

Flores v. The Duncan Group et al. (Case No. 25CV00142)

Hearing Date: October 6, 2026

Nature of Proceeding: Preliminary Approval of Class Action Settlement

Attorneys:

For plaintiffs: Blackstone Law Group APC, by Miriam L. Schimmel, Joana Fang, Alexandra Rose, Jared C. Osborne, Kyle W. Wilson, James S. Winn Jr.

For defendants: Ogletree, Deakins, Nash, Smoak & Stewart, P.C. by Ryan H. Crosner, Gabrielle E. Gordon

Tentative Ruling:

For all the reasons discussed below, counsel must be prepared to discuss the theory that it is entitled to include the \$550,000 Prior Paid Amount in its common fund for purposes of calculating its attorney fees.

If satisfied, the court will grant the motion, provisionally certify the class, and appoint counsel and the proposed representative to represent the class. If not satisfied, the court will authorize up to \$297,500 in attorney fees (35% of \$850,000).

Upon request for final approval, counsel must specifically address the reasonableness of the PAGA settlement.¹

Background:

Defendant People's Self-Help Housing Corporation is a non-profit housing organization providing affordable housing services to over 10,000 residents in four counties. Defendant The Duncan Group serves as the property management department for Defendant People's Self-Help Housing Corporation. On July 2, 2018, Defendant The Duncan Group merged with Defendant People's Self-Help Housing Corporation. Plaintiff was employed by Defendants as an hourly-paid, non-exempt Property Manager from approximately August 2021 to approximately November 2024.

On January 8, 2025, Plaintiff filed a Class Action Complaint in the action entitled *Patricia Flores v. The Duncan Group, et al.*, Santa Barbara County Superior Court Case No. 25CV00142 ("Action"), thereby commencing a putative class action against Defendants. (*Id.*, ¶ 12.) The complaint asserts the following causes of action: (1) Violation of Cal. Labor Code §§ 1194, 1197, and 1197.1 (Minimum Wages); (2) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime); (3) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Meal Break Violations); (4) Violation of Cal. Labor Code § 226.7 (Rest Break Violations); (5) Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment); (6) Violation

¹ The reasonableness of the PAGA settlement was not addressed here, presumably because there is no requirement that it be "preliminarily" approved. The reasonableness of the settlement must nevertheless be considered. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76, disapproved on another ground in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 710-711; see also *Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245,263 [" We emphasize that in any case involving a proposed PAGA settlement, the trial court must review the settlement for fairness and 'scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest,' citing *Moniz*].) The court expects PAGA-specific briefing in the petition for final approval.

of Cal. Labor Code § 226(a) (Wage Statement Violations); (7) Violation of Cal. Labor Code §§ 201, 202, and 203 (Untimely Final Wages); (8) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); (9) Violation of Cal. Business & Professions Code §§ 17200, et seq.

On February 28, 2025, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* in the action entitled *Patricia Flores v. The Duncan Group, et al.*, Santa Barbara County Superior Court Case No. 25CV01530 (“PAGA Action”), thereby commencing a California Labor Code Private Attorney General Act of 2004 (“PAGA”) representative action against Defendants. (*Id.*, ¶ 13.) These cases were related by court order dated August 8, 2025.

On May 26, 2026, plaintiff filed an amended complaint in this action (Case No. 25CV00142) adding a 10th cause of action for her PAGA claims. Case No. 25CV01530 thus appears to be superseded and/or rendered moot by this new procedural status. The court will consider issuing an OSC re Dismissal.²

Plaintiff seeks preliminary approval of a class action settlement in the amount of \$1,400,000.00 for approximately 367 current and former employees. (Winn Decl., ¶¶ 21-22; Settlement Agreement, attached as Exhibit 4 to Winn Declaration, § 11(q), § III.A.)

The class is defined as:

“[A]ll current and former hourly-paid and/or non-exempt employees who worked for Defendants in the State of California at any time [from January 8, 2021 through December 31, 2025].” (Winn Decl., ¶ 21; Settlement Agreement, ¶ 11.b, 11f.)

The fund will be reduced as follows:

Gross Settlement Amount	\$ 850,000
Class Counsel Fees	\$ 490,000
Class Counsel Expenses	\$ 35,000
Settlement Administration Costs	\$ 8,190
Plaintiffs Service Award	\$ 10,000
Net Settlement Amount	\$ 306,810

“The Prior Paid Amount consists of payments Defendants made to employees . . . relating to overtime issues associated with their alternative workweek schedule, and also

² On August 27, 2025, a Notice of Related Case was filed identifying a case filed by Rashell Flores against these same defendants in San Luis Obispo County. (Case No. 25CVP-0182.) It does not appear that any orders were entered regarding the feasibility and desirability of joint discovery orders or other informal or formal means of coordinating proceedings in the cases. (Calif. Rules Court, rule 3.300(h)(2)(A).) The SLO case was dismissed on July 24, 2026. (Supp. Decl. of Winn, ¶ 5.)

made payments relating to a *Pick Up Stix* campaign after this case was filed.³ These payments were made outside of the class action settlement approval process, so there is no separate order approving settlement of those payments.” (Supp. Winn Decl., ¶ 4.) It is unclear from the motion whether the employees with whom defendant has previously settled is included in the estimated 367 class members. (Winn Decl., ¶ 21.) For purposes of this motion, the court will assume it does not include those employees with whom private settlements were reached. If it does, counsel must be prepared to address the fairness of distributing further settlement proceeds to putative class members who have already received a settlement. For purposes of this motion, the court will also assume the Gross Settlement is \$850,000.00, which is the amount that will fund this settlement.

The amount of the net settlement to be paid to each class member on a *pro rata* basis based on the number of weeks each Class Member worked for Defendants as an hourly-paid and/or non-exempt employee in California during the Class Period (“Workweeks”). (Winn Decl., ¶ 23; Settlement Agreement, ¶¶ 11.nn and 11.oo.) Based on simple math, it appears that the average payout will be approximately \$835.99 (\$306,810 divided by 367 class members). Each Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages.

The gross settlement amount is non-reversionary. (Winn Decl., ¶ 26; Settlement Agreement, ¶¶ 11.q and 39.)

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Winn Decl., ¶ 27; Settlement Agreement, ¶ 39). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California’s Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee. (Winn Decl., ¶ 27; Settlement Agreement, ¶ 39.)

Analysis:

1. General Standards for Approval of a Class Action Settlement

Review of a proposed class action settlement typically involves a two-step process: preliminary approval and a subsequent final approval hearing. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118—“Rule 3.769 of the California Rules of Court [CRC] sets forth the procedures for settlement of class actions in California.”)

Procedurally, a party must move for “preliminary approval of the settlement.” (CRC 3.769(c).) After the hearing, the court makes an order approving or denying “certification of

³ A “Pick Up Stix” campaign is derived from the case *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. In that case, “Stix’s attempt to settle the lawsuit through mediation failed. Stix then decided to attempt settlement with as many putative class members as possible. It offered each of them an “amount ... based upon a figure ... Stix had previously offered at the mediation.” Over two hundred former and current employees accepted the offer and signed a settlement agreement, which included a general release.” (*Id.* at 798.) Thus, the term “Pick Up Stix campaign” is where an employer approaches putative class members individually before certification and obtain releases in an effort to reduce exposure and potentially reduce the class.

a provisional settlement class.” (CRC 3.769(d).) If the court grants preliminary approval, it must set a final approval hearing, and provide for notice to be given to the class. (CRC 3.769(e).) “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.” (CRC 3.769(f).) At the final approval hearing, “the court must conduct an inquiry into the fairness of the proposed settlement.” (CRC 3.769(g).) If the court approves the settlement agreement, it enters judgment accordingly. (CRC 3.769(h).) (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.)

The first step is for the court to review the proposed terms of the settlement at a preliminary hearing and make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms. (CRC 3.769(c); see also Manual for Complex Litigation, (Federal Judicial Center 4th ed. 2021), § 21.632.)⁴ The preliminary evaluation requires the court to address two competing concerns: (1) On the one hand, given that the court would have the opportunity to weigh the settlement's strengths and weaknesses with more information at the final approval hearing, the preliminary approval hearing did not need to substitute for that level of review; (2) On the other hand, sending notice to the class costs money and triggers the need for class members to consider the settlement, actions which are wasteful if the proposed settlement is obviously deficient from the outset. (Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th Ed. 2002) § 13:10; see *In re Traffic Executive Association–Eastern Railroads* (2d Cir.1980) 627 F.2d 631, 634.) “The judge should raise questions at the preliminary hearing and perhaps seek an independent review if there are reservations about the settlement, such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive compensation for attorneys.” (Manual for Complex Litigation, *supra*, § 21.632.)

Precertification settlements in class actions should be scrutinized carefully. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743.) This is accomplished through careful review by the trial court, and precertification settlements are routinely approved where they are found fair, adequate and reasonable. (*Ibid*; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.)

The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (*Dunk*).) This list “is not exhaustive and should be tailored to each case.” (*Dunk*, at p. 1801.) “[A]

⁴ The Manual for Complex Litigation is widely relied upon by federal judges as well as practitioners regarding the organization and administration of class actions and other complex litigation matters. (*Parris v. Superior Court* (2003) 109 Cal.App.4th 285, 298.) The Manual does not have the force of law, but in federal court it does “provide a rough guide by which to measure whether the trial judge acted within his discretion.” (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir.1979) 594 F.2d 1106, 1124, fn. 22.) The court relies on it here for its useful description of the relative scope of the preliminary approval and final approval process for class settlements.

presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk*, at p. 1802.)

This is only an initial presumption; a trial court's ultimate approval of a class action settlement will be vacated if the court “is not 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.” In short, the trial court may not determine the adequacy of a class action settlement “without independently satisfying itself 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.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.)

The court undoubtedly gives considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement. (*Munoz, supra*, 186 Cal.App.4th at p. 408, fn. 6.)

With these standards in mind, the court must determine whether there are preliminary matters that must be resolved; whether the settlement agreement is fair, adequate, reasonable; whether preliminary certification of the class is appropriate; whether the proposed procedures appear sound; whether attorney's fees, costs, and settlement administrator and its costs are appropriate; and whether any class representative enhancement as requested is justified.

2. Is the Class Action Settlement Fair, Adequate and Reasonable?

As noted, a presumption of fairness exists where the settlement is reached through arm's length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra*, at p. 1802.)

Winn reviews his and his firms extensive experience in representative employment litigation in his declaration at ¶¶ 2 – 10. The court is satisfied that counsel is sufficiently experienced.

Here, a private full-day mediation occurred with Monique Ngo-Bonnici, Esq., on October 14, 2025, at the end of which the parties continued to negotiate until they reached a settlement. (Winn Decl., ¶ 17; Settlement Agreement ¶ 9.)

Prior to mediation, “the Parties engaged in extensive formal and informal discovery prior to reaching a settlement. Prior to mediation, Defendants produced all of the putative class members’ time and pay records, and information regarding the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members.” (Winn Decl., ¶ 29.) Based on the information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions.” (Winn Decl., ¶ 31.) Plaintiff’s investigation appears sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130.)

Finally, the court must consider the reaction of the class members to the proposed settlement. As this is a request for preliminary approval, there has been no opportunity for the proposed class members to react.

The above factors favor the presumption of fairness.

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. While the court “must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,” it must eschew any rubber stamp approval in favor of an independent evaluation. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407-408 (*Munoz*).) To perform this balance, the trial court must have “a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’ ” (*Munoz, supra*, at p. 409; see *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.) While an express statement of the maximum amount is not required, there must be a record that is sufficiently developed to allow the court to understand the amount in controversy and the realistic ranges of outcomes of the litigation. (See *Munoz, supra*, 186 Cal.App.4th at p. 409.)

The following represents the maximum estimated exposure of each of the class claims, as reported in the Winn Declaration.

Meal periods	\$ 278,786 (less meal period premiums paid)
Rest periods	\$ 2,675,312 (at 100% violation rate)
Unpaid overtime wages	\$ 496,892
Off-the-clock work	\$ 650,342
Unpaid Overtime	\$ 4,238
Unreimbursed business expense	\$ 212,670
Waiting time penalties	\$ 920,766
Wage Statement penalties	\$ 650,250

Total: \$5,889,256

The proposed settlement of \$850,000 thus discounts this maximum exposure by approximately 85%. (If the court includes the Prior Payment of \$550,000, this is closer to a 76% discount.)

Counsel describes the procedural risks involved with litigation, specifically the hurdles to obtain class certification. For example, plaintiffs report that meal period classes have been “increasingly difficult” to certify in recent years. The parties disagreed whether defendant’s the policies and practices for meal periods were lawful. Indeed, plaintiff’s own analysis suggested an 11.5% meal period violation rate. The claims would require individualized inquiry which would undermine the class certification. (Winn Decl., ¶ 36.)

Winn also points out that a large portion of Defendants’ overall liability lies in Plaintiff’s rest period allegations. As with the meal period allegations, Defendants contended that they had a lawful written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as required under California law. Additionally, this claim was even more uncertain given the difficulties associated with proving the alleged rest period violations, as Defendants were not required to record these breaks. Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with requisite certainty, which made the estimated value of this claim subject to much challenge. (Winn Decl., ¶ 37.)

Counsel continues to describe for each category the risks associated with the claim, such as the individualizes nature of the claims. For the derivative claims, counsel points out the uncertainty of certification of the underlying claim as well as the burden of demonstrating willful violations, pointing out that wage statement claims have seen varying treatment at the appellate level because of discretion attached to them. (Winn Decl., ¶¶ 38-41.)

Counsel highlights the expense and time associated with proving these claims even if they were certified, as well as the possible appeal that may delay any recovery by the class. (Winn Decl., ¶ 41.)

Taking into account the risks associated with obtaining class certification, counsel discounted defendant’s liability by 50% to \$3,276,725. Counsel further reduced this number based on the merits-based risk factors by another 50% to \$1,683,364. Accepting these numbers as true, the settlement is a strong settlement, amounting to approximately 50% of the defendant’s liability. The court finds the settlement is fair, adequate and reasonable.

3. Preliminary Certification of Class for Settlement Purposes

Class action certification questions are essentially procedural and involve an assessment of whether there is a common or general interest between numerous people. The burden is on the proponent to show an ascertainable class with a well-defined community interest, meaning predominant commons question of law or fact, class representatives with claims or

defenses typical of class, and class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

There has been a sufficient preliminary showing of numerosity, ascertainability, and predominance of commonality. The class is not inordinately large, during a defined class period, with names obtained through existing employment records. It appears the claims are sufficiently similar, subject to the same policies or practices, with similar job duties and universal formula. It also appears the class representatives have typical claims of the class as a whole. A class action appears the superior way to a fair and efficient adjudication of the lawsuit. Certification of the class for settlement only seems appropriate.

4. Notice Procedures for the Claim Forms and Opt-Out

The class notice and claim form instructions are attached to Exhibit A of the Settlement Agreement. It properly details the nature of the lawsuit and identifies the proposed class. It provides the nature of the class claims and who may be eligible. It states that the parties have agreed to a settlement amount of \$1,400,000, acknowledges the prior payment of \$550,000.

The Notice discloses the proposed deductions that will come from the settlement amount. It explains the terms of the class action settlement, and notably how an individual class member's award will be calculated (i.e., based on the total number of workweeks they were employed by defendant). It indicates that class members need not do anything to be deemed part of the class, what this means, and the nature of the general release required. The notice also explains what the class member can do if he or she does not want to participate (opt out), or if they simply want to object. It explains the nature of the preliminary approval process, culminating in the final approval hearing. The notice also indicates how the class member can obtain more information. The procedures seem standard. The time frames discussed in the notices and implementation procedures outlined in the order are appropriate. The Notice will be provided to each Class Member in Spanish.

5. Settlement Administrator Fees and Costs

The parties have agreed to use Apex Class Action LLC as the settlement administrator, and costs have been estimated to be \$8,190. (Sutherland Decl., Exh. B.) The costs appear reasonable and roughly approximate the typical request.

6. Class Counsel's Request for Fees and Costs

Counsel asks the court to preliminarily approve fees of up to \$490,000 which is 35 % of the Gross Settlement Amount of \$1,400,000, along with litigation costs of up to \$35,000. The amount used to calculate fees thus includes the Prior Paid Amount of \$550,000.

Class action litigation can result in an attorney fee award pursuant to a statutory fee shifting provision or through the common fund doctrine when, as in this case, a class settlement agreement establishes a relief fund from which the attorney fee is to be drawn. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 489.) Under the "common fund" doctrine, one who expends attorney fees in winning a suit which creates a fund from which

others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 35.) When class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. (*Id.* at 503.)

Here, the common fund created by the settlement is \$850,000 and does not include the Prior Paid Amount of \$550,000. The court requested a supplement addressing whether including the Prior Paid Amount in assessing fees was warranted by any legal doctrine. Counsel asserts that such inclusion is warranted under the catalyst theory, citing *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 567[.]” (Supp. Winn Decl., ¶ 4.)

In *Graham*, defendant offered to repurchase a truck that had been marketed with false statements about its towing capacity. This offer came after a lawsuit plaintiffs filed against defendant seeking this repurchase remedy, but before any kind of court judgment was rendered. Substantial attorney fees were awarded under the private attorney general doctrine (Code of Civil Procedure section 1021.5). The award was made under the catalyst theory, which states attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation. (*Graham* at 560.) Appellant urged the court to reconsider the catalyst theory and the court concluded that “the catalyst theory should not be abolished but clarified. In order to be eligible for attorney fees under section 1021.5, a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit, as discussed below, and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to litigation.” (*Id.*)

Thus, the catalyst theory as considered in *Graham* addresses entitlement to fees under § 1021.5. It reflects the policy to take a “broad, pragmatic view of what constitutes a successful party.” (*Graham, supra*, at 565-566.) It does not, by itself, establish that pre-certification individual settlements are part of the common fund or common benefit upon which a percentage fee may be calculated. However, subsequent case law has held that the “catalyst theory” of attorney fees recovery applies equally to fees sought under the common fund doctrine. (*Abouab v. City and County of San Francisco* (2006) 141 Cal.App.4th 643, 668.)

Thus, assuming it may be properly applied to a common fund case, the court must consider whether the requisite elements have been satisfied. The *Graham* court held that when a lawsuit has been mooted by a defendant's change in conduct, some development of the factual record is required in order to prevail on a catalyst theory. At the very least, a plaintiff must establish “the precise factual/legal condition that [it] sought to change or affect” as a prerequisite for establishing the catalytic effect of its lawsuit.” (*Graham, supra*, at 576.) Here, the supplemental declaration of Winn states:

- Defendants made payments relating to overtime issues associated with their alternative workweek schedule; and
- also made payments relating to a *Pick Up Stix* campaign after this case was filed.

Although the court may infer that the lawsuit was the catalyst for the payments made under a *Pick Up Stix* campaign, it is sufficiently unclear whether the lawsuit was a catalyst for the payments relating to overtime issues. As to both types of settlement, the court would need, at a minimum, a better factual record.

The court also notes that the supplemental declaration fails to address an important limitation on implementation of the catalyst theory: that plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to litigation. “Awarding attorney fees for litigation when those rights could have been vindicated by reasonable efforts short of litigation does not advance that objective and encourages lawsuits that are more opportunistic than authentically for the public good. Lengthy prelitigation negotiations are not required, nor is it necessary that the settlement demand be made by counsel, but a plaintiff must at least notify the defendant of its grievances and proposed remedies and give the defendant the opportunity to meet its demands within a reasonable time.” (*Graham, supra*, at 577; *Abouab, supra*, at 669—“With the benefit of [the catalyst] theory comes its burden, the requirement of pre-suit notification, a requirement, we conclude, that applies regardless of the theory under which one seeks fees.”) There is, of course, evidence that the claims were outlined upon submission to the LWDA, of which defendant’s attorney was notified on December 24, 2024. However, the lawsuit was filed on January 8, 2025, which does not immediately strike the court as a reasonable period of time in which to respond.

Counsel must be prepared to address these issues at the time of the hearing.

7. Enhancement for Class Representative

Class counsel asks for an enhancement the named plaintiff of \$10,000. It is established that a named plaintiff is eligible for reasonable incentive payments to compensate him or her for the expense or risk they have incurred in conferring benefit on other members of the class. (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Relevant factors include actions the plaintiff has taken to protect the interests of the class, the degree to which the class had benefited from those actions, the amount of time and effort the plaintiff has expended, the risk to the class representative of commencing suit, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit enjoyed by the class representative. (*Clark, supra*, 175 Cal.App.4th at p. 804.) The rationale in the end is to compensate class representatives for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Id.* at p. 806.)

The question is whether the incentive payments are proportional to the Settlement Amount. Cases have expressed concern when there is a large disparity between an incentive award and recovery of class members. (*Clark v. American Residential Services, LLC, supra*, 175 Cal.App.4th at p. 806, fn. 14, citing *Alberto v. GMRI, Inc.* (2008) 252 F.R.D. 652, 669 [given a proposed \$5,000 incentive award and an average \$24.17 recovery (multiple of just over 20), when there was no evidence demonstrating the quality of plaintiff’s representative service; plaintiff should be prepared to present evidence of the named plaintiff’s “substantial efforts” as class representative to justify the discrepancy between the award and those of the unnamed plaintiffs”].)

Plaintiff has submitted a declaration stating that she has spent approximately 45-50 hours participating in this case. (Flores Decl., ¶ 9.) She states that she has regularly conferred with her attorneys, searched for and provided documents concerning her employer, answered any questions her attorneys had, and provided information about the company's practices and the duties of those employed there. She also points out the risk of bringing this lawsuit, including potential reputational harm and liability for costs if the case were unsuccessful. (*Id.* at ¶¶ 4-7.) The payment does not seem disproportional to the average recovery of the other class members.

Thus, the court will find the incentive payment to be reasonable for purposes of the preliminary request.