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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10 JAMES E. AGUILAR, et al.,

11
12 Plaintiff,

13 v.

14 T&K, L.P., et al.,

15 Defendants.
16
17

Case No.: 21CV384674

**ORDER CONCERNING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

18
19 **INTRODUCTION**

20 This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiffs
21 James E. Aguilar and Pamela Cazares allege that Defendant T&K, L.P., which operates a chain
22 of franchised Taco Bell restaurants in California, failed to provide employees with compliant
23 meal and rest breaks, failed to pay minimum and overtime wages, issued noncompliant wage
24 statements, and committed other wage and hour violations.

25 Now before the Court is Plaintiffs’ motion for preliminary approval of a settlement, which
26 is unopposed. As discussed below, the Court GRANTS preliminary approval, now that Plaintiffs
27 have provided the additional information requested by the Court.
28

BACKGROUND

Mr. Aguilar began employment with Defendant in August 2020 and Ms. Cazares began employment with Defendant November 2020. (First Amended Class Action Complaint (“FAC”), ¶ 3.) They were both employed by Defendant until March 2021 as non-exempt employees. (*Ibid.*)

According to Plaintiffs, their wages were paid late. (FAC, ¶ 8.) And, while employees routinely earned non-discretionary incentive wages but overtime, double time, and sick pay was paid at their base pay rate rather than the regular rate of pay. (FAC, ¶ 11.) Further, Defendant did not have an immutable time keeping system to record all hours worked and utilized an unlawful rounding policy resulting in employees not being paid for all hours worked. (FAC, ¶ 12.)

Employees frequently had to work through their meal and rest periods. (FAC, ¶¶ 14-15.) Plaintiffs also allege that Defendant failed to provide them with paper wage statements or the option to receive paper wage statements. (FAC, ¶ 20.) Defendant also required employees to use their personal vehicles and cellular phones for work purposes without compensation. (FAC, ¶ 22.)

Based on these allegations, Plaintiffs assert putative class claims for: (1) violation of Business and Professions Code section 17200, et seq.; (2) failure to pay minimum wages, in violation of Labor Code sections 1194, 1197, and 1197.1; (3) failure to pay overtime wages, in violation of Labor Code section 510, et seq.; (4) failure to provide rest breaks violation of Labor Code sections 226.7 and 512 by and the relevant Industrial Wage Commission order; (5) failure to provide rest breaks violation of Labor Code sections 226.7 and 512 by and the relevant wage order; (6) violation of Labor Code section 226 by failing to provide accurate itemized wage statements; (7) failure to provide wage when due under Labor Code sections 201 through 203; (8) failure to reimburse employees for required expenses under Labor Code section 2802; and (9) a representative claim for PAGA penalties (Lab. Code, § 2698, et seq.).

1 Plaintiffs now move for an order preliminarily approving the settlement of the class and
2 PAGA claims, provisionally certifying the settlement class, approving the form and method for
3 providing notice to the class, and scheduling a final fairness hearing.

4 DISCUSSION

5 I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

6 A. Class Action

7 Generally, “questions whether a [class action] settlement was fair and reasonable,
8 whether notice to the class was adequate, whether certification of the class was proper, and
9 whether the attorney fee award was proper are matters addressed to the trial court’s broad
10 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
11 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
12 260.)

13 In determining whether a class settlement is fair, adequate and reasonable, the trial court
14 should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,
15 complexity and likely duration of further litigation, the risk of maintaining class action status
16 through trial, the amount offered in settlement, the extent of discovery completed and the stage
17 of the proceedings, the experience and views of counsel, the presence of a governmental
18 participant, and the reaction of the class members to the proposed settlement. (*Wershba, supra*,
19 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

20 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
21 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
22 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
23 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
24 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
25 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
26 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
27 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
28 marks omitted.) The trial court also must independently confirm that “the consideration being

received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be “provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (“LWDA”), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

Similar to its review of class action settlements, the Court must “determine independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O’Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often

1 exercise their discretion to award PAGA penalties below the statutory maximum, even where a
2 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
3 CV-02198-EMC) 2016 WL 5907869, at *8-9.)

4 **II. SETTLEMENT**

5 **A. Process**

6 According to Plaintiffs' counsel, the parties have engaged in significant written
7 discovery. Defendant produced, inter alia, time and payroll records for a sample of 25% of the
8 class, aggregate workweek and pay period data, and copies of applicable handbooks, policies,
9 and procedures. Class counsel used that data to calculate Defendant's liability exposure.

10 On August 29, 2022, the parties attended mediation with the Honorable Carl West (Ret.).
11 After a full day of negotiations with his assistance, they were able to reach the agreement now
12 before the Court.

13 **B. Settlement Provisions**

14 The non-reversionary gross settlement amount is \$2,000,000. Attorney fees of up to
15 \$666,666.66 (one-third of the gross settlement), litigation costs of up to \$25,000, and up to
16 \$25,000 in administration costs will be paid from the gross settlement. One hundred thousand
17 dollars of the gross settlement amount will be allocated to PAGA penalties, 75 percent of which
18 (\$75,000) will be paid to the LWDA. The named plaintiffs will seek incentive awards of
19 \$10,000 each.

20 The net settlement will be allocated to class members proportionally based on their pay
21 periods worked during the class of July 23, 2017 up to and including October 29, 2022. The
22 PAGA payment will be allocated to aggrieved employees on a pro rata basis based on their
23 number of pay periods worked during the PAGA period of May 19, 2020 up to and including
24 October 29, 2022. Counsel calculates that the average payment will be around \$610.99 to each
25 of the 1,904 class members. Class members will not be required to submit a claim to receive
26 their payments.

27 For tax purposes, settlement payments will be allocated 10 percent to wages and 90
28 percent to penalties and interest. The PAGA payments will be treated as 100 percent penalties

1 and no wages. The employer's share of payroll taxes will be paid in addition to the gross
2 settlement. Funds associated with checks uncashed after 180 days will be paid to Child
3 Advocates of Silicon Valley, an IRS 401(c) nonprofit organization.

4 In exchange for the settlement, class members who do not opt out will release "all claims
5 that were alleged or reasonably could have been alleged in the Complaint based on the facts
6 contained therein, arising during the Class Period, including," including specified wage and hour
7 and expense reimbursement claims. The release is appropriately tailored to the factual
8 allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th
9 521, 537.) And the PAGA release is appropriately limited to "all claims for PAGA penalties that
10 were alleged, or reasonably could have been alleged, based on the facts stated in the complaint,
11 first amended complaint, and PAGA notice provided to the LWDA pursuant to Labor Code
12 section 2699.3, subd. (a), including but not limited to," specified Labor Code violations.
13 Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion
14 of the settlement.

15 **C. Fairness of Settlement**

16 Defendant asserted certain defenses, denying all liability for each claim and articulating
17 that it fully complied with all employment laws. Based on the records provided by Defendant,
18 Plaintiffs' expert found a 39.1 percent rate of meal and rest break deficiencies and estimated the
19 meal rest period damages at \$5,020,621. Plaintiffs allege that they were required to spend time
20 completed work-related tasks before and after their shifts while off-the-clock and Plaintiffs
21 estimated Defendant's exposure for this claim to be \$124,515. With regard to the regular rate
22 theory, class members were underpaid by an estimated \$57,248. The maximum exposure on the
23 business expense claim was \$152,302, or \$5 per month for each class member during the class
24 period. Plaintiffs estimated Defendant's exposure for these wage statement violations to be
25 approximately \$5,369,066, consisting of \$3,337,316 for Labor Code section 203 waiting time
26 penalties and \$2,031,750 for Labor Code section 226 penalties. PAGA penalties could total
27 \$8,242,500.00.

1 Class counsel calculated Defendant's total maximum exposure at \$18,966,252:
2 \$10,723,752 for class liability and another \$8,242,500 for PAGA penalties. Thus, the settlement
3 amount of \$2,000,000.00 represents approximately 18.6% of Defendant's class-wide liability
4 exposure and approximately 10.5% of Defendant's maximum liability exposure with penalties.
5 The PAGA payment of \$100,000 represents approximately five percent of the settlement
6 amount. In light of the large portion of the case's value attributable to highly uncertain penalties,
7 the settlement achieves a good result for the class.

8 For purposes of preliminary approval, the Court finds that the settlement is fair and
9 reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light
10 of the statute's purposes. Of course, the Court retains an independent right and responsibility to
11 review the requested attorney fees and award only so much as it determines to be reasonable.
12 (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)
13 Counsel shall submit lodestar information prior to the final approval hearing in this matter so the
14 Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half*
15 *Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the
16 reasonableness of a percentage fee through a lodestar calculation].) Counsel must disclose their
17 fee sharing arrangement, as well.

18 **D. Proposed Settlement Class**

19 Plaintiff requests that the following settlement class be provisionally certified: “all
20 individuals who are or previously were employed by T&K, L.P. (‘Defendant’) in California and
21 classified as a non-exempt employee at any time during the Class Period.”

22 1. *Legal Standard for Certifying a Class for Settlement Purposes*

23 Rule 3.769(d) of the California Rules of Court state that “[t]he court may make an order
24 approving or denying certification of a provisional settlement class after [a] preliminary
25 settlement hearing.” Code of Civil Procedure section 382 authorizes certification of a class
26 “when the question is one of a common or general interest, of many persons, or when the parties
27 are numerous, and it is impracticable to bring them all before the court”
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1 Code of Civil Procedure section 382 requires the plaintiff to demonstrate by a
2 preponderance of the evidence: (1) an ascertainable class; and (2) a well-defined community of
3 interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34
4 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*).) “Other relevant considerations include the
5 probability that each class member will come forward ultimately to prove his or her separate
6 claim to a portion of the total recovery and whether the class approach would actually serve to
7 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)
8 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”
9 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d
10 381, 385.)

11 In the settlement context, “the court’s evaluation of the certification issues is somewhat
12 different from its consideration of certification issues when the class action has not yet
13 settled.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in
14 the settlement-only context, the case management issues inherent in the ascertainable class
15 determination need not be confronted, and the court’s review is more lenient in this respect.
16 (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
17 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
18 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p.
19 94.)

20 2. Ascertainable Class

21 A class is ascertainable “when it is defined in terms of objective characteristics and
22 common transactional facts that make the ultimate identification of class members possible when
23 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980
24 (*Noel*).) A class definition satisfying these requirements “puts members of the class on notice
25 that their rights may be adjudicated in the proceeding, so they must decide whether to intervene,
26 opt out, or do nothing and live with the consequences. [Citation.] This kind of class definition
27 also advances due process by supplying a concrete basis for determining who will and will not be
28 bound by (or benefit from) any judgment.” (*Ibid.*)

1 “As a rule, a representative plaintiff in a class action need not introduce evidence
2 establishing how notice of the action will be communicated to individual class members in order
3 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
4 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
5 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
6 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
7 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
8 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
9 own account records. No more is needed.”].)

10 Here, the 1,904 class members are readily identifiable based on Defendant’s employment
11 and payroll records, and the settlement class is defined based on objective characteristics. The
12 Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

13 3. *Community of Interest*

14 The “community-of-interest” requirement encompasses three factors: (1) predominant
15 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
16 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
17 Cal.4th at pp. 326, 332.)

18 For the first community of interest factor, “[i]n order to determine whether common
19 questions of fact predominate the trial court must examine the issues framed by the pleadings
20 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home*
21 *Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any
22 conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v.*
23 *Superior Court* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues
24 which may be jointly tried, when compared with those requiring separate adjudication, are so
25 numerous or substantial that the maintenance of a class action would be good for the judicial
26 process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096,
27 1104-1105 (*Lockheed Martin*)). “As a general rule if the defendant’s liability can be determined
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1 by facts common to all members of the class, a class will be certified even if the members must
2 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

3 Here, it appears that common legal and factual issues predominate. Plaintiff’s claims
4 arise from Defendant’s wage and hour practices, which would apply to the other class members,
5 who are similarly-situated.

6 As to the second factor,

7 The typicality requirement is meant to ensure that the class representative is able to
8 adequately represent the class and focus on common issues. It is only when a
9 defense unique to the class representative will be a major focus of the litigation, or
10 when the class representative’s interests are antagonistic to or in conflict with the
11 objectives of those she purports to represent that denial of class certification is
12 appropriate. But even then, the court should determine if it would be feasible to
divide the class into subclasses to eliminate the conflict and allow the class action
to be maintained.

13 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
14 brackets, and quotation marks omitted.)

15 Like other members of the class, Plaintiffs were employed by Defendant as non-exempt
16 employees and they allege that they suffered the violations at issue. The anticipated defenses are
17 not unique to Plaintiff as they are based on Defendant’s general compliance with applicable laws
18 and its own policies and procedures. There is no indication before the Court that Plaintiff’s
19 interests are otherwise in conflict with those of the class. The Court finds that Plaintiffs have
20 sufficiently demonstrated typicality.

21 Finally, adequacy of representation “depends on whether the plaintiff’s attorney is
22 qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
23 interests of the class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
24 representative does not necessarily have to incur all of the damages suffered by each different
25 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
26 Cal.App.4th at p. 238.) “Differences in individual class members’ proof of damages [are] not
27 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
28

will defeat a party’s claim of representative status.” (*Ibid.*, internal citations and quotation marks omitted.)

Here, Plaintiffs would appear to have the same interest in maintaining this action as any other class member would have. Plaintiffs are represented by experienced counsel who are qualified to represent the class. The Court finds that Plaintiffs and their counsel are adequate to represent the class.

4. *Substantial Benefits of Class Certification*

“[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp. 120–121, internal quotation marks omitted.)

Here, the class is large, comprised of an estimated 1,904 class members. It would surely be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is plain that a class action provides substantial benefits to both the litigants and the Court in this case.

E. Notice

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class

1 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
2 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
3 3.766(e).)

4 Here, the notice describes the lawsuit, explains the settlement, and instructs class
5 members that they may opt out of the settlement (except the PAGA component) or object to the
6 settlement. The gross settlement amount and estimated deductions are provided. Class members
7 are informed of their qualifying pay periods as reflected in Defendant’s records and are
8 instructed how to dispute this information. They are given 45 days to request exclusion from the
9 class or submit a written objection to the settlement.¹ Class members are instructed that they
10 may appear at the final fairness hearing to make an oral objection without submitting a written
11 objection. Notice will be provided in Spanish and English.

12 The form of notice is generally adequate, but must be modified to instruct class members
13 that they may opt out of or object to the settlement simply by providing their name, without the
14 need to provide their Social Security Number, phone number, or other personal information.

15 With regard to appearances at the final fairness hearing, the notice shall be further
16 modified to instruct class members as follows:

17 Class members can appear in person at the hearing or remotely. If class members
18 wish to appear remotely, they should contact class counsel at least three days
19 before the hearing if possible. Instructions for appearing remotely are provided
20 at https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml
21 and should be reviewed in advance. Class members may appear remotely using
the Microsoft Teams link for Department 1 (Afternoon Session) or by calling the
toll-free conference call number for Department 1.

22 Turning to the notice procedure, the parties have selected ILYM Group, Inc. as the
23 settlement administrator. Defendant will provide a list of class members to the administrator
24 within 10 days of the date of preliminary approval of the settlement. The administrator will mail
25 the notice packet within 45 days of preliminary approval, after updating class members’
26 addresses using the National Change of Address Database. The deadline for responses will be 45
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28 ¹ The notice will provide the date by which the class members must respond.

1 days after mailing. Any returned notices will be re-mailed to any forwarding address provided or
2 better address located through a search. Class members who receive a re-mailed notice will have
3 an additional 10 days to respond.

4 The Court notes that Plaintiff already has modified the class notice to conform with the
5 Court's requests. (Supplemental Declaration of Shani O. Zakay, Esq. in Support of Plaintiffs'
6 Motion for Preliminary Approval of Class Action and PAGA Settlement, ¶ 4, Ex. A.)

7 These notice procedures are appropriate and are approved.

8 **F. Settlement of Mr. Aguilar's Individual Claims**

9 The settlement agreement provides that Mr. Aguilar "acknowledges that he is knowingly
10 and voluntarily waiving and releasing any rights he may have under the Age Discrimination in
11 Employment Act ('ADEA'). Mr. Aguilar also acknowledges that the consideration given in this
12 agreement for the waiver and release is \$300.00 of his \$10,000.00 Class Representative's
13 Payment and is in addition to anything of value to which he was already entitled." (Settlement
14 Agreement, at p. 28.) In their original moving papers, Plaintiffs did not provide information
15 regarding the factual basis for any ADEA claim and such a claim was not raised in the FAC.
16 Accordingly, the Court requested additional information regarding this portion of the release.

17 On May 24, 2023, Plaintiffs' counsel provided a supplemental declaration in which he
18 explained that Mr. Aguilar was not aware of the existence of an ADEA claim but that this
19 language was included in the settlement agreement because Mr. Aguilar is over the age of 40. At
20 Defendant's request, \$300 of Mr. Aguilar's \$10,000 incentive payment was allocated as
21 consideration for the release. Mr. Aguilar had the right to revoke the agreement but he has not
22 done so and the time in which to do so has passed. The Court is satisfied with this explanation.

23 **CONCLUSION**

24 The Court GRANTS Plaintiffs' motion for preliminary approval. The final approval
25 hearing shall take place on October 26, 2023 at 1:30 pm. in Dept. 1.

1 Counsel shall submit lodestar information before the final approval hearing in this matter
2 so the Court can compare the lodestar information with the requested fees. Counsel also must
3 disclose their fee sharing arrangement.

4 **IT IS SO ORDERED.**

5 Date: **May 30, 2023**



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7 The Honorable Sunil R. Kulkarni
8 Judge of the Superior Court
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