Proposed Tentative

The court provided a very detailed order preliminarily approving the class action and PAGA settlement consummated in this matter, as reflected in the signed order dated and filed on August 5, 2024. The court expressed its concerns/queries about the settlement both in the court's posted order and orally at the July 24, 2024, hearing. At the July 24, 2024, hearing counsel clarified the relationship between this case and Case No. 24CV00180; confirmed the maximum value of the lawsuit was similar to the one identified by the court in its preliminary order; and explained that as to the $100,000 PAGA settlement the amount would comport with *Moniz.* Per the court's directive, plaintiff filed a "Notice of Settlement of Entire Case" on August 7, 2024, that complies with California Rules of Court, rule 3.1385. The final approval hearing was originally scheduled for January 15, 2025; the court signed an order on August 22, 2024, accelerating the final approval hearing date to December 18, 2024.

On November 26, 2024, plaintiff filed a motion for final approval of the class action and PAGA settlements, including a memorandum of points and authorities; a declaration from attorney Brian Mankin, which includes the class action and PAGA settlement agreement, the court approved notices sent to the class and aggrieved employees, an itemized list of the litigation costs at issue, and the email confirmation from the LWDA that the proposed settlement was sent; a declaration from attorney Kristina Bui Carlson; a declaration from attorney Mehrdad Bokhour; and a declaration from Amy Fringer, a Senior Project Manager for Rust Consulting, Inc., the third party administrator. Plaintiff seeks final approval of the nonreversionary gross settlement amount of $2,150,000, based on claims that class members/aggrieved employees did not receive all minimum, regular and overtime wages, due to defendants' piece-rate compensation policies, did not receive accurate itemized wage statements, and incurred waiting time penalties under PAGA; final certification of the class, which is defined as "all current and former nonexempt employees employed by Defendants in California during the Relevant Time Period [defined as four years before the filing this actions]"; final approval of attorneys' fees of $716,666.67; final approval of litigations costs of $17,498.39; final approval of the third party administration costs/fees of $92,000; the PAGA settlement of $100,000; and final approval of a $10,000 class service enhancement. The net settlement amount is $1,213,835.1.[1] The average individual class payment is estimated to be $72.27, with the highest individual settlement payment is estimated to be $837.94. There are 16,795 "Participating Class Members," working a collective 492,521 workweeks. According to counsel, 99.5% of the possible class members have

[1] Counsel indicates the net settlement amount is $1,216,834.94. (See Dec. of Brian Mankin, p. 3; Motion at p. 2.) That number is incorrect. ($2,150,000 - $716,667.67 - $17,498.39 – $92,000 – $100,000 - $10,000 = $1,213,834.1) The net settlement amount is correctly stated in Ms. Fringer's declaration. (¶ 21.)

participated in the settlement, with only 86-opt outs, which appear to be part of the litigation in *Alvino, et al., v. Eat Sweet Farms, LLC,* Case No. 24CV00180.

The court will initially discuss a preliminary matter; detail the general standards for final approval of a class action settlement; determine whether the gross settlement is fair, reasonable, and adequate; discuss the general standards for a PAGA settlement; examine the propriety of the preliminary class certification of the class, the settlement administrator's fees and costs, counsel's attorney fees and litigation costs, the class representative's enhancement, and finish with an assessment of the class certification efforts, notices, class procedures and disbursement time frames. The court will conclude with a summary of its conclusions.

A) Preliminary Matters

The court in its preliminary approval directed plaintiff's counsel to submit, inter alia, the following documents: a copy (or the verbatim contents) of the attorney-fee agreement with plaintiff, as mandated by California Rules of Court, rule 3.769(b). The court does not see a copy of this document (or a document with its verbatim contents described in any way). ***Plaintiff is directed to submit a document satisfying this requirement before or at the hearing.***

B) General Standards for Approval of a Class Action Settlement

At the final approval hearing, "the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) If the court approves the settlement agreement, it enters judgment accordingly. (Cal. Rules of Court, rule 2.769(h).) (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.)

Final approval involves the same factors involved in the preliminary approval process, although the court's scrutiny is more rigorous and thorough. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.,* (2018) 4 Cal. 5th 260, 269.)

" 'Due regard,' . . . 'should be given to what is otherwise a private consensual agreement between the parties. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [Citation.]. . . .' " (*7–Eleven Owners* (2000) 85 Cal.App.4th 1135, 1145, quoting from *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not whether the maximum amount is secured, but whether the settlement is reasonable under all the circumstances. For example, a trial court does not abuse its discretion in approving a settlement when it found that the settlement was achieved at arm's length negotiation, including review of the mediator's declaration; the fact the case was vigorously litigated; plaintiff was represented by

experienced counsel; the number of class members who objected or opted out was very small; and plaintiff faced considerable risk in proceeding to trial. (*Cho, supra,* at p. 745.)

As was true for the preliminarily approval, the proponents of final approval have the burden to show the settlement is fair, although 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.) 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.)

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

a. Factors Favoring Presumption of Fairness

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.)

Here, it is reported that the settlement agreement was reached following a full day, arm's length negotiation before a reputable class action mediator, Michael Strauss, Esq., on March 13, 2024. Further, before mediation, plaintiff's counsel "diligently investigated the claims raised in this litigation . . . ." Specifically, "substantial written discovery, analyzing substantial amounts of information, correspondence, documents, policies and procedures, pay data and timekeeping records, and evidence relating to the class size and the commonality of the claims." (Final Motion, at p. 6.) Counsel in in the preliminary approval applications (through declarations of Mr. Mankin and Ms. Carlson) indicated the parties "exchanged thousands of pages of documents and information that allowed both sides to conduct significant investigation regarding the facts of the case and calculate the potential damages and evaluate potential risk . . ." Plaintiffs' counsel "analyzed, researched, and investigated potential issues, including policies and procedures pertaining to each claim alleged, and statistics relating to the number of current and former employees, number of shifts, weeks worked and other things. Defendants also provided its written policies and practices and robust sampling of payroll and timekeeping members for Class Members. This information enabled both parties to take a deep dive into the claims. Additionally, during the process, Plaintiff and counsel analyzed, researched, and investigated potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks." Further, in preparation for mediation, counsel "formulated a damages model and risk analysis based upon detailed data obtained through informal discovery and information exchanges," and received expert analysis of the data. There appears to have been more than sufficient investigation before the settlement was consummated. The experience of counsel, cannot be questioned, as detailed in the declarations offered by Mr. Mankin, Ms. Carlson, and Mr. Bokhour. and their efforts seem reasonable.

Further, the settlement administrator (Rust Consulting Inc.) mailed out 16,880 class notices to putative class members, and after 3,644 address traces, which revealed an additional 766 addresses, zero (0) objections have been made. In the end, 16,794 are participating class members, with 86 opt-outs, reflecting 99.5% of the putative class. The deadlines for objections and opt-outs has passed (they had to be submitted by October 21, 2024).

These factors favor a presumption of fairness.

b. Strength of the Case

The most important factor in the fairness calculation is the strength of plaintiffs' case 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, supra,* 186 Cal.App.4th at pp 407-408.) 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.' " (*Id.* at p. 409; see *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801; see also *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 120.)

The court in its preliminary approval order direct counsel to provide more concrete numbers in its application for final approval, including the perceived maximum value of the lawsuit, the perceived maximum value of each category of damages, including penalties, and counsels' thought process in reducing the values for purposes of settlement, along with the ultimate average payout to each putative class member under the negotiated disbursement formula. Counsel has complied with the court's directive.

Mr. Mankin in his declaration observes that the unpaid wage claims "had several theories of liability." The first was based on a failure to compensate for all rest breaks, including the practice of "rounding" which resulted in underpayment and defendant's maximum liability value of $5,053,845, assuming a 13.2% violation rate. There were substantial risks of fully litigating this amount, however, namely 1) the significant risk that the value of this claim would be reduced "to zero" if the court dismissed the class claims based on the existence of arbitration agreements; 2) the fact defendants "vehemently opposed these unpaid wage claims on the merits and the propriety of class certification" and raised several potentially meritorious defenses. Counsel applied a "30%" risk adjusted value based on problems with class certification and another 30% based on "merits based risk," with a new value at $2,476,384. (Mankin Dec. ¶ 13(a) and (b).)

The second category was based on alleged meal break claims, and class counsel (with expert input) estimated that that 12.1 % of pay periods had a least one meal violation, leading to an alleged 138,600 violations, which established a maximum value of $2,620,926 (138,600 violations x $18.91 hours rate as contemplated by Code of Civil Procedure section 226.7). Defendants, however, raised numerous challenges, claiming it had "written policies and valid meal waivers," and, further, contested class certification, claiming individualized determinations were required. Accordingly, counsel applied a "40 %" risk at the class certification state, and an additional "40%" risk on the merits, reducing the value to $943,533. (Mankin Dec., ¶ 13(c).)

The third category involves defendant's alleged failure to reimburse business expenses. Counsel calculated violations based in approximately 50,400 workweeks, with a maximum potential value of $1,008,000. Defendants claimed that employees were not required to incur (and were actually discouraged from incurring) any business expenses as defendant "would provide all necessary tools and equipment, such as gardening gloves and sheets," meaning any expenses incurred were not "necessary." Counsel, after factoring into the calculus these risks and defenses, determined the claims had little value.

The fourth category involves waiting time penalties and wage statement violations, including failure to state accurately all applicable hourly rates and total hours worked, observing that some were based on the success of the above-mentioned violations. The maximum value for waiting time penalties was deemed to be $5,391,619 (10,000 former employees x $18.91 value (same as above) x 7.2 hours per day x 30 days x 13.2 violation rate); and $3,425400 for wage statement violations. Defendant, however, raised a number of significant defenses to these violations and to these amounts, including (as to wage statement violations) that the deficiencies were "technical," and plaintiff cannot prove the violations were knowing and intentional and that injury was suffered. (See, e.g., *Naranjo v. Spectrum Security System Inc.* (2024) 15 Cal.5th 1056, 1087 ["We hold that an employer's objectively reasonable, good faith belief that it has provided employees with adequate wage statements precludes an award of penalties under [Code Civ. Proc., §] 226, subd. (e)(1). An employer that believes reasonably and in good faith, albeit mistakenly, that it has complied with wage statement requirements does not fail to comply with those requirements knowingly and intentionally"].) Based on these defenses, plaintiff placed a 30% risk factor at the class certification and a 30% risk factor on the merits, meaning the risk adjusted values were $2,641,893 for waiting time claims and $1,678,446 for wage statement claims.

All adjusted claims were reduced further because of the specter signed arbitration agreements, which "posed a significant risk that the value of these claims would be reduced to zero if the Court dismissed" the claims. In the end, with the new adjusted values, counsel felt the adjusted penalties and damages totaled $7,740,256 (unpaid wage claims of $2,476,384, meal claims of 943,533, wage statement claims of $1,678,446, and waiting time penalty claims of $2,641,893.) The gross settlement amount is 27.77% of the reduced maximum. Counsel explains that this amount is "fair, reasonable and adequate," and in the best interests of the class, "given the litigation risks and delay inherent in further litigation and possible appeals." (Mankin Dec., ¶ 13.)

The court finds counsels' explanations adequate, their assessment of the risks appropriate and realistic, and their valuation of the claims based on their assessments warranted. (*See Brown v. CVS Pharmacy, Inc.*, No. CV 15-7631 PSG (PJWx), 2017 WL 3494297, at *4 (C.D. Cal. Apr. 24, 2017) [approving settlement that represented 27 percent of possible recovery]; *Glass v. UBS Fin. Servs., Inc.*, CV 06-4068 MMC, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007) [approving an overtime wage settlement that represented 25 to 35 percent of the estimated damages].) The record is adequate to reach an intelligent and objective opinion of the probabilities of success and allows the court to form an educated estimate of fairness of the settlement agreement.

The court finds the gross settlement amount of $2,150,000 to be fair, adequate, and reasonable under the circumstances.

2. General Standards for PAGA Settlement

The PAGA settlement here is $100,000 of the $2,150,000 gross settlement amount, with $75,000 going to the state (75%), and $25,000 (25%) going to aggrieved employees (which appears to overlap with the certified class). Procedurally, Labor Code section 2699, subdivision (s)(2) provides that the "the superior court shall review and approve any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (See also *Correia v. NB Baker Electric, Inc.* (2019) 32 Cal.App.5th 602, 615.) The proposed settlement was served on the LWDA, through its online portal, on November 22, 2024. (Mankin Dec., Exhibit C.) No objection from the LWDA has been lodged.

The court's gatekeeping function in the class action context differs from its role in reviewing PAGA settlements. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims for wrongfulness will be discharged. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 [court acts as guardian of rights of absentee class members].) A PAGA representative action, however, is "not akin to a class action"; it "is a species of *qui tam* action." When reviewing a PAGA settlement, courts do not consider the value of individuals' claims for damages because a PAGA settlement does not release those claims. (*Kim v. Reins International California, Inc. (2020)* 9 Cal.5th 73 87 [PAGA claims have no individual component]; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197-198 [PAGA damages limited to civil penalties].) "The state's interest in such an action is to enforce its laws, not to recover damages on behalf of a particular individual." (*Huff v. Securitas Security Systems* (2018) 23 Cal.App.5th 745, 760.) Instead of focusing on fair recovery for individual claims, the goal of PAGA enforcement is to achieve "maximum compliance with state labor laws." (*Huff*, at p. 756.)

Labor Code section 2699, subdivision (s)(2) requires the trial court to review and approve any PAGA settlement, and in so doing, the court must "ensure that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) When evaluating the fairness, adequacy, and reasonableness of a PAGA penalty, courts compare the potential penalty amount (its verdict value, as some courts refer to it) with the actual recovery under the settlement. (See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 87, overruled on another ground in *Turrieta v. Lyft, Inc*. (2024) 16 Cal.5th 664, 658.) There is no express or even baseline percentage of recovery required. Under the express terms of the PAGA, a verdict value is not guaranteed even if the plaintiff prevails, as courts have discretion to lower the amount of penalties based on the circumstances of a particular case. Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further

litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement. (*Moniz, supra,* 72 Cal.App.5th at 76.) *Moniz* is quite clear, however, in its conclusion: "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate ***in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.***" (*Moniz, supra,* 72 Cal.App.5th at 77 [emphasis added].)[2]

With this background, counsel explains that in their opinion the maximum value of PAGA civil penalties in this action was $10,010,000, but was fraught with the same risks as detailed above, underscored by the obvious reality that "courts have wide latitude to reduce civil penalties 'based on the facts and circumstances of a particular case," when to do so would otherwise result in an award that is unjust, arbitrary, oppressive or confiscatory." Taking into account the significant risk factors at play, counsel determined that the civil penalties for unpaid wage claims amounted to $600,600; for meal violations amounted to $471,900; and for derivative claims for wage statements was $600,600. "The maximum combined risk-adjusted value that factored in additional reductions for all PAGA claims is $1,673,100," and plaintiff allocated $100,000 of the total gross settlement to the PAGA claims, which amounts to 6% of the reduced value, and 1% of the maximum value. There are 10,153 aggrieved employees who worked during the PAGA period.

The court finds that the PAGA settlement is fair, reasonable, and adequate, keeping in mind that its purpose is to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws**.** The LWDA has not objected to the settlement despite notice**.** Further, the amount is commensurate with other cases involving PAGA settlement amounts, particularly given the reasonably reduced value of the maximum verdict amount. *(Gilmore v. McMillan-Hendryx Incorporated* (E.D. Cal., Jan. 20, 2022, No. 1:20-CV-00483-HBK) 2022 WL 184004, at *2 [courts have approved settlements across of range of verdict value percentages, including 1 %]; see also *Haralson*, 383 F. Supp. 3d at 972-74 [discussing cases approving settlements where PAGA penalty accounted for 1% to 2.4% of gross settlement

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[2] At the July 24, 2024, hearing for preliminary approval, plaintiff's counsel attempted to distinguish *Moniz,* by claiming (at least so it appears) that *Moniz* involved a "PAGA only" settlement, and did not involve a combined PAGA and class action settlement. It is true that *Moniz* involved a PAGA representative action only. But the court does not read *Moniz* as limited to that factual context *exclusively*; in fact, no case this court has found (either in a published or unpublished California appellate decision) limits *Moniz* to the PAGA only settlement scenario. Quite the contrary in fact. That being said, as *Moniz* also made clear: ". . . [B]ecause many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—***these factors can be useful in evaluating the fairness of a PAGA settlement***." (*Id.* at p. 77, emphasis added.) It follows from this (and despite the differences between class and representative actions) that the amount of the class action settlement can be seen as a relevant factor in demonstrating defendant's remediation, deterrence, and enforcement of state labor laws (commensurate with the PAGA scheme as mandated by *Moniz),* as a supplement to a PAGA settlement per the *Moniz* rubric. Of course, *Moniz* did not address this as factor as it was not at issue in that case. Thus, while *Moniz* may not be ultimately determinative on that exact issue, it remains illustrative.

amount].) True, per the settlement agreement, defendant admits no liability, class counsel cannot issue any press releases related to this agreement, and there is a confidentiality provision. (¶¶ 13.1, 13.2, and 13.3 of Settlement Agreement). And the settlement agreement does not contemplate nonmonetary relief, factors federal courts have found relevant in determine whether a PAGA settlement. (*Gutierrez v. New Hope Harvesting, LLC.* (C.D. Cal., Apr. 26, 2024, No. 219CV07077FWSAJR) 2024 WL 1834362, at *7 ["The proposed settlement also includes nonmonetary relief in the form of an injunction providing for several changes to Defendants' workplace practices, several of which are listed above"].) While these are factors that suggest defendant will not change past practices, the court also recognizes that context is important, if not critical, underscored with a heavy dose of common sense and practical reality. The $100,000 earmarked as a PAGA settlement, coupled with the overall settlement amount of $2,150,000, in its aggregate, seems an obvious vehicle to ensure defendant's future compliance with all Labor Code laws. Deterrence can occur if the amount allocated is significant, and the amounts here in aggregate seem large enough to suggest the settlement will further the goals of the PAGA scheme. (See, e.g., *Manuel Perez and Macario Perez v. All AG, Inc.* (E.D. Cal., July 23, 2021, No. 118CV00927 DADEPG) 2021 WL 3129602, at *3.)

As a result, the court finds that the $100,000 is fair, reasonable, and adequate, taking into consideration the totality of circumstances and the purposes of PAGA.

3. Certification of Class

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.)

The court previously found there to be a sufficient showing to certify the class for purposes of settlement. There is no reason to revisit that conclusion here.

4. Settlement Administrator's Fees/Costs

The court preliminarily approved the appointment of Rust Consulting, Inc., as the third party settlement administrator, and authorized up to $92,000 in costs/fees. Plaintiff asks the court to approve $92,000 in settlement administration costs, as detailed in the declaration of Ms. Amy Fringer, which contains an itemized costs bill, and which indicates third party administrator actual costs total of $95,583. The amount requested, limited to $92,000, seems reasonable, given the number of class members and the complexity of the endeavor. The court approves Rust

Consulting, Inc., as the third party settlement administrator and its request of $92,000 for fees/costs.

5. Class Counsel's Request for Fees and Litigation Costs

Counsel asks the court to approve class fees of $716,666.97 (which reflects .3333333334 of the gross settlement amount of $2,150,000), along with actual litigation costs of $17,498.39 (the court preliminarily approved litigations costs up to $30,000). As noted above, California Rules of Court, rule 3.769(b) requires that any attorney fee agreement, express or implied, that has been entered into with respect to payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the of the settlement that has been certified as a class action. ***Plaintiff must submit this agreement (or a document describing its critical components) at or before the hearing.***

On the merits, the attorney fee amount seems appropriate based on the percentage method, which amounts to approximately 1/3 the amount of the gross settlement and is standard in California courts in this context. (See, e.g., *Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 578 [it is well settled that attorney fees under Code Civ. Proc., § 1021.5 may be awarded for class action suits benefiting a large number of people]; see also *Clark, supra*, 175 Cal.App.4th at p. 791.) The court has a duty to review and approve the request for attorney's fees, even where the parties agree on the amount. (*Garabedian v. Los Angeles Cellular Telephone Co*. (2004) 118 Cal.App.4th 123, 127-128.) Use of the percentage method in common fund cases is permissible, although there must be evidence that the parties intended the attorney fees would be paid out of any common fund that had been created. That appears to be the case here. Further, the method is permissible when the amount is certain or easily calculable sum, as it is here. (*Dunk v. Ford Motor Co., supra*, at p. 1809.)

The court generally "double checks" the reasonableness of the fees requested by using the lodestar method. (See, e.g., *Lafitte v. Robert Half Internat., Inc*. (2016) 1 Cal.5th 480, 504 [no abuse of discretion in court's decision to double check reasonableness of contingency method by looking to lodestar method for determining attorney's fees].) Counsel contends the amount is justified under the lodestar method, as follows. Mr. Mankin's hourly rate is $775 an hour; Ms. Carlson bills at $600 an hour; and Mr. Bokhour bills at $650 an hour, all of which (according to counsel) is justified by the "Laffey Matrix."[3] Mr. Mankin has worked (or will have

[3] "The *Laffey* Matrix is a United States Department of Justice billing matrix that provides billing rates for attorneys at various experience levels in the Washington, D.C., area and can be adjusted to establish comparable billing rates in other areas using data from the United States Bureau of Labor Statistics." (*Pasternack v. McCullough* (2021) 65 Cal.App.5th 1050, 1057, fn. 5.) The court is not required to follow the *Laffey* Matrix, nor is it required to adopt the rate defense counsel opined was the "market rate' for service of this type. (*Syers Properties III, Inc., v. Tankin* (2014) 226 Cal.App.4th 691, 702.) Instead, a court "may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215

worked) an estimated 109 hours (including an estimated 15 hours of additional work preparing for and attending today's hearing, "as well as 20 hours in anticipated work to be performed after final approval . . . ."), for a total lodestar amount of $84,475 (109 hours x $775 per hour). Ms. Carlson declares that she has or will spend a total of 206.4 hours, for a total amount of $123,840 (206.40 hours x $600). And Mr. Bokhour has worked or will have worked 85.5 hours (including 15 hours of work finalizing the present motion, attending final approval, and working with defense counsel post approval), for a total amount of $59,895. Mr. Bokhour identifies a fourth person involved (a paralegal Mr. Carlos Garcia, who works for Mr. Bokhour), and who spent 15 hours at $150 an hour, for a total of $2,250. The total amount for attorney fees under an unadorned lodestar is $268,165. Counsel then argues that a multiplier of 2.67 should be applied because (essentially) the matter involved specialized work, complexity, and expertise, which amounts to $716,000.55 (with an additional $2,250 added for Mr. Garcia's work).

The court has no issue with the number of hours worked (or to be worked) by counsel, as indicated in the three declarations. That being said, the hourly rates charged by counsel, which perhaps commonplace in Los Angeles, are nevertheless high for this locale. The court therefore is reluctant to simply look to the "Laffey Matrix" as the definitive authority without resort to or at least recognition of local hourly billing rates, which at the high end are $550 an hour. That being said, the court recognizes the size of the class at issue, based on the number of putative class members and aggrieved employees, making this case particularly complex. Counsel, as detailed in all three declarations submitted to the court, are obviously experienced, and no doubt this case required experienced practitioners to achieve the litigation results that were actually obtained. The court acknowledges, therefore, that experienced counsel from out of the area were required, meaning a greater multiplier should be used rather than elevated billing hours. In the Ninth Circuit, for example, multipliers "ranging from one to four are frequently awarded . . . when the lodestar method is applied." (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n. 6 [approving multiplier of 3.65].) The same is true in California courts. (*Wershba, supra*, 91 Cal.App.4th at p. 255 ["multipliers can range from 2 to 4 or even higher"]; *In re Lugo* (2008) 164 Cal.App.4th 1522, 1547 [same]; see generally *Chavez v. Netflix, Inc*. (2008) 162 Cal.app.4th 43, 66].) Recognizing the need her for class action expertise, given the contingency nature of the employment, as given the fact counsel displayed skill, framed by the difficulty and complexity of the case, the court is willing to apply a multiplier of 3.2 (i.e., even if the court reduces the hourly rate to $550 an hour). (*Ketchum v, Moses* (2001) 24 Cal,4th 1122, 1132 [factors for a multiplier include novelty and difficulty of questions, skill displayed, extent to which the nature of the litigation precluded other employment, and the contingent nature of the fee award].) Under this alternative lodestar calculation, the unadorned lodestar amount would be 400.9 hours x $550, which equals $220,495, and with a multiplier of 3.2, would amount to a lodestar amount of $705,584, roughly similar to the amount calculated under the

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Cal.App.4th 972, 1009.)

percentage method. The court determines that the lodestar method supports the percentage calculation.

Accordingly, the court determines that attorney's fees of $716,667.97 are reasonable.

The court authorized litigation costs for counsel up to $30,000 at the preliminary approval hearing. Counsel indicates that those costs actually amount to $17,498.39. Attached to Mr. Mankin's declaration is Exhibit B, which is an itemized list of all expenses incurred for the law firm of Lauby, Mankin & Lauby, LLP, which amounts to $9,993.39. Mr. Bokhour in his declaration indicates that the total costs for his law firm total $7,50, which includes an expert fee and a mediation fee. $7505 + $9,993.39 = $17,498.39. The expenses appear reasonable and are approved.

There is one matter the court directs counsel to address at the hearing. While attorneys Mr. Mankin and Ms. Carlson are members of the law firm Lauby, Mankin & Lauby, LLP, attorney Mr. Bokhour is a member of Bokhour Law Group, LLC. A fee split therefore is contemplated. The court directs counsel to put on the record the nature of the fee split and the amount earmarked for each law firm.

6. Enhancement for Class Representative

Plaintiff requests an incentive award of $10,000, which was preliminarily approved on the condition that at the final approval hearing plaintiff provided information about the average payout to the class members, given the concerns expressed by courts about a potential large disparity between incentive awards and average recovery. (*Clark, supra*, 175 Cal.App.4th 785, 806, fn. 14; see also *Stanton v. Boeing Co*. (9th Cir, 2003) 327 F.3d 938, 975 [condemning a class enhancement of $30,000 when average payout was $1,000, a multiplier of 30]; compare with *Munoz, supra*, 186 Cal.App.4th at p. 412 [noting there that class representatives would receive more than twice as much as the average payment to class members, in contrast to the multipliers of 30 and 44 in *Stanton* and *Clark*, respectively].) The court observed at the preliminarily approval hearing only, in light of the explanations offered in plaintiff's declaration, that the $10,000 enhancement, which represents .000461 of the gross settlement amount (or .0008218 of the net settlement amount).

Counsel explains in the final approval submissions that the average payout to class members will be $72.27. (Motion, at p. 2.) The $10,000 enhancement thus represents a payment ***of approximately 138 times the average payout***. This is a substantial deviation – and thus is a concern to the court. (*Clark, supra,* 175 Cal.App.4th at p. 805 [an "enhancement that gives the named plaintiffs at least 44 times the average payout to a class member simply cannot be justified on the record in this case].) That means the amount has to be justified with specific

details about plaintiff's involvement in the litigation (and not by generic claims plaintiff simply spent "countless hours" on the case). (*Ibid.* ["moreover, the court is not bound to, and should not, accept conclusory statements about 'potential stigma' and 'potential risk' in the absence of supporting evidence or reasoned argument explaining why, under the particular circumstances, an actual – not a negligible – risk existed, or why it might be difficult to get plaintiffs to come forward to prosecute a particular case"].)

Mr. Mankin makes the following observations in his declaration to support the $10,000 enhancement award. "I also believe that the service award of $10,000 to Plaintiff is fair and warranted for the reasons outlined in his declaration and in the motion. He came forward and worked directly with my office in analyzing the claims and documents, providing valuable information (See [plaintiff's] declaration for supporting information). Indeed, his participation was an essential element of Defendants' desire to mediate and the pre[-] and post[-] mediation analysis that allowed Class Counsel to settle this case. Of course, he also took on various risks, including the risk that he could have been ordered to pay Defendants' costs if he lost and the risk of retaliation and being black balled in the industry. He also provided a full release of all his claims. Defendants do not oppose the requested service award." Mr. Mankin's observations are as generic as the observations determined to be insufficient in *Clark*, meaning the court will examine the details in plaintiff's declaration, filed on June 20, 2024, in order to find a justification for the approximate 138 multiplier at issue.

Plaintiff declares as follows: ". . . I provided invaluable assistance to my attorneys and the putative class members in this case, including providing factual information, wage and hour documentation, wage statements, my payroll records, and personnel file for the allegations in the Class Claims Complaint and PAGA Letters. I also spent numerous hours on the phone with my lawyers, including, preparing for mediation, and was available on the day of mediation. I also participated in various phone calls with my lawyers to discuss litigation, facts, witnesses, and settlement strategy and reviewed the settlement documents. My efforts were instrumental in securing the favorable terms of the Settlement Agreement, which will provide monetary compensation to the putative class members. I also agreed to participate in this case without guaranteeing personal benefit. [¶] This case also involved risks for me, such as the potential risk of having to pay Defendants' costs if we list. Disregarding these risks, I pursued this case on behalf of the putative class members, aggrieved employees, and the State of California to a successful resolution and settlement. Further, as part of the Settlement, I agree to a general release of all claims, which is broader than the release of claims that the class members will agree if they wish to participate in the settlement. . . . [¶] In light of what I have done for the class and the hard work I put in, I believe that the requested award is fully warranted and respectfully request that it be granted. Moreover, I voluntarily undertook a great amount of risk by publishing my name and putting my time and reputation on the line to represent the putative class members. Regardless of these risks, I put the interests of the class before mine."

The court is aware that there have been no objections to the $10,000 enhancement. And of course it is aware that the size of the class is large, and this case is complex. But even with this, it is not convinced on the present record that there is enough to justify the $10,000 enhancement award, which (as noted) amounts to an approximate multiplier ***138 times*** the average payout. This discrepancy is inordinate, and as a result gives the court pause. The factual recitations offered here seem as generic as the explanations condemned in *Clark*, a case which involved a similar 2 million settlement with an average recovery for class members of just over $550, with requests by each plaintiff for $25,000 enhancement, which amounted to a multiplier of slightly over ***45 times*** the average payout for each named plaintiff. (*Clark, supra*, at p. 805.) In that context the *Clark* court made the following observations that appear particularly apt here: "We simply cannot sanction, as within the trial court's discretion, incentive awards totaling $50,000, with nothing more than pro forma claims as to "countless hours' expended, 'potential stigma' and 'potential risk.' Significantly, ***more specificity, in the form of quantification of time and effort expended on the litigation***, ***and in form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required*** in order for the trial court to conclude that enhancement was 'necessary to induct [the named plaintiff] to participate in the suit . . . .' [Citation]." (*Clark, supra*, at pp. 806-807, emphasis added.) While there may be slightly more detail offered here than in *Clark*, plaintiff or at least plaintiff's counsel needs to provide more specifics about plaintiff's quantification of time and effort, and more detail about the financial or other risks potentially suffered. The court therefore directs counsel to provide a more detailed declaration (either from counsel or from plaintiff or both) about plaintiff's specific involvement in this lawsuit, as well as specifics about the risks he was subject too, before or at the hearing, in order to justify the $10,000 enhancement. Counsel is also directed to discuss *Clark* and progeny and its impact on the current evidentiary showing.

Unless the showing/explanations are satisfactory, the court will deny the $10,000 enhancement award as requested and award plaintiff something less, such as $5,000, should the supplemental evidence fail to justify the $10,000 enhancement. (See 10.2 of the Settlement Agreement, which provides that a court's decision to award less than the class representative service payment "shall not constitute a material modification to the Agreement within the meaning of this paragraph.")

7. Class Certification Efforts, Notices, Class Procedures, and Disbursements

Plaintiff asks the court to approve the class action procedures contemplated by the settlement agreement, including the timing mechanisms and disbursement provisions. Again, the nonreversionary gross amount is $2,150,000, with a net settlement amount of $1,216,834.94, arrived at after the following subtractions: attorney's fees of $716,666.67; litigation costs of $17,498.39; administrator costs of $92,000; the PAGA settlement of $100,000; and a class

enhancement of $10,000. There are 16,794 class members who are bound by the judgment, who worked a collective total of 492,510 work weeks during the class period. Allocations for each individual class member will be based on dividing the net settlement amount by the total number of workweeks worked by class members during the class period. and then multiplying the result by each class member's workweeks. Nonparticipating class members do not receive a payout, and those amounts will be distributed to participating class members on a pro rata basis. The average payout will be $72.28, with the highest individual payout will be $837.96. There are 10, 153 aggrieved employees who worked during the PAGA period (and who are entitled to a pro rate share of the $25,000 of the PAGA settlement), and the PAGA calculation is based on the total number of PAGA pay periods worked by all aggrieved employees during the PAGA period, multiplied the result by each aggrieved employee's PAGA period pay periods.

Defendant is required to fund the gross settlement amount in three equal installments, with the first on or before January 1, 2025, or within 10 days after the effective date (final approval), whichever is later; the second installment will be on or before July 31, 31, 2025; and the third installment to be paid will be on or before December 1, 2025. Within 14 days after defendants pay each installment, the third party administrator will pay one-third of all amounts (ranging from individual class payments, individual PAGA payments, class counsel fees and litigation expenses, and class enhancement, although checks for counsel and plaintiff shall not precede individual class action or PAGA payments). The settlement agreement thus contemplates three separate payments, staggered over the course of 2025. The settlement agreement details how the checks can be issued and how taxes are allocated and what tax responsibilities exist; explains that a class member will have 180 days to cash a check, which is expected to expire on May 30, 2026; provides what happens if checks are uncashed (i.e., all uncashed checks will be transmitted to the California Controller's Unclaimed Property Fund, which will be sent one year after the check cashing deadline due to the mandatory holding period); and explains the nature of the releases by both class members and aggrieved employees. The settlement agreement also contains an "Escalator Clause," which dictates what occurs if the workweeks worked by all class members during the class period is ultimately determined to exceed the 554400 workweeks which rest at the basis for all disbursement calculations. According to counsel, the parties have proposed submitting a final report in the from a declaration from the third party administrator on approximately July 1, 2026, and then holding a disbursement hearing with the court in order to detail all that has occurred. The court finds these requirements/procedures to be reasonable and appropriate

The court finds the "Court Approved Notice of Class Action Settlement and Hearing Date for Final Approval," sent by the third party administrator following the court's preliminary approval in both English and Spanish, to be appropriate and reasonable, as it included a toll free number and email address for questions, as well as website address for settlement documents, which could be accessed by the putative class members. It adequately informed the putative class

members of all relevant information. Ms. Fringer details the efforts made by third party administrator with regard to this notice On August 22, 2024, the third party administrator received a mailing list contain putative class members names and last known addresses, which contained 16,880 names. Class notices were sent on September 6, 2024, and expressly informed class members that about the date by which a class member had to submit an exclusion, objection, or dispute (October 21, 2024). The third party administrator performed 3,644 address traces on notices that were returned, and during the process, found 766 more current addresses. Of the 3,644 traces performed, the third party administrator did not obtain updated addresses for 2,878 undeliverable class notices; of the 3,644 new class notices mailed, 142 were returned, and an additional 81 notices were returned after October 21, 2024. 34 were returned with forwarding addresses, which were promptly remailed. As of today, 3,101 class notices remain undeliverable; there have been zero challenges or objections; 86 requests for exclusions (opt outs) have been received. The settlement agreement in Section 10 provides for all procedures that must be followed with regard to the final approval hearing.

The court determines these efforts, notices, procedures, and disbursement time frames are all reasonable.

The court directs counsel to appear at the hearing by Zoom or in person.

8. Summary of Court's Conclusions

- The court directs plaintiff's counsel to submit the attorney-fee agreement (or its functional equivalent), as required pursuant California Rules of Court, rule 3.769(b), either before or at the hearing.
- The court directs plaintiff's class counsel to explain/confirm on the record how the attorney fees will be split between law firm Lauby, Mankin & Lauby, LLP and the Bokhour Law Group, P.C.
- The court directs counsel to submit a supplement declaration (either from counsel or plaintiff or both), either before or at the hearing, providing more specificity about the "quantification of time and effort expanded" by the named plaintiff in the litigation, and providing " a [more] reasoned explanation of financial or other risks incurred" by the named plaintiff in the litigation (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 806-807), in order to justify the $10,000 enhancement award, an amount approximately ***138 times*** the average payout of $72.28. Counsel should come prepared to address *Clark*'s impact on the showing made here. The court may reduce the $10,000 enhancement award to $5,000 if the supplemental showing is inadequate to justify a $10,000 enhancement.
- The court will want assurances from counsel that they will comply with Labor Code section 2699, subdivision (s)(3), which requires counsel to submit the judgment in this matter with the LWDA within 10 days after entry of judgment or order.

- If these points are addressed to the court's satisfaction, the court will determine that the overall gross settlement of $2,150,000 is fair, reasonable and adequate, including the $100,000 PAGA settlement (with $75,0000 going to the state and $25,000 going to the aggrieved employees); finally approve certification of the class; finally approve appointment of class counsel, the class representative, and the settlement administrator; approve attorney's fees of $716,666.67, litigation costs of $17,498.39, third party settlement administrator costs of $92,000, and the class enhancement of $10,000 (or the reduced amount per the discussion above); and finally approve all class certification efforts, notices, procedures, and disbursement time frames. It will sign the proposed/amended order/judgment, or order a new one to be submitted.