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MICHELLE NOURIAN MARTINEZ

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHELLE NOURIAN MARTINEZ, on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

HELZBERG'S DIAMOND SHOPS,
INC., and DOES 1-25 inclusive,

Defendant.

Case No. 5:20-cv-01085-PSG-
SHK

**DECLARATION OF RICHARD A.
HOYER SUPPORTING
UNOPPOSED MOTION FOR
ATTORNEYS' FEES, COSTS,
AND SERVICE AWARD**

Date: September 10, 2021
Time: 1:30 p.m.
Courtroom: 6A (6th Floor)
Judge: Hon. Philip S.
Gutierrez

I, Richard A. Hoyer, declare:

I have personal knowledge of the facts set forth in this Declaration and, if
called upon as a witness, I could and would testify competently as to these facts.

This Declaration is submitted in support of Plaintiff's Unopposed Motion
for Attorneys' Fees, Costs, and Service Award.

QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

1. I am an attorney licensed to practice law in the state of California, the
Senior Partner of Hoyer & Hicks and one of the attorneys of record for plaintiffs
in the above entitled action. I make this declaration based on my personal

1 knowledge and if called upon to do so, could and would competently testify to
2 the contents hereof.

3 2. I have practiced litigation in San Francisco since 1990. I have a Bachelor
4 of Arts degree from Northwestern University (1987) and a Law Degree from
5 Georgetown (1990). I was a commercial litigator at what is now called Pillsbury
6 Winthrop (1990-1993) and an employment litigator at Epstein, Becker & Green
7 (1993-1997), which are both national firms. I was a partner at Whitehead, Porter
8 & Gordon LLP from 1997 to 2001.

9 3. Since 1993, I have focused almost exclusively on employment disputes.
10 Since 2002, ninety percent of my clients have been plaintiffs in employment
11 cases. Specifically, I have represented clients with claims of sexual
12 discrimination and harassment, racial discrimination and harassment,
13 employment retaliation, and wage and hour disputes. Since 2002, I have had
14 my own practice. This firm takes nearly all of their cases on a contingency basis,
15 though it does take hourly clients when appropriate.

16 4. HH and I specifically have acted or are acting as class counsel in
17 numerous cases. A partial list of class actions in which I or HH were counsel
18 includes: *Butler v. Home Depot*, (N.D.Cal. Case No. C-94-4335) (representing
19 Defendant in nationwide class action alleging gender discrimination); *Ling, et*
20 *al. v. Regents* (Alameda Sup. Ct. No. 2001-035654) (represented class
21 members in a race discrimination claim that resulted in class certification and
22 settlement); *Wahid v. Nations Foodservice, Inc.* and *Saavedra v. Nations*
23 *Foodservice, Inc.* (Alameda County Superior Court Nos. RG 05246866 and RG
24 08421015) (wage and hour class action regarding misclassification of
25 restaurant managers); *Stockwell, et al v. City and County of San Francisco*,
26 (N.D.Cal. Case No. C 08-05180 PJH) (disparate impact age discrimination
27 claims on behalf of police officers); *Kauffman v. Bank of America* (D.Kan. Case

1 No. 10-md-2138-JWL-KGS) (wage and hour class action and multidistrict
 2 litigation and settlement concerning unpaid wages and overtime and missed
 3 meal and rest periods under the FMLA and California law); *In Re: Sanofi-Aventis*
 4 *U.S., Inc. Wage and Hour Litigation* (N.D.Cal. Case Nos. 3:10-CV-04141 SBA;
 5 3:10-CV-04672 SBA) (class of pharmaceutical sales representatives in a state-
 6 wide misclassification case); *Neu-Helms v. UHS of Delaware, Inc.* (Alameda
 7 County Case No. RG08425516) (post- certification settlement of class claims
 8 regarding missed meal and rest periods for classroom assistants at schools for
 9 special needs children); *Al Lahham, et al vs. Serra Medical Transportation,*
 10 (N.D.Cal. Case No. 3:12-cv-00355-CRB) (FLSA Collective of drivers deprived
 11 of overtime pay and meal and rest breaks); *Okechukwu, et al. vs. DEM* (putative
 12 class arbitration representing limousine drivers on claims of unpaid overtime, as
 13 well as meal and rest break violations); *Parvataneni, et al. vs. E*Trade*
 14 *Financial,* (N.D.Cal. Case No. 3:13-cv-02428-JSW) (statewide representative
 15 claims of unpaid overtime for PAGA collective of computer systems employees);
 16 *Sanchez-Ramirez v. The Consulate General of Mexico in San Francisco*
 17 (N.D.Cal. Case No. 4:12-cv-03485-PJH) (represented non-exempt workers on
 18 class claims of unpaid overtime and missed breaks); *Asghari, et al. v. Friendly*
 19 *Cab Company, Inc.* (Alameda County Case No. AG11556435) (class settlement
 20 on behalf of taxicab drivers alleging improperly assessed processing fees on
 21 credit card transactions); *Palm v. Sur la Table, Inc.* (N.D.Cal. Case No. 13-cv-
 22 1250-JCS) (class settlement of over 2,800 non-exempt retail store employees
 23 in California on rest break claims); *Shaghafi v. ValleyCare Health System*
 24 (Alameda County Case No. RG12618899) (class settlement of meal and rest
 25 period claims on behalf of respiratory therapists); *Jenkins v. Goodwill Industries*
 26 *of the Greater East Bay, Inc.* (Alameda County Case No RG12659632) (class
 27 settlement of unpaid wages, overtime, and meal and rest period violations);

1 *Marr v. Poodles, Inc., et al.* (S.F. Sup. Ct. Case No. CGC-14-537154) (class
 2 settlement for unpaid wages and missed break premiums); *Oseas DeLeon et*
 3 *al. v. Clock Freight International, Inc. et al.* (San Mateo County Case No. CIV-
 4 521247) (class settlement of drivers' claims of missed meal and rest periods)
 5 *Guilbaud v. Sprint/United Management Co. Inc.* (N.D.Cal. Case Nos. 3:13-cv-
 6 04357-VC and 3:14-cv-02642-VC) (final approval of class and FLSA settlement
 7 for off-the-clock and missed meal and rest period claims on behalf of class and
 8 FLSA collective of non-exempt retail store employees); HH is currently counsel
 9 in the following pending wage and hour class/representative actions: *Thomas*
 10 *v. Sonoma Mission Inn Management, et al.* (Sonoma County Case No. SCV-
 11 257470) (putative class of massage therapists and estheticians alleging missed
 12 meal and rest periods); *Casas v. Mission-Hope Day Program, LLC et al.*
 13 (Alameda County Case No. RG15797671) (class and PAGA claims of missed
 14 meal and rest periods for employees who care for special needs adults); *D'sa*
 15 *v. Amber India Corp.* (San Francisco Superior Court Case No. CGC-15-544578)
 16 (non-exempt restaurant workers alleging missed meal and rest periods;
 17 *Villarreal v. Perfection Pet Food* (E.D.Cal. Case No. 1:16-cv-01661-LJO-EPG)
 18 (pet food factory workers alleging missed rest and meal periods for shifts
 19 exceeding 10 hours, now compelled to class arbitration); *Coppernoll v. Hamcor*
 20 *Inc.* (N.D.Cal. Case No. 3:16-cv-05936-WHA) (piece-rate automotive service
 21 technicians alleging off the clock work, unpaid overtime, missed breaks);
 22 *Coppernoll v. Hamcor Inc.* (Alameda County Case No. RG16843171) (parallel
 23 PAGA-only state court action); *Heartley v. On My Own, Inc.* (E.D.Cal. Case No.
 24 2:17-CV-00353-KJM-EFB)(in-home care providers alleging unpaid overtime
 25 and meal/rest period violations); *Magee v. AEG Management Oakland, LLC*
 26 (N.D.Cal. Case No. 3:17-cv-02631-JD)(Security Guards Asserting meal/rest
 27 period violations); *Stearne v. Heartland Payment Systems, LLC* (E.D.Cal. Case

No. 2:17-cv-01181-MCE-CKD)(PAGA-only Action asserting Paid Sick Leave violations), *Thaoho v. Capitol Casino, Inc.* (Sacramento County Case No. 2018-00228073) (Class action on behalf of casino dealers with meal period and tip theft violations); *Wiley v. Health Services Media, Inc.* (Cal.N.D. Case No. 3:18-cv-06680-SK) (Class action involving house cleaners misclassified as independent contractors); *Gutierrez v. El & El Wood Products Corp.* (Sacramento County Case No. 34-2019-00268549) (Class/PAGA Action involving wage and hour claims of wood manufacturing workers); *Benroth v. Glassybaby, LLC, et al.* (Alameda County Case No. HB19045978) (Class/PAGA action involving wage and hour claims of glassblowers); *Landucci v. Freeman Expositions, LLC* (N.D.Cal. Case No. 3:19-cv-07573-JCS) (Class/PAGA action involving paycheck cashing fees on event workers); *Rivera, et al. v. Home Care Assistance, Inc. et al.* (Alameda County Case No. RG20058229) (Class/PAGA action involving healthcare workers misclassified as exempt from overtime); and *Hand v. Spread Your Wings, LLC, et al.* (Contra Costa County Case No. C20-02287) (PAGA action involving improper payroll practices and bounced paychecks)

CLASS COUNSEL

5. Plaintiff's Counsel in this case is Hoyer & Hicks ("HH"), a highly-regarded member of the wage and hour and employment class and collective action bar, with extensive experience in this highly-specialized type of litigation.

PROCEDURAL HISTORY

6. The brief in support of this motion contains a section entitled "Procedural History and Work Performed by Class Counsel." As its title suggests, this section of the brief details the major billable projects that took place over the course of this lawsuit, and also provides a summary of the necessary work performed by Class Counsel with respect to each project. Class Counsel

1 compiled this section of the brief by: (1) reviewing the documents entered into
2 the Court's record, along with any discovery propounded by either Party, to
3 determine the major billable events that took place in this case; and (2)
4 reviewing any correspondence and billing related to a particular billable event
5 to determine the specific work performed by Class Counsel. In the opinion of
6 Class Counsel, this section truly and correctly summarizes the major billable
7 events in this case for which (with a few exceptions) Plaintiff seeks recovery of
8 her fees and costs, along with the work performed by Class Counsel to warrant
9 such an award.

10 7. Plaintiff filed this action in the Central District of California on May 27,
11 2020. (Dkt. # 1) After submitting a PAGA Notice and the period for the LWDA's
12 response elapsed, Following the expiration of the LWDA 65-day response
13 period, on August 7, 2020, Plaintiff filed the operative Amended Complaint,
14 adding a claim for PAGA penalties. (Dkt. # 20). Defendant timely answered on
15 September 1, 2020. (Dkt. # 26). Shortly thereafter, the parties discussed and
16 agreed to an early mediation.

17 **DISCOVERY**

18 8. Plaintiff served her Initial Disclosures pursuant to Rule 26(a) on August
19 12, 2020, with accompanying documents. Class Counsel strategized regarding
20 what to include in the document, including discussions regarding potential
21 witnesses and persons with information regarding Plaintiff's claims. In addition,
22 Class Counsel compiled documents relevant to Plaintiff's claims.

23 9. Plaintiff also then prepared formal discovery requests, which counsel
24 served on Defendant on September 18, 2020. These requests included: (1)
25 Plaintiff's Special Interrogatories; and (2) Plaintiff's Request for Production of
26 Documents. However, shortly after the discovery was propounded, the parties
27

1 agreed to prepare for an early mediation, and agreed to proceed with informal
2 discovery instead of formal discovery.

3 10. Thereafter, the Parties engaged in meet and confer efforts, including
4 teleconferences and letter exchanges in order to facilitate informal discovery to
5 prepare for the mediation. To facilitate case resolution. To facilitate case
6 resolution, the Parties agreed to focus on an informal exchange of discovery for
7 purposes of mediation. As a condition of a participating in an early mediation of
8 the case, Plaintiff required that Defendant produce substantial informal
9 discovery, including but not limited to Defendant and Plaintiff exchanging
10 documents, aggregate information regarding the total workweeks, wage rates,
11 pay periods of class members, as well as actual timekeeping data, payroll
12 documents, and internal store staffing data for an audit sample of employees to
13 confirm the other class wide data provided. The Parties agreed to stay all formal
14 proceedings pending the mediation. Counsel also made a thorough study of the
15 legal principles applicable to the claims asserted against Defendant. Class
16 Counsel also made a thorough study of the legal principles applicable to the
17 claims asserted against Defendant.

18 **MEDIATION, SETTLEMENT NEGOTIATIONS, AND APPROVAL MOTIONS**

19 11. The Parties agreed to mediate this case on behalf of the 31 CMs and
20 mediated this dispute on February 5, 2021 with the assistance of respected
21 mediator Steve Pearl. The Parties engaged in arm's-length negotiations,
22 culminated by the execution of a memorandum of understanding which set forth
23 settlement terms resolving the matter. After the mediation, counsel for the
24 Parties worked to finalize the settlement for the CMs and corresponding notice
25 documents, subject to the Court's approval. The Settlement Agreement was
26 fully-executed on March 2, 2021.

1 12. Class Counsel was required to present the settlement agreement to the
2 Court for preliminary approval as to the Class. Accordingly, Class Counsel
3 drafted and prepared the appropriate papers and submitted them on March 5,
4 2021. *Id.* (Dkt. Nos. 30 to 30-2.) Class Counsel researched applicable case law
5 defining the standard for approval of California wage and hour class action
6 settlements. Class Counsel also researched case law approving service awards
7 similar to the ones distributed to the Named Plaintiff under the settlement
8 agreement. Finally, Class Counsel drafted and revised the approval papers to
9 ensure compliance with applicable case law and also the settlement agreement.
10 After preparing drafts of the approval papers, Class Counsel sent them to
11 Defendant's Counsel to review and revise. Counsel for the Parties thereafter
12 conferred regarding revisions to the approval papers before ultimately reaching
13 agreement. The Court granted preliminary approval of the Settlement as to the
14 California Class on April 12, 2021. (Dkt. No. 31.)

15 13. Class Counsel was likewise obligated to request that the Court finally
16 approve the Settlement following the administration process detailed in the
17 settlement agreement. Class Counsel drafted and prepared final approval
18 papers that have been submitted to the Court concurrently with this fee motion.
19 The work Class Counsel performed on the final approval papers is substantially
20 similar to work the Class Counsel performed on the preliminary approval papers
21 described above.

22 14. Class Counsel also spent significant time preparing this motion. Beyond
23 drafting this motion and researching applicable case law, Class Counsel also
24 conferred with each other regarding the arguments to include herein and the
25 most effective way to present Class Counsel's fees and costs to the Court. In
26 addition, Class Counsel undertook the time-consuming project of reviewing
27 each individual bill, or time entry, for this case and determining whether each

1 entry warranted a request for recovery. This project resulted in Class Counsel
2 excising an appropriate portion of the fees they incurred during this case.
3 Finally, rather than present a large, disorganized file of time entries to the Court,
4 Class Counsel reasoned that the most effective way for the Court to review
5 Plaintiffs' Counsel's attorneys' fees is on a summary basis. Accordingly, Class
6 Counsel assigned each time entry a category, which allowed them to filter from
7 all of the time entries only those assigned to a particular project. For example,
8 Class Counsel was able to filter all the time entries associated with pleadings
9 or conditional certification.

10 **MISCELLANEOUS**

11 **Communicating with Named Plaintiffs and CMs**

12 15. Class Counsel spent substantial time communicating with the Named
13 Plaintiff and CMs in this case. A substantial portion of these communications
14 occurred during the initial phases of the case, when Class Counsel was
15 conducting fact investigations to determine the scope of Plaintiff's class and
16 collective allegations. These communications generally involved interviewing
17 Plaintiff and CMs regarding their respective work experiences while employed
18 by Defendant. Plaintiff also engaged in a substantial outreach campaign, during
19 which they attempted to contact and interview all CMs, for the purpose of
20 obtaining CM declarations for use as evidence in the case. Finally, following
21 preliminary approval of the Settlement as to the Class, Class Counsel provided
22 status updates to CMs who contacted them regarding the progress of settlement
23 administration. Class Counsel also recorded updated contact information for
24 these individuals to ensure their checks were sent to the proper address.

25 **Communicating with the Administrator**

26 16. Class Counsel generally communicated with the Administrator regarding
27 the administration of the settlement. Class Counsel, for example,

1 communicated with the Administrator regarding distributing notice packets to
2 CMs, and weekly updates regarding the status of the notice campaign. Class
3 Counsel also communicated with the Administrator regarding pending
4 deadlines called for in the settlement agreement. In addition, Class Counsel
5 communicated with the Administrator regarding preparing a declaration in
6 support of the final approval of the settlement.

7 **ATTORNEYS' FEES AND COSTS**

8 17. This section discusses efforts by Class Counsel to minimize duplication
9 of efforts and to assign attorneys to discrete tasks. In addition, I address
10 litigation costs, attorney rates, and the efforts I have made to exercise billing
11 judgment in connection with this fee application.

12 **HH firm partners and their role in the case**

13 18. I was the lead partner on this case for HH. I directed and supervised the
14 work of my firm, and conducted legal analysis of the facts presented by this
15 case. I reviewed pleadings, submissions, and correspondence in this action,
16 including the complaint, the motions, the mediation statement, and the
17 preliminary and final approval papers. I appeared at the mediation and
18 participated in settlement discussions. My hourly rate is \$725.00 per hour, which
19 is within the market range charged by attorneys of comparable experience,
20 expertise and reputation. Below is the biography and description of the work
21 performed by my partner, Ryan L. Hicks, who performed the bulk of the work
22 for HH on this case.

23 19. Ryan L. Hicks is a partner of HH. Mr. Hicks received his Juris Doctor
24 degree in 2008 from the University of California, Hastings College of Law, and
25 has been licensed to practice law in California since that year. Mr. Hicks has an
26 extensive background in employment litigation, and has represented plaintiffs
27 at all levels including the federal and state trial courts, the California Court of

1 Appeal, and the Ninth Circuit Court of Appeals. The litigation of wage and hour
2 class action matters under both state and federal law are a significant part of
3 Mr. Hicks' day-to-day practice. He has been counsel in scores of employment
4 cases filed under various statutes, including the Fair Labor Standards Act, Title
5 VII of the Civil Rights Act of 1964, the California Labor Code, the California Fair
6 Employment and Housing Act, and other analogous statutes. Mr. Hicks' hourly
7 rate is \$525.00 per hour, which is within the market range charged by attorneys
8 of comparable experience, expertise and reputation. Mr. Hicks reviewed
9 pleadings, submissions, and correspondence in this action, including the
10 complaint, the motions, the mediation statement, and the preliminary and final
11 approval papers. Mr. Hicks appeared at the mediation session and participated
12 in the subsequent negotiations that resulted in the settlement of this case.

13 **HH firm staff and their role in the case**

14 20. Eisha Perry was formerly an associate at HH. Ms. Perry's practice focused
15 on wage and hour class actions and employment litigation while employed by
16 HH. Ms. Perry received her B.A. from Loyola Marymount University in 2015. In
17 2019, she received her Juris Doctor from the University of California Hastings
18 School of Law. Ms. Perry's rate was \$350.00 per hour which is in line with that
19 of attorneys with similar qualifications and experience. Ms. Perry handled much
20 of the early work in this action, she prepared discovery and pleadings, and
21 communicated with Plaintiff and attempted to contact CMs. Ms. Perry appeared
22 at the mediation session and participated in the subsequent negotiations that
23 resulted in the settlement of this case.

24 21. Plaintiff's counsel also engaged a law clerk to perform support and
25 outreach related to the case, including contacting employees identified via the
26 *Belaire* process. These clerks are billed out at \$150 per hour and they
27

1 performed a total of 62:40 hours of work contacting and interviewing putative
2 class members.

3 **The Court should apply the common fund doctrine to award attorneys’**
4 **fees.**

5 22. A common fund award of attorneys’ fees and costs is appropriate here
6 because Plaintiff has created an ascertainable common fund from which
7 reasonable attorneys’ fees can be recovered. The proposed Settlement creates
8 a common fund of \$475,000 that will substantially benefit 31 CMs. Each
9 participating CM will receive an ascertainable, *pro-rata* share of the Settlement.
10 In addition, Plaintiff’s requested fee award constitutes a fair charge to the CMs
11 for the excellent result obtained by the Settlement. Because each participating
12 CM will receive a portion of the fixed Settlement fund based on its distribution
13 formula, equity requires that they also contribute a *pro-rata* share to the
14 attorneys’ fees that netted them this positive result. Moreover, the requested
15 one-third of the fund is actually equal or less than the fee that Class Counsel
16 would have expected if they had negotiated individual retainer agreements with
17 each CM. Thus, the requested award ensures that Class Counsel receive an
18 appropriate fee award for the actual benefit conferred to the Class.

19 **Class Counsel’s fee award is reasonable under the circumstances of this**
20 **case.**

21 1. **The fee request is justified by the excellent monetary**
22 **results.**

23 23. The proposed settlement provides \$475,000 in total monetary relief to the
24 CMs, and assuming the Court approves the requested fee award and other
25 deductions, \$285,416.67. The average CM will receive a net award of
26 approximately \$9,206.99 and the maximum expected net award is
27 approximately \$18,560.56. Since Class Counsel’s costs have come in under the

1 \$10,000 permitted by the Court, those awards will be slightly larger than those
2 calculated by the administrator. In addition, the gross recovery represents
3 approximately 18% of Plaintiffs' reasonable estimate of the total non-PAGA
4 damages and penalties, and roughly 11% of the total estimated damages.¹ In
5 our experience, parties assign little values to PAGA claims, unless the action
6 only asserts claims under that Act. Moreover, because this is a non-reversionary
7 settlement with respect to the Class, the Court is assured that the entire net
8 settlement amount will be distributed to the CMs.

9 **2. The risks associated with this litigation justified the fee**
10 **request.**

11 24. Class Counsel were subjected to the risk of litigating against a company
12 with abundant financial resources. Class Counsel knew when they accepted
13 this case that Defendant had the resources to hire aggressive and skilled
14 attorneys who would provide zealous representation. Defendant retained a
15 national law firm in this action – Ogletree, Deakins, Nash, Smoak & Stewart,
16 P.C. – which advertises itself as having hundreds of attorneys in offices
17 scattered around the globe.

18 25. Defendant asserted complete liability defenses against Plaintiff's claims,
19 many of which were supported by the declarations gathered by Defendant. For
20 example, Defendant asserted that the CMs in fact were properly classified as
21 exempt employees, and that even if one or two CMs may have been
22 misclassified, those CMs as managers had an opportunity to take off-duty meal
23 or rest periods whenever they wanted. These defenses were supported by
24 numerous declarations obtained by Defendant from nearly half the CMs, while
25 many PCMs refused to provide declarations to Plaintiffs out of fear of retaliation,
26

27 ¹ Notably 75% of the duplicative estimated PAGA damages would have to be
28 paid to the LWDA.

1 while other PCMs interviewed indicated that they might in fact be properly
2 classified as exempt. Defendant also intended to raise several defenses against
3 class certification, including a lack of numerosity due to a class size of only 31,
4 that individualized determinations regarding the proper classification of any
5 single CM, and the amount of wages owing (including overtime or meal period
6 premium wages), if any, would overwhelm common issues. If Defendant
7 succeeded on any of these or other defenses to class certification, Plaintiff
8 would be left with only her individual claims and the Class would likely recover
9 nothing.

10 26. If this case were to go to trial as a class and collective action (which
11 Defendant would vigorously oppose if this Settlement Agreement were not
12 approved), Class Counsel estimates that fees and costs would exceed
13 \$1,000,000.00. Litigating the class and collective action claims would require
14 substantial additional preparation and discovery. It would require depositions of
15 experts, the presentation of percipient and expert witnesses at trial, as well as
16 the consideration, preparation, and presentation of voluminous documentary
17 evidence and the preparation and analysis of expert reports. Recovery of the
18 damages and penalties previously referenced would also require complete
19 success and certification of all of Plaintiff's claims, a questionable feat in light of
20 recent developments in wage and hour and class and collective action law as
21 well as the legal and factual grounds that Defendant has asserted to defend this
22 action.

23 27. Most notably, as discussed in Plaintiff's motion for final approval, filed
24 concurrently herewith, Defendant obtained declarations from nearly half of the
25 CMs in which CMs declared under penalty of perjury that they were properly
26 classified as exempt employees based on the time spent they performing
27 various exempt duties, and that they were at all times provided with the

1 opportunity to take timely off-duty meal and rest periods. Defendant also
2 produced documents and other evidence regarding the expected job duties of
3 the CMs. If that testimony were credited by the Court or other fact-finder, then
4 Plaintiff's prospects for success on the merits of the class claims were slim, as
5 was the potential for a successful motion for Class Certification.

6 **3. Class Counsel's skill and quality work justify the fee**
7 **request.**

8 28. Class Counsel have demonstrated substantial skill, diligence, and high
9 quality of work in achieving the proposed Settlement and its creation of a
10 common fund of \$475,000. Moreover, Class Counsel are highly-experienced
11 members of the bar.

12 **4. The contingency nature of the fee and financial burden**
13 **carried by Class Counsel justifies the fee request.**

14 29. From the outset of this case, Class Counsel have been aware of the risks
15 involved in litigating this case against Defendant. Perhaps chief among these
16 risks was Class Counsel's agreement to prosecute the claims of Plaintiff and
17 the CMs on a contingent fee basis. In so doing, Class Counsel assumed the
18 responsibility of representing Plaintiff and the CMs without any assurance of
19 compensation or reimbursement for attorneys' fees and costs expended.

20 30. Class Counsel has worked on this case since before July 2020, and in
21 effect has loaned their legal services to the CMs since that time. Class Counsel
22 has prosecuted this case wholly on a contingency basis, and done so at great
23 risk of never receiving any compensation due to the risky nature of class action
24 litigation in general, the small class size, and due to the evidence provided by
25 Defendant at the mediation supporting their defenses. In addition to the
26 contingent risk of this case, Class Counsel's representation of Plaintiff and the
27

1 CMs in this action forced them to forego other cases, including hourly paid
2 matters.

3 **5. CMs' positive reaction to the requested fee award**
4 **supports its approval.**

5 31. Here, following the expiration of the opt-out and objection deadline, no
6 CM has objected to the Settlement despite being informed of Plaintiffs'
7 requested attorneys' fees and costs award. This positive reaction further
8 underscores its reasonableness.

9 **The Lodestar Cross-Check Confirms the Reasonableness of the Fee**
10 **Award.**

11 **1. Class Counsel's hourly rates are reasonable.**

12 32. The hourly rate HH seeks for my own legal services in this case is
13 \$752.00. We also seek the hourly rate of \$525 for Mr. Hicks, \$350 for Ms. Perry,
14 and \$150 for our law clerk. Having reviewed the market and represented dozens
15 of clients in the greater Los Angeles area, my firm has determined that my rate
16 is within the market range charged by attorneys of comparable experience,
17 expertise, and reputation for similar services in the Los Angeles Area.

18 33. The rates that are sought herein for the work of HH attorneys represent
19 rates that were approved by other courts as being reasonable in during the past
20 few years. For example, in the *Capitol Casino*, and *Instacart* cases cited
21 hereinabove, those courts (In Sacramento and Santa Clara County) approved
22 my hourly rate of \$725 and Mr. Hicks's hourly rate of \$525 in 2020. This firm
23 has had their requested rate for law clerk/paralegal work of \$150 repeatedly
24 approved in numerous cases. Copies of the orders approving Class Counsel's
25 rates in the *Capitol Casino* and *Instacart* cases are attached hereto as Exhibits
26 1-2.

1 34. Class Counsel's hourly rates are reasonable in light of their significant
2 experience, expertise, and skill.

3 35. HH has clients that pay these rates on an hourly, non-contingent basis.
4 Even without accounting for contingent risk, Class Counsel's rates are well
5 within the range of rates charged by similarly experienced and qualified
6 attorneys practicing in this area.

7 36. This firm takes cases throughout the state of California, to the furthest
8 corners of the State. We recently have had cases as far northeast as Plumas
9 County, and have a number of cases pending throughout California. We are
10 mostly contacted via the internet by potential clients who presumably have been
11 unable to find local counsel who litigate plaintiff-side wage and hour class
12 actions, and instead turned to the internet.

13 37. This firm also associates in on a substantial portion of our class action
14 cases because the initially retained counsel are not equipped or prepared to
15 litigate complex employment class actions on their own.

16 **2. The number of hours claimed is reasonable.**

17 38. In the prosecution of this case, my firm efficiently prosecuted this litigation
18 and conducted relevant discovery. We efficiently divided assignments to avoid
19 duplication of efforts, and accomplish all tasks in the most efficient manner
20 possible.

21 39. Work was performed efficiently within HH. I managed this case from within
22 HH and personally oversaw and supervised all of the other attorneys. Generally
23 speaking, legal theories, model pleadings, and case strategy were developed
24 by me as the handling partner or Mr. Hicks and then circulated to our Ms. Perry
25 as appropriate for further development. Time-intensive projects such as written
26 discovery, communicating with CMs, and developing the factual record was
27 performed mostly by Ms. Perry or Mr. Hicks following Ms. Perry's departure from

1 the firm. This internal allocation of work ensured that litigation tasks were
2 performed at the appropriate billing rate.

3 40. My personal practice, and the practice at my firm, is to record time in tenth-
4 of-an hour-increments or less, and to do so as contemporaneously as possible
5 with the expenditure of the time by the attorney. All other HH attorneys keep
6 track of their time in real-time using an application on their iPhones, while the
7 law clerks are instructed to do the same. These methods of recording time are
8 generally followed in the legal community in the San Francisco Bay Area, and
9 are more accurate than recording time by quarter-hour increments, which tends
10 to inflate the amount of time billed for short telephone conferences and other
11 short tasks.

12 41. Class Counsel, to date, have expended nearly 260 hours of attorney time
13 to reach this Settlement and monitor the Settlement process. These hours
14 reflect reasonably spent time litigating this case, which Class Counsel sought
15 to efficiently manage, staff, assign, and divide the work between the firms and
16 amongst lower and higher-level attorneys and to avoid duplication of effort. A
17 summary of the billing records is inserted below divided into categories of work
18 performed on the case:

19 a. **Case Management:** this category includes strategic meetings,
20 communications with Plaintiff and/or Defense Counsel, scheduling, and other
21 general case management tasks;

22 b. **Communications with CMs (PCM Outreach):** these hours
23 incurred include communications with the CMs regarding the case;

24 c. **Pleadings:** these hours include work performed drafting and
25 reviewing pleadings, including the complaints, motion for leave to amend, filings
26 by Defendant;

d. **Discovery:** this category includes work performed preparing for and engaging in the Rule 26 conference with opposing counsel, drafting Plaintiff's initial disclosures and formal discovery requests, reviewing Defendant's initial disclosures, and reviewing and analyzing the informal discovery exchanged by the parties to prepare for the mediation;

e. **Factual Investigation and Research:** this category includes research related to the claims at issue in this case.

f. **Mediation:** this category includes tasks performed in preparation for the mediation in this case, and also the mediation session itself;

g. **Settlement:** this category includes tasks performed related to post-mediation finalization of the settlement, including communications with proposed administrators and opposing counsel, and drafting the motions related to preliminary and final approval of the proposed Settlement.

42. The total hours incurred by Class Counsel as of August 2, 2021 in commencing and bringing this matter to resolution are as follows:

Totals by Category	Hours	Hourly %	Lodestar
Factual Investigation and Research	6:33:13	3%	\$4,332.51
Pleadings	21:14:06	8%	\$9,653.33
Discovery	14:13:39	6%	\$8,258.99
PCM Outreach	73:12:22	28%	\$14,109.64
Case Management	8:30:56	3%	\$4,999.22
Mediation	45:59:37	18%	\$23,856.10
Settlement	88:42:14	34%	\$44,354.04
Total	258:26:07	100%	\$109,563.82

43. It should also be emphasized that Class Counsel's lodestar does not include the time they will spend attending the final approval hearing, supervising settlement administration, and communicating with settlement Class Members in the future about the settlement. Based on their experience with numerous other class action settlements, Class Counsel estimates that these future tasks

1 will likely require an additional 15-25 hours of work. These identified hours have
2 been reasonably expended by Class Counsel.

3 **3. Class Counsel's claim for attorneys' fees is fully**
4 **documented.**

5 44. Plaintiffs' claim for attorneys' fees is fully documented by detailed time
6 records that show when and how each hour was spent. Class Counsel's time
7 was carefully recorded in tenth-of-an-hour increments or in real-time, the most
8 precise means of capturing the time expended. These time records are the best
9 evidence of the time that this case has required. As shown in the declarations
10 of Class Counsel submitted herewith, and as documented in Counsel's billing
11 records, Class Counsel's hours are fully justified and were incurred in the
12 efficient and expeditious resolution of this matter.

13 **4. Class Counsel has exercised significant billing**
14 **judgment.**

15 45. Class Counsel have reviewed their billing records and exercised billing
16 judgment to ease the burden on the Court in deciding this Motion, and to excise
17 inefficient or duplicative work, clerical entries, and other billing entries.
18 Specifically, when exercising billing discretion, Class Counsel identified a
19 number of discrete billing activities – defined above – to exclude others from
20 their time records.

21 46. Specifically, in connection with filing this motion, I applied billing judgment
22 and attempted to lessen the workload for the Court, by voluntarily omitting
23 entries from the total amount of attorneys' fees being sought in this motion.

24 47. In the exercise of billing judgment, I reviewed and edited HH's billing
25 records on an entry-by-entry basis to eliminate inefficiencies and other billing
26 entries that should not be claimed.

48. To the extent that particular time entries by HH staff reflect arguably unproductive or duplicative hours, we have not requested fees based thereon. In this matter, I exercised billing judgment in which I either excluded or reduced particular time entries.

49. After all of the above deductions were voluntarily made by Class Counsel, the remaining lodestar for Class Counsel for their work on this case is \$109,563.82. A detailed breakdown of Class Counsel's lodestar for the attorneys' fees requested here, broken down by individual is included below:

Totals by Staff		Hours	Rate	Lodestar
Richard Hoyer	RAH	7:48:38	\$ 725.00	\$5,662.65
Ryan Hicks	RLH	158:06:10	\$ 525.00	\$83,003.96
Eisha Perry	EP	29:51:19	\$ 350.00	\$11,497.21
Zoe Canin	ZC	62:40:00	\$ 150.00	\$9,400.00
Total		258:26:07		\$109,563.82

5. Class Counsel's Costs are Reasonable and Compensable from the Settlement.

50. A true and correct summary of the reasonable and necessary costs and expenses incurred by HH in this matter is included below. Invoices supporting these costs are available if the Court so requires.

51. If the Settlement remains unopposed as expected, Plaintiffs estimate a final cost figure of \$6,715.00 to finalize the Settlement. Any unclaimed costs will be reallocated to the Settlement and distributed to the CMs.

52. Here, as Plaintiff's reimbursable out-of-pocket expenses include the following:

Date	Vendor	Item	Cost
12/3/20	Steve Pearl Mediation	Mediation	\$ 6,000.00
11/20/20	Simpluris	Belaire Notice	\$ 200.00
6/3/20	OneLegal	Service of Process	\$ 40.00
5/27/20	CACD	Initial Filing Fee	\$ 400.00
5/27/20	LWDA	PAGA Notice Fee	\$ 75.00
		Total	\$ 6,715.00

53. In summary, Plaintiff is entitled to an award of all of the above-listed and described costs. These expenses are reasonable and were necessary to the representation of Plaintiff and the class in this action. Such expenses should be reimbursed to Class Counsel.

CLASS REPRESENTATIVE SERVICE AWARDS

54. The Court should approve the requested \$10,000 service award to Plaintiff because the award is just, fair, and reasonable.

55. The Class Representative spent a considerable amount of time assisting this investigation or actively prosecuting this action. Her efforts included: providing extensive intake interviews regarding the class and collective claims and allegations; looking for and reviewing relevant company documents; attempting to contact putative class members regarding potential participation in the case, communicating with Class Counsel regarding mediation; participating in mediation preparation and strategy; reviewing and signing the Settlement and related documents, and supporting Plaintiff's motions for preliminary approval and the instant motion. In addition, as the face of the lawsuit, the Class Representative spent numerous hours communicating with other potential witnesses and CMs to aid in the investigation of the case as well as to field questions from the CMs once the Settlement was reached and Notice of the Settlement was distributed. Altogether, the Class Representative estimates that she spent nearly 120 hours serving as the Class Representative of this class and collective action, which ultimately resulted in the instant Settlement. The requested service awards are fair reimbursement for these efforts. There were well over 100 emails and dozens of telephonic conversations between Plaintiff and my firm.

56. The Class Representative took on substantial risk in bringing this class and collective action and exposed themselves to notoriety and personal

1 difficulties from serving as the Named Plaintiff in this lawsuit. Indeed, Plaintiff
2 would likely have received a larger amount had she agreed to settle only her
3 own individual claims instead of prosecuting the claims on behalf of the CMs.
4 Furthermore, Plaintiff's employment was terminated by Defendant while this
5 action was pending. The Class Representative also bore the significant financial
6 risk of Defendant's costs in the event she lost at trial. This financial risk, if the
7 case were ultimately tried, could easily total tens, if not hundreds, of thousands
8 of dollars.

9 57. The requested service award will promote the underlying purpose of a
10 service award in wage and hour class actions: to incentivize employees to
11 enforce state and federal labor laws on behalf of their fellow workers.

12 58. The service award amount of \$10,000 is commensurate with the range of
13 recoveries expected for the CMs. Here, the average award is approximately
14 \$9,206.99 for CMs. Thus, the requested \$10,000.00 service award is nearly
15 identical to the average award and just over half of the expected maximum
16 award. In addition, the requested service award amounts to just 2% of the total
17 \$475,000 fund, which further underscores its reasonableness. The
18 reasonableness of the requested service award is further supported by the fact
19 that the Class Representative had to execute a general release, not required of
20 the other Class Members.

21 59. Not one Class Member has objected to this requested service award and
22 Defendant does not oppose it either.

23 I declare under penalty of perjury under the laws of the United States that
24 the foregoing is true and correct and is based upon my own personal
25 knowledge. Executed in San Francisco, California on August 11, 2021.

26
27 /s/ Richard A. Hoyer
RICHARD A. HOYER

28 HOYER DECLARATION SUPPORTING MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE
AWARD

EXHIBIT 1

1 HOYER & HICKS
2 Richard A. Hoyer (SBN 151931)
3 rhoyer@hoyerlaw.com
4 Ryan L. Hicks (SBN 260284)
5 rhicks@hoyerlaw.com
6 Nicole B. Gage (SBN 318005)
7 ngage@hoyerlaw.com
8 4 Embarcadero Center, Suite 1400
9 San Francisco, CA 94111
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12 UNITED EMPLOYEES LAW GROUP, PC
13 Walter Haines (SBN 71075)
14 walter@whaines.com
15 5500 Bolsa Avenue, Suite 201
16 Huntington Beach, CA 92649
17 tel (562) 256-1047
18 fax (562) 256-1006

19 Attorneys for Plaintiff
20 AURIA THAOHO
21 and the Proposed Settlement Class

22 SUPERIOR COURT OF CALIFORNIA
23 IN AND FOR THE COUNTY OF SACRAMENTO

24 AURIA THAOHO, on behalf of herself and
25 all others similarly situated, aggrieved
26 employees, and the State of California,

27 Plaintiff,

vs.

28 CAPITOL CASINO, INC., and DOES 1
29 through 25, inclusive,

Defendants.

Case No. 34-2018-00228073-CU-OE-
GDS

CLASS AND REPRESENTATIVE
ACTION

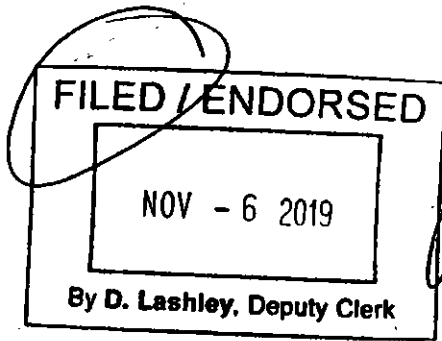
**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
SETTLEMENT, MOTION FOR
ATTORNEYS' FEES, AND JUDGMENT**

Date: November 6, 2019
Time: 1:30 p.m.
Dept.: 35

BY FAX

30 This matter came on for hearing upon the motion for final approval of the settlement
31 set forth in the Stipulation and Class Action Settlement Agreement (the "Settlement
32 Agreement"). Due and adequate notice having been given to the Class, and the Court having

33 [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT, MOTION FOR
34 ATTORNEYS' FEES, AND JUDGMENT



1 considered the Settlement Agreement, all papers filed and proceedings had herein and all
2 oral and written comments received regarding the proposed settlement, and having reviewed
3 the record in this Litigation, and good cause appearing,

4 IT IS HEREBY ORDERED AS FOLLOWS:

5 1. The Court, for purposes of this Order ("Order"), adopts all defined terms as set
6 forth in the Settlement Agreement¹ filed in this case.

7 2. The Court has jurisdiction over the subject matter of this Action, the Named
8 Plaintiff, the other members of the settlement Class, and Defendants.

9 3. The Court finds that the distribution of the Class Notice, as provided for in this
10 Court's August 1, 2019 Order granting preliminary approval of the Settlement, constituted the
11 best notice practicable under the circumstances to all persons within the definition of the
12 Class and fully met the requirements of California law and due process under the United
13 States Constitution. Based on evidence and other material submitted in conjunction with the
14 Settlement Hearing, the actual notice to the class was adequate.

15 4. The Court finds that this Action presented a good faith dispute over rest and
16 meal period claims, the payment of wages, and other relief, and the Court finds in favor of
17 settlement approval.

18 5. The Court approves the settlement of the above-captioned action, as set forth
19 in the Settlement Agreement, each of the releases and other terms, as fair, just, reasonable
20 and adequate as to the settling Parties. The settling Parties are directed to perform in
21 accordance with the terms set forth in the Stipulation.

22 6. As no Class Member validly and timely requested exclusion from the settlement
23 Class, all of the Released Claims are discharged and extinguished with prejudice as to the
24 Class Representative and all of the other Settlement Class Members. The Settling Parties
25 are to bear their own costs, except as otherwise provided in the Stipulation.

26
27
28 ¹ The Settlement Agreement was attached as Exhibit 1 to the Declaration of Ryan L. Hicks supporting the instant Motion.

1 7. Solely for purposes of effectuating this settlement, this Court has certified a
2 class of all members of the Settlement Class, as that term is defined in and by the terms of
3 the Settlement Agreement, and the Court deems this definition sufficient for purposes of
4 California Rule of Court 3.765(a).

5 8. With respect to the settlement Class and for purposes of approving this
6 settlement only, this Court finds and concludes that: (a) the Class Members are ascertainable
7 and so numerous that joinder of all members is impracticable; (b) there are questions of law
8 or fact common to the settlement Class, and there is a well-defined community of interest
9 among Members of the settlement Class with respect to the subject matter of the Action; (c)
10 the claims of Class Representative are typical of the claims of the Members of the Settlement
11 Class; (d) the Class Representative has fairly and adequately protected the interests of the
12 members of the settlement Class; (e) a class action is superior to other available methods
13 for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
14 Representative, *i.e.*, Class Counsel, are qualified to serve as counsel for the plaintiffs in their
15 individual and representative capacities and for the settlement Class.

16 9. By this Order, the Class Representative shall release, relinquish and discharge,
17 and each of the settlement Class Members shall be deemed to have, and by operation of the
18 Order shall have, fully, finally, and forever released, relinquished and discharged all Released
19 Claims. This Order resolves and extinguishes the claims for civil penalties California Labor
20 Code Section 2698 et. seq. that were asserted through the Actions or otherwise meeting the
21 definition of Released Claims.

22 10. Neither the Settlement Agreement nor the settlement contained therein, nor
23 any act performed or document executed pursuant to or in furtherance of the Settlement
24 Agreement: (i) is or may be deemed to be or may be used as an admission of, or evidence
25 of, the validity of any Released Claim; or (ii) is or may be deemed to be or may be used as
26 an admission of, or evidence of, any fault or omission by any of the Released Parties in any
27 civil, criminal or administrative proceeding in any court, administrative agency or other
28

1 tribunal. Defendants or any of the Released Parties may file the Settlement Agreement
2 and/or the separate Judgment from this action in any other action that may be brought against
3 it or them in order to support a defense or counterclaim based on principles of *res judicata*,
4 collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of
5 claim preclusion or issue preclusion or similar defense or counterclaim.

6 11. The only settlement Class Members entitled to payment pursuant to this Order
7 are Participating Class Members.

8 12. Defendants have agreed to pay Class Counsel for their reasonable attorneys'
9 fees in this matter and all additional expenses. Defendants have also agreed to pay the
10 Class Representative to reimburse her for her unique services as class representative. The
11 Court finds that these agreements, as set forth in the Settlement Agreement, are fair and
12 reasonable. Defendants are directed to make such payments through the Settlement
13 Administrator in accordance with the terms of the Settlement Agreement and any order
14 issued prior to or in conjunction with this Order. Specifically, Defendants are directed to pay
15 Class Counsel \$266,666.67 in attorneys' fees² and \$11,450.62 in reasonable costs incurred,
16 the class representative enhancement to the Class Representative in the amount of \$10,000,
17 and payment to the California Labor Workforce and Development Agency in the amount of
18 \$7,500, which the Court finds sufficient and appropriate under the circumstances. \$10,000
19 of the settlement proceeds have been allocated to resolution of the PAGA claims, which 75%
20 (\$7,500) to be disbursed to the Labor Workforce and Development Agency, and the
21 remaining 25% (\$2,500) to be distributed to the Participating Class Members via the Net
22 Settlement Amount.

23 13. The Court hereby designates Legal Aid at Work as the *cy pres* beneficiary. The
24 sum of any settlement checks returned as undeliverable or otherwise un-cashed within 90
25

26
27 ² The Court finds the hourly rates of class counsel (\$725 per hour for Richard A. Hoyer, \$525 per hour for Ryan
28 L. Hicks, \$250 per hour for Nicole Gage, \$675 per hour for Walter Haines, respectively) to be reasonable and
within the market range charged by attorneys practicing wage and hour litigation of comparable experience,
expertise, and reputation.

1 days after being mailed will be transmitted to the *cy pres* beneficiary, California Rural Legal
2 Assistance Foundation.

3 14. Pursuant to Code Civ. Proc. §384, no later than June 5, 2020 2019 (5 court days
4 prior to the compliance hearing), the parties shall submit a report to the Court specifying the
5 total amount paid to class members, and the residual of unclaimed funds that will be paid to
6 the entity(ies) identified as recipients of such funds in the proposed settlement (if any), along
7 with a proposed amended judgment. No later than five (5) days after receipt of notice of the
8 entry of the amended judgment, the parties shall submit the amended judgment to the Judicial
9 Council, pursuant to Code Civ. Proc. § 384.5, and shall file a proof of service with this court
10 confirming this.

11 15. The Court sets the compliance hearing for June 12, 2020 2019, at 10:00
12 (a.m./p.m.), in Dept. 35. Class Counsel is directed to file a compliance status report at least
13 five (5) court days prior to the compliance hearing.

14 16. The Court reserves exclusive and continuing jurisdiction over the Litigation, the
15 Class Representatives, the Settlement Class and Defendants for the purposes of supervising
16 the implementation, enforcement, construction, administration and interpretation of the
17 Stipulation and the Order entered in this case pursuant to C.R.C. 3.769(h).

18 **IT IS SO ORDERED.**

19
20 **JUDGMENT**

21 The Court having granted Plaintiff's unopposed motion for Final Approval of the
22 Settlement Agreement, as discussed hereinabove, and the case having been heard,

23 **IT IS HEREBY ORDERED ADJUDGED, AND DECREED THAT:**

24 **///**

25 **///**

26 **///**

27 **///**

28 [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT, MOTION FOR
ATTORNEYS' FEES, AND JUDGMENT

1 Judgment is hereby entered on the terms set forth above in this Order and Judgment
2 granting final approval of the Settlement Agreement and awarding attorneys' fees, costs, and
3 service award.

4 **IT IS SO ORDERED.**

5
6 DATED: November 6, 2019

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Judge of the Superior Court

Alan G. Perkins



PROOF OF SERVICE BY E-MAIL

I declare that I am employed in the City and County of San Francisco, State of California. I am over eighteen years of age and not a party to the within entitled cause. My business address is 4 Embarcadero Center, Suite 1400, San Francisco, California 94111.

On October 10, 2019, I served the within:

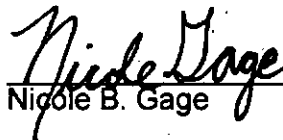
**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT,
MOTION FOR ATTORNEYS' FEES, AND JUDGMENT**

to:

Christina Tillman
christina.tillman@mccormickbarstow.com
Tristan Matthews
tristan.matthews@mccormickbarstow.com
McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720

I electronically served true and correct copies of the above documents to the email addresses above pursuant to the agreement of the parties for electronic service of these documents.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on the date above.


Nicole B. Gage

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT, MOTION FOR
ATTORNEYS' FEES, AND JUDGMENT**

EXHIBIT 2

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/14/2020 3:51 PM
Reviewed By: L. Wang
Case #18CV323046
Envelope: 4035296

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JOSE ORNELAS, on behalf of himself and all
aggrieved employees and the State of California,

Plaintiff,

vs.

MAPLEBEAR, INC. (d/b/a/ INSTACART) and
DOES 1-25,

Defendants.

Case No. 18CV323046

**ORDER RE: MOTION TO APPROVE
PAGA SETTLEMENT**

The above-entitled matter came on for hearing on Friday, February 14, 2020, at 9:00 a.m. in Department 3, the Honorable Patricia M. Lucas presiding. The Court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Thursday, February 13, 2020. No party contested the tentative ruling; therefore, the Court orders the tentative ruling be adopted as the Order of the Court, as follows:

I. INTRODUCTION

This is a case for recovery of penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"). The Complaint, filed on February 7, 2018, sets forth the following causes of action: (1) PAGA Penalties for Failure to Pay Wages Owed; (2) PAGA

1 Penalties for Failure to Provide Meal Periods; (3) PAGA Penalties for Waiting Time Penalties;
2 and (4) PAGA Penalties for Itemized Wage Statement and Recordkeeping Violations.

3 The parties have reached a PAGA settlement. Plaintiff Jose Ornelas ("Plaintiff")
4 previously moved for approval of the settlement, but the Court denied the motion. The parties
5 have modified the settlement and Plaintiff seeks approval of the modified settlement.

6 **II. LEGAL STANDARD**

7 A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699,
8 subd. (1)(2).) The proposed settlement must be submitted to the Labor and Workforce
9 Development Agency ("LWDA") at the same time it is submitted to the court. (*Ibid.*)

10 As discussed by one court:

11 PAGA does not establish a clear standard for evaluating PAGA settlements.

12 ...
13 Accordingly, certain courts have been willing to approve PAGA settlements only
14 if (1) the statutory requirements set forth by PAGA have been satisfied, and
15 (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's
16 public policy goals.

15 (*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

16 As part of this analysis, these courts have evaluated proposed PAGA settlements under
17 the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel*
18 *v. Nike Retail Services, Inc.*, *supra*, 2019 WL 2029061 at *2.) "Of the *Hanlon* factors, the
19 following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case;
20 (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered
21 in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the
22 presence of government participation; and (6) the expertise and views of counsel." (*Ibid.*)

23 **III. DISCUSSION**

24 Under the previous version of the settlement, the net settlement amount was split so that
25 20% of the total was designated the "PAGA Civil Penalties Amount," with 75% of that amount
26 to be paid to the Labor and Workforce Development Agency ("LWDA"); and the remaining 80%
27 of the total was designated the "PAGA Unpaid Wages Amount," to be paid in its entirety to the
28

1 settlement group for unpaid wages under Labor Code section 558. Of this proposed settlement,
2 the Court found:

3 Distributing the entirety of the “PAGA Unpaid Wages Amount” to the settlement
4 group is not permitted under the law. To the extent this amount is a penalty, 75%
5 must be distributed to the LWDA; it cannot be paid in whole to the settlement
6 group. (Lab. Code, § 2699, subd. (i).) To the extent this amount reflects unpaid
7 wages, the Settlement Agreement runs afoul of a recent California Supreme Court
8 case which states: “a PAGA claim does not include unpaid wages under section
9 558.” (*ZB, NA. v. Superior Court of San Diego County* (2019) 8 Ca1.5th 175,
10 245.) There are no non-PAGA causes of action in the Complaint, and “section
11 558 has no private right of action.” (*Id.* at p. 244.)

12 (Order re: Motion to Approve PAGA Settlement, p. 3:4-11.)

13 The parties have amended the settlement so that the entire settlement is now for civil
14 penalties under PAGA. (See Declaration of Ryan L. Hicks Supporting Motion to Approve
15 PAGA Private Attorney General Act Settlement (“Hicks Decl.”), Ex. 2 (“Addendum to
16 Stipulation of Settlement and Release”).)

17 Pursuant to the amended settlement, defendant Maplebear, Inc. (“Defendant”) will pay a
18 total amount of \$350,000. (Hicks Decl., Ex. 1 (“Settlement Agreement”), ¶ 4.) This amount
19 includes attorneys’ fees of \$116,666.67, costs of \$18,565.38, settlement administration fees of
20 \$15,000, and a service award of \$5,000. The net settlement will be split with 75% to be paid to
21 the LWDA and 25% to the aggrieved employees.

22 The aggrieved employees in this case are defined as “all current and former non-exempt
23 In-Store Shoppers who worked in California during the period of December 4, 2016 through
24 September 1, 2019.” (Settlement Agreement, ¶ 2.) There are 4,461 aggrieved employees.
25 (Hicks Decl., ¶ 22.) This means that each aggrieved employee will get a little less than \$11 of
26 the net settlement fund (\$48,691.99.)

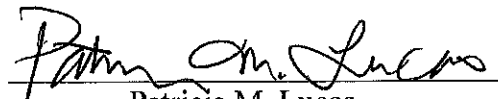
27 Plaintiff asserts that although the recovery per employee is somewhat low, there were
28 difficulties in proving the case, such as the fact that meal break violations occurred in only about
3% of all shifts and all the claims could be unmanageable due to required individualized
analyses. Upon review, the Court finds the settlement is fair.

1 Plaintiff's counsel provides a lodestar figure of \$118,099.43, just above the amount of
2 requested fees. (Hicks Decl., ¶ 28.) Plaintiff's counsel also provides evidence of incurred costs
3 of \$18,565.38. (*Id.* at ¶ 25.) These amounts are approved.

4 With regard to the service award, Plaintiff submits a declaration detailing his
5 participation in the case and stating he spent approximately 87 hours on the litigation.
6 (Declaration of Jose Ornelas Supporting Motion to Approve Private Attorney General Act
7 Settlement, ¶ 27.) The Court finds the service award is warranted and it is approved.

8 Accordingly, Plaintiff's motion to approve PAGA settlement is GRANTED.

9
10 Dated: February 14, 2020


Patricia M. Lucas
Judge of the Superior Court