podnizhnyy, Shontelle Moore, and Tracy Lynn Crenshaw, filed concurrently herewith]

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs Colleen Sharp, Barbara Mize, Angela Podnizhnyy, Shontelle Moore, and Tracy Lynn Crenshaw (the "Named Plaintiffs"), on behalf of themselves, Aggrieved Employees, the state of California as its designated proxies, and the putative Class (collectively, the "Plaintiffs"), very respectfully move the Court for final approval of the Settlement[1] of this class and Private Attorney General Act (PAGA) action, the terms of which are set forth in the preliminarily Court-approved Class Action and PAGA Settlement Agreement, a copy of which is attached as **Exhibits 1** and **2** 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 and Full Release payments to the Named Plaintiffs, and settlement administration expenses.

By this Motion, Defendant Shiftsmart Inc. agrees to pay a non-reversionary total of $4,172,900 which includes: (1) Class Representative Enhance Payments to the Class Representatives of $10,000 each and Full Release Payments to the Named Plaintiffs of $10,000 each; (2) Settlement Administration Expenses of $33,000; (3) Class Counsel's Fees in the sum of one-third of the Gross Settlement Amount (GSA); and (4) Class Counsel's litigation expenses of $36,298. The resulting amount is the Net Settlement Fund (NSF), of which $100,000 constitutes civil penalties for Plaintiffs' PAGA claim, referred to herein as the "PAGA Award," 75% of which is payable to the Labor and Workforce Development Agency (LWDA) and 25% of which is payable to the PAGA Members. Rutledge Decl., **Ex. 1** ¶ IV.1-1V.4; **Ex. 2**.

From this Settlement, more than 6,000 Class Members are expected to receive an average individual settlement payment of $392.70, with the highest payment being $8,931.51 and the lowest being $54.79. Mitzner Decl., ¶ 27. The 5,639 PAGA Members will receive about $4.43 on average per person from the PAGA Award, with the highest individual PAGA Payment being $78.18. Class Members and PAGA Members will be paid *automatically*—no need to submit a claim.

In total, only ten Class Members opted out of the Settlement, yielding a non-exclusion rate

[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").

of less than one percent. No objections to the Settlement were filed. Mitzner Decl., ¶¶ 17-24.

II. PROCEDURAL HISTORY & SETTLEMENT NEGOTIATIONS.

On or about April 26, 2023, Plaintiff Sharp performed gig services via the Shiftsmart app. Thoroughly dissatisfied with her experience, she retained Class Counsel shortly thereafter who promptly obtained Plaintiff Sharp's records from the Defendant. Rutledge Decl., ¶¶ 25-26.

On May 15, 2023, Plaintiff Sharp, via counsel, filed a notice with the LWDA to exhaust Plaintiff Sharp's pre-litigation requirements under the PAGA. Rutledge Decl., ¶ 27. On the same day, Plaintiff Sharp commenced a nonindividual representative PAGA enforcement action in the Superior Court of California for the County of San Diego alleging the following PAGA claims:

1) Failure to Pay Minimum/Regular Wages;
2) Failure to Pay State Overtime;
3) Failure to Pay Wages Timely;
4) Failure to Comply with Meal and Rest Break laws;
5) Failure to Provide Accurate Wage Statements;
6) Failure to Maintain Records;
7) Failure to Reimburse Business Expenses;
8) Failure to Pay Sick Pay;
9) Misclassification;
10) Failure to Maintain Workers' Compensation Insurance; and
11) Claim for Civil Penalties under the Private Attorney General Act.

ROA #1.

On July 24, 2023, Plaintiffs filed a First Amended Complaint, adding Plaintiff Barbara M. Mize as a named Plaintiff (hereinafter, the "*Sharp/Mize* Action"). ROA #13.

On October 6, 2023, Plaintiffs in the *Sharp/Mize* Action filed a Second Amended Complaint, adding individual claims via the PAGA. ROA #18.

On October 27, 2023, Defendant filed a Motion to Compel Arbitration (MTCA) in the *Sharp/Mize* Action. ROA #19.

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On February 9, 2024, the Court granted Defendant's MTCA, and the case was stayed pending a resolution of the outcome of the Sharp and Mize individual arbitrations. ROA #41.

On March 4, 2024, Plaintiff Sharp filed a demand for arbitration with the American Arbitration Association (AAA) against Defendants Shiftsmart Inc. and Circle K Stores Inc. This arbitration case alleged similar claims as in the *Sharp/Mize* Action, except the claims were asserted as individual claims. Rutledge Decl., Ex. 1, ¶ I.3.

On March 5, 2024, Plaintiff Mize filed a demand for arbitration with the AAA against Defendants Shiftsmart Inc. and Circle K Stores Inc. This arbitration case alleged similar claims as the claims asserted in the *Sharp*/*Mize* Action, except the claims were asserted as individual claims. Rutledge Decl., Ex. 1, ¶ I.4.

On March 5, 2024, Plaintiff Mize filed another demand for arbitration with the AAA against Defendants Shiftsmart Inc., Quik Stop Markets, Inc., and EG Retail (America), LLC. This arbitration demand alleged similar claims as the claims asserted in the *Sharp/Mize* Action, except the claims were asserted as individual claims. Rutledge Decl., Ex. 1, ¶ I.5.

On April 23, 2024, Plaintiffs Tracy Lynn Crenshaw and Caitlyn Crenshaw filed a nonindividual only PAGA enforcement action in the Superior Court of California for the County of San Diego entitled *Crenshaw, et al. v. Shiftsmart Inc., et al*., Case No. 37-2024-00019026-CU-OE-CTL (the "*Crenshaw* Complaint"). ROA #1. In response, Defendant filed a MTCA. ROA #s 60-63.

From the outset of this litigation, Defendant mounted a vigorous defense. In particular, Defendant maintains that the Plaintiffs were properly classified as independent contractors who provided services and/or performed tasks for Shiftsmart's Customers via the Shiftsmart Application. Defendant maintains that Plaintiffs were paid in full by Shiftsmart for any services provided or tasks performed. Defendant further asserts that it did not manage the Plaintiffs as Shiftsmart merely posted shifts to the Shiftsmart Application. Additionally, Shiftsmart's Customers likewise deny they employed Plaintiffs and putative class members or were a client employer of Plaintiffs and putative class members. Rutledge Decl., **Ex. 1**, ¶¶ II.2, IX.3.

During a short period from about April 25, 2024 to May 20, 2024, however, the Parties—through counsel—explored the possibility of settlement. To facilitate meaningful negotiations, the

Parties placed litigation on hold and participated in private mediation, contingent upon Defendants' production of relevant representative action data, including the total number of alleged employees, number of alleged pay periods worked, a random sampling of alleged payroll records, and copies of applicable documents governing the tasks PAGA Members performed. Rutledge Decl., ¶¶ 43-44.

On May 20, 2024, the Parties participated in a private mediation with Steven Serratore, Esq.; however, they were unable to reach a settlement. Thereafter, the Parties resumed litigation. Rutledge Decl., **Ex. 1**, ¶ I.7.

On September 26, 2024, Plaintiff Mize filed a third separate demand for arbitration with the AAA against Defendants Shiftsmart Inc. and AU Energy LLC. This arbitration demand alleged similar claims as the claims asserted in the *Sharp/Mize* Complaint, except the claims were asserted as individual claims under the Labor Code. Rutledge Decl., **Ex. 1**, ¶ I.9.

On November 29, 2024, Plaintiff Shontelle Moore filed a demand for arbitration with the AAA against Defendants Shiftsmart Inc. and United Pacific Industries, Inc. This arbitration demand alleged similar claims as the claims asserted in the *Sharp/Mize* Action, except the claims were asserted as individual claims. Rutledge Decl., **Ex. 1**, ¶ I.10.

On December 1, 2024, Plaintiff Shontelle Moore filed a second separate demand for arbitration with the AAA against Defendants Shiftsmart Inc. and Frito Lay, Inc. This arbitration demand alleged similar claims as the claims asserted in the *Sharp/Mize* Action, except the claims were asserted as individual claims. Rutledge Decl., **Ex. 1**, ¶ I.11.

In December 2024, Plaintiffs' Counsel, on behalf of another former Shiftsmart worker, India Price, filed two more arbitration demands with the AAA. These arbitration demands alleged similar claims as the claims asserted in the *Sharp/Mize* Action, except the claims were asserted as individual claims. Rutledge Decl., ¶ 50.

On December 31, 2024, Plaintiff Angela Podnizhnyy filed a complaint in the Superior Court of California for the County of San Diego entitled *Podnizhnyy v. Shiftsmart Inc*., Case No. 24CL031407N (the "*Podnizhnyy* Complaint"). ROA # 1. The *Podnizhnyy* Complaint asserted individual claims under the Labor Code. Rutledge Decl., Ex. 1, ¶ I.12.

On January 17, 2025, the Court granted Defendants' MTCA in the Crenshaw case and the

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case was stayed pending resolution of the outcome of the Crenshaw individual arbitrations. ROA #77.

On January 17, 2025, Plaintiff Moore filed a complaint in the Superior Court of California for the County of San Diego entitled *Moore v. Circle K Stores, Inc*., Case 25CU003569N (the "*Moore* Complaint"). The *Moore* Complaint asserted individual claims under the Labor Code. ROA #1.

On March 19, 2025, Plaintiffs Angela Podnizhnyy, Vernell Price, and Leanna Neggesmith filed a class action complaint in the Superior Court of California for the County of San Diego entitled *Podnizhnyy, et al. v. Circle K Stores Inc.*, Case No. 25CU015722C (the "*Podnizhnyy* Class Action Complaint"). The *Podnizhnyy* Class Action Complaint asserted similar claims as the *Sharp/Mize* Complaint against Defendant Circle K Stores Inc., except the claims were alleged as class not PAGA causes of action. ROA #4.

On April 4, 2025, the Court granted Plaintiffs Tracy Crenshaw and Caitlyn Crenshaw's Motion for Reconsideration of the Court's decision to grant Defendants' MTCA of the *Crenshaw* case, reversing its decision and lifting the stay of the *Crenshaw* case. ROA #10; Rutledge Decl., **Ex. 1**, ¶ I.15.

On April 11, 2025, Plaintiffs Shontelle Moore and Demitrious Market-Conley filed a nonindividual representative PAGA complaint in the Superior Court of California for the County of San Diego entitled *Moore, et al. v. Shiftsmart Inc., et al*., Case No. 25CU019054C (the "*Moore* PAGA Complaint"). ROA # 4. The *Moore* PAGA Complaint asserted similar claims as the *Sharp/Mize* and *Crenshaw* Actions against Defendants Shiftsmart Inc., Aakashdeep Kumar, Richard Zicchino, Walmart, Inc., United Pacific Industries Inc., and Frito Lay, Inc. ROA #4.

Following the Parties' unsuccessful mediation on May 20, 2024, the foregoing litigation continued for over a year. During this time, Plaintiffs' Counsel, on behalf of the Named Plaintiffs and other Shiftsmart workers, filed more than ten individual arbitrations with the AAA, actively engaged in arbitration-related discovery, obtained and reviewed voluminous documents, interviewed over 100 witnesses, filed dozens of motions, took at least four depositions—three of which were Defendants' Person Most Qualified depositions—and defended three depositions (Sharp, Mize, and

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Godfrey). Rutledge Decl., ¶¶ 61-62, **Ex. 1**, ¶ I.17.

In late April 2025, the Parties, through counsel, reinitiated settlement negotiations with Mediator Serratore. After several months of discussions, Mediator Serratore issued a settlement proposal the Parties accepted on May 7, 2025. Thereafter, the Parties spent an additional two months negotiating the terms of the formal Settlement Agreement. Rutledge Decl. ¶¶ 63-65, **Ex. 1**, ¶¶ I.17-I.18.

As part of the Settlement Agreement, the Parties entered a stipulation to dismiss the aforementioned AAA arbitrations, consolidate the *Sharp/Mize*, *Crenshaw*, *Podnizhnyy* Class Action, *Podnizhnyy*, and *Moore* Complaints into one case, and to allow Plaintiffs to file one amended Consolidated Third Amended Complaint (TAC) under the *Sharp/Mize* Case No. 37-2023-00021163-CU-OE-CTL (the "Consolidated Action") dismissing all Defendants but Shiftsmart, Inc. Rutledge Decl., **Ex. 1**, ¶ I. 20.

On July 21, 2025, Plaintiffs filed the Parties' stipulation. ROA #111. On July 23, the Court granted the stipulation and signed the proposed order. ROA # 112.

On July 31, 2025, the Settlement Agreement was signed by all Parties. Defendant also entered individual release agreements with 19 individuals represented by Plaintiffs' Counsel, some of whom were named Plaintiffs in the foregoing matters (Caitlyn Crenshaw, Demitrious Market-Conley, Leana Neggesmith, and Vernell Price). Rutledge Decl. ¶¶ 69-70.

On July 31, 2025, Class Counsel filed a copy of the Settlement Agreement and Plaintiffs' moving papers in support of Plaintiffs' Motion for Preliminary Approval (MFPA) with the LWDA. ROA #s 106-109.

On August 22, 2025, the parties appeared before the Court for Plaintiffs' MFPA. The Court continued Plaintiffs' MFPA subject to the filing of the TAC and the parties' agreement to change the allocation to the LWDA from 65%-35% to 75%-25%. ROA #s 110, 114.

On August 26, 2025, Plaintiffs filed a TAC. ROA # 113. On September 10, 2025, Class Counsel filed a supplemental declaration informing the Court of the parties' agreement to change the allocation to the LWDA from 65%-35% to 75%-25% via stipulation. ROA #115.

On October 17, 2025, the Court granted Plaintiffs' MFPA, signed the proposed order, and

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set a Final Approval hearing date for March 6, 2026. ROA #s 119, 120.

Phoenix Settlement Administrators (Phoenix), the Court-appointed Settlement Administrator, has complied with all relevant requirements of the Court's order of October 17, 2025. Mitzner Decl., ¶ 1-33. Because Defendant Shiftsmart is not in possession of Class Members' social security numbers (SSNs), Phoenix ran a skiptrace on all Class Members who are expected to receive more than $600 from the Settlement before the Class Notice was mailed. *Id*., ¶ 10. Of the Class Members whose SSNs could not be obtained from the skiptrace, Phoenix included a W-9 with the Class Notice with a self-addressed return envelope. *Id*., ¶ 12. On December 8, 2025, the Settlement Administrator mailed the Class Notice to the provisionally certified class. *Id*., ¶ 11. Only ten people opted out of the Settlement. *Id*., ¶ 18. As of the deadline to object to the Settlement, there are no objections. *Id*., ¶ 19. Sixty Class Members returned a completed W-9. *Id*., ¶ 17.

Before filing this Motion, Class Counsel again filed copies of these moving papers with the LWDA. To date, the LWDA has not served the Parties with any objections or notice whatsoever in opposition to the proposed Settlement. Rutledge Decl., ¶¶ 124-126.

III. SUMMARY OF THE SETTLEMENT.

A. Overview Of the Settlement Terms.

The Parties have agreed to a full and complete Settlement of this matter that provides relief for members of the proposed Settlement Class. The Settlement Class consists of the following:

> All persons who provided services and/or performed tasks during at least one partial or complete shift via the Defendant's Application in California during the Settlement Class Period, including but not limited to, providing services and/or performing tasks for Defendant's Customers.

Rutledge Decl., **Ex. 1**, ¶ II.2.

In addition, the PAGA Members (i.e., Aggrieved Employees) are defined as all persons who provided services and/or performed tasks during at least one partial or complete shift via the Shiftsmart Application in California during the PAGA period from May 15, 2022, to October 17, 2025, including but not limited to, providing services and/or performing tasks for Defendant's Customers. Rutledge Decl., **Ex. 1**, ¶¶ II.16, II.17.

On October 17, 2025, the Court preliminarily approved Defendants' agreement to pay the gross sum of $4,172,900 into a Gross Settlement Fund (GSF) for the benefit of the Class and PAGA Members. ROA #s 119, 120.

After Court-approved deductions for attorneys' fees, expenses, claims administration costs, Class Representative Enhancement Payments and Full Release Payments, the Net Settlement Fund (NSF) will be automatically distributed *pro rata* to all Class Members who did not timely and validly exclude themselves from the Class, and the PAGA Award will be distributed to the PAGA Members and the LWDA. Proceeds from uncashed checks shall be sent to the California State Controller's Unclaimed Property Fund pursuant to Code of Civil Procedure § 384. No settlement proceeds will revert to the Defendant. Rutledge Decl., **Ex. 1**, ¶¶ IV.1-IV.4.

B. The Net Settlement Fund and its Allocation and Apportionment.

The NSF is expected to be $2,537,675. The NSF was calculated by subtracting Class Counsel's requested attorneys' fees ($1,390,967), Class Counsel's actual costs ($36,298), the requested Class Representative Enhancement and Full Release Payments in the total sum of $100,000 to the named Plaintiffs, PAGA Penalties payable to the LWDA in the total sum of $75,000, and Settlement Administration costs of $33,000 from the GSF ($4,172,900). Employer-side payroll taxes (e.g., FICA, FUTA, SUTA, ETT) shall remain the sole responsibility of Defendant. Rutledge Decl., **Ex. 1** ¶¶ IV.1-IV.4.

1. Settlement Payments to Class Members.

Settlement Payments to participating Class Members will be calculated based on the Class Member's *pro rata* share of workweeks they worked during the Class Period. Rutledge Decl., Ex. 1, ¶ VIII.1. Based on the estimated NSF, the average net individual settlement payment to Class members is expected to be $392.70. Mitzner Decl., ¶ 27.

2. Notice and Payments to the LWDA and PAGA Members.

Before filing this Motion, nonconformed copies of these papers were provided to the LWDA by upload to the PAGA portal. Class Counsel has complied with all applicable exhaustion requirements under the PAGA. Rutledge Decl., ¶¶ 124-126.

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From the NSF, $75,000 is payable to the LWDA as penalties under the PAGA and $25,000 is payable to the PAGA Members on a *pro rata* payroll period basis. All PAGA Award payments shall be reported by the Settlement Administrator on IRS Form 1099 by end of the year. Rutledge Decl., Ex. 1, ¶ VIII.1.

3. <u>Payment of the Settlement Administrator's Costs.</u>

Upon court approval, the Settlement Administrator will pay itself $33,000 from the Gross Settlement Fund for its services. Mitzner Decl., ¶ 33.

IV. <u>THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR FINAL APPROVAL.</u>

A. <u>Standard of Review for Class Settlements.</u>

When a proposed class-wide settlement is reached, it must be submitted to the court for approval pursuant to California Rules of Court (CRC), Rule 3.769. 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 process is widely followed by both federal and California courts for evaluating the fairness of class action settlements. *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 October 17, 2025, for example, this Court entered an Order granting Plaintiffs' Motion for Preliminary Approval of the Class Settlement. ROA #s 119, 120. On December 8, 2025, the Claims Administrator mailed the Class Notice to the Class Members. Mitzner Decl., ¶ 11.

The only remaining question for the Court to consider is whether the settlement is a "fair and reasonable resolution of a bona fide dispute." CRC 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). A presumption of fairness arises when: (1) the settlement is reached through arm's-length negotiation; (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. <u>The Reasons the Settlement is Fair, Reasonable, and Adequate.</u>

The declaration submitted by Class Counsel explains the reasons in support of this settlement in detail. The monetary relief achieved through this Settlement Agreement is substantial, particularly when compared to the potential recovery through continued litigation or trial. Rutledge Decl., ¶¶ 77-80.

Further, no fraud or collusion exists regarding this Settlement. This Settlement was procured after almost three years of intense litigation followed by extensive arm's length negotiations via experienced counsel using an knowledgeable mediator after a significant exchange of documents and data was shared between the parties. Rutledge Decl., ¶ 85.

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Moreover, the complexity, expense, and likely duration of the litigation support the Settlement. The Defendant has asserted, and continues to assert, many defenses, and has expressly denied and continues to deny any wrongdoing and asserts its liability is, at most, minimal. Notwithstanding the asserted claims and defenses, the parties have concluded that the Settlement is fair when compared to the burden, expense, and uncertainty of continuing litigation. Rutledge Decl., ¶¶ 77-83.

Further, the stage of the litigation and amount of discovery completed demonstrates the Parties possessed sufficient information to make an informed settlement decision. The parties, after all, exchanged hundreds of pages of documents, policy handbooks, payroll records, among other things. Class Counsel and various staff members reviewed the foregoing records and data and made an assessment regarding a range of possible recoveries. Counsel for the respective parties created a meaningful mediation environment, exchanging sufficient documentation to enable Class Counsel to make an assessment concerning the range of possible recoveries and make an informed assessment of the reasonable settlement value of the case. Rutledge Decl., ¶¶ 85-87.

Additionally, the probability of success on the merits suggest that settlement was in the best interest of the parties and the Class. At the time of the Settlement, both sides faced considerable risk going forward with the class certification motion process and a possible trial. Notwithstanding the defenses, Class Counsel is optimistic that Plaintiffs would have been able to make the required commonality showing. However, Class Counsel acknowledges the difficulty in establishing commonality when confronted with claims that the Defendant never broke the law. Rutledge Decl., ¶¶ 77-80.

In further considering the factor of the range of possible recoveries and the settlement reached, this Settlement is outstanding. Indeed, all Settlement Class Members will receive cash payments, not coupons, days off, or some other unusual form of remuneration. On average, Class Members will receive approximately $392.70, which, in Class Counsel's experience, is an excellent outcome. Additional evidence the Settlement is reasonable is that only ten class members opted out of the Settlement and there are no objectors. Mitzner Decl., ¶ 17.

The last important factor the courts normally consider is the opinion and experience of counsel. Class Counsel has served the public for over 30 years, with the past 20 years focused on class action, PAGA, and employment litigation. Class Counsel has been the originating attorney on more than five dozen wage and hour class and representative actions. When the counsel who is recommending the proposed settlement for approval is known to the court as a competent and experienced attorney, significant weight is normally given to his/her opinion. *Wershba*, *supra*, 91 Cal. App. 4th at pp. 240-242; *Dunk*, *supra*, 48 Cal. App. 4th at p. 1802. Here, Class Counsel unhesitatingly believes the Settlement is fair, reasonable, and adequate. Rutledge Decl., ¶¶ 5-24, 77-123.

V. <u>THE PAGA SETTLEMENT IS FAIR AND REASONABLE.</u>

A. <u>Standard of Review for PAGA Settlements.</u>

Labor Code § 2699(s)(2), provides, "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Court review of PAGA settlements is significantly different from the review of class action settlements, the former of which typically focus on the amount received by the Aggrieved Employees, compares the settlement amount to the reasonable range of potential outcomes in the case, and does not require a preliminary and final approval. *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Judicial review of a PAGA settlement focuses on whether the settlement is fair and reasonable and supports PAGA's remedial objectives. *Ibid*.

B. <u>Reasons to Approve the PAGA Settlement.</u>

The declaration submitted by Class Counsel explains the reasons in support of the PAGA Settlement in detail. In short, based on virtually the same reasons the settlement amount obtained for the Class is reasonable, the monetary relief obtained from this Settlement Agreement for the LWDA and PAGA Members here is fair and reasonable. Indeed, many courts substantially discount PAGA penalties when parties cannot settle and cases must go to trial unless the violations are willful. The general norm of judicial leniency combined with the recent amendments to the PAGA demonstrate a general trend against "punishing" employers. Rutledge Decl., ¶¶ 77-179.

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VI. THE CLASS REPRESENTATIVES EARNED ENHANCEMENT PAYMENTS.

The Named Plaintiffs very respectfully request the Court to award them a representative Enhancement Payments of $10,000 each, for a total of $50,000. The Defendant does 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 Representatives, the Named Plaintiffs here admirably performed their duties to the Class. They 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 participated as active litigants in AAA arbitration. They also assumed risks, including potential liability for costs if the case were unsuccessful. They also risked (and continue to risk) the potential stigma in their industry associated with suing a former employer. In short, without the Named Plaintiffs' participation and hard work, there would be no case and no recovery for the Class. Colleen Sharp Decl., ¶¶ 1-36; Barbara Mize Decl., ¶¶ 1-33; Angela Podnizhnyy Decl., ¶¶ 1-32; Shontelle Moore Decl., ¶¶ 1-33; Tracy Lynn Crenshaw Decl., ¶¶ 1-29; and Rutledge Decl., ¶¶ 1-179.

Accordingly, Plaintiffs very respectfully request the Court to approve the requested representative Enhancement Payments. [2]

VII. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS REQUEST IS REASONABLE.

As noted above, Class Counsel moves for final approval of a fee award of $1,390,967 (1/3 of

[2] The Named Plaintiffs also seek $10,000 each for Full Release payments in exchange for their broad Civil Code § 1542 release agreements. The reason these amounts are fair and reasonable is because they each are waiving their right to pursue individual claims that are not asserted in this litigation. *See* Rutledge Decl., ¶¶ 131-145 for more details.

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the Gross Settlement Amount) and $36,298 in actual costs, sums authorized per the terms of the Settlement Agreement and preliminarily approved by this Honorable Court. The request is unopposed, and no objections have been filed.

A. <u>The Amount Sought for Class Counsel's Fees is a Reasonable Percentage of the Gross Settlement.</u>

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 Defendant or a claims process where the common fund may diminish based on a lack of qualified claims, is application of the percentage method. *Id*.

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. <u>A Lodestar Cross-Check Also Supports Class Counsel's Fee Request.</u>

The nature of the 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, Esq.	1995	$1,227	1284.56	$1,576,155

Rutledge Decl., **Exs. 3** and **4**.

C. <u>Class Counsel's Cost Request is Reasonable.</u>

Class Counsel also seeks reimbursement of litigation costs in the amount of $36,298, which Defendant does not oppose. *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, these expenses generally are for: (1) court filing fees; (2) service fees; (3) travel costs (depositions were in Modesto, Cal.); and (4) mediation fee. Class Counsel's expenses were ordinary and necessary for the successful prosecution of this litigation. Rutledge Decl., **Ex. 5**.

VIII. CONCLUSION.

For the reasons described in these moving papers, Plaintiffs very respectfully request that the Court grant Plaintiffs' Motion and sign the proposed Order submitted herewith.

Dated: February 9, 2026

Law Office of
Thomas D. Rutledge

By: */s/Thomas D. Rutledge*
Thomas D. Rutledge
Attorney for the Plaintiffs and the Provisionally 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 February 9, 2026, 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 AND FULL RELEASE PAYMENTS, 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 February 9, 2026, 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.

/s/THOMAS D. RUTLEDGE
THOMAS D. RUTLEDGE

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