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FILED
Superior Court of California
County of Los Angeles

JUN 24 2020

Sherri R. Carter, Executive Officer/Clerk
by Alfredo Morales deputy
ALFREDO MORALES

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

SAM YOO, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

NGL TRANSPORTATION, an Arizona
limited liability company; SHANG-IL ROH,
an individual; and DOES I through 25,
Defendants.

Case No.: BC682160

**ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT ON
CONDITIONS**

Date: June 24, 2020
Time: 11:00 a.m.
Dept.: SSC-7

1 **I. BACKGROUND**

2 Plaintiff filed his initial complaint against NGL on November 7, 2017, filed a First
3 Amended Complaint on February 2, 2018, which added a claim for penalties under the
4 Private Attorneys General Act (“PAGA”), and filed a Second Amended Complaint on
5 August 27, 2018, which added NGL’s owner Shang Il-Rohas a defendant.

6 The Second Amended Complaint alleges causes of action against Defendants for:
7 (1) failure to pay wages earned, (2) failure to pay overtime in violation of Labor Code
8 section 510, (3) failure to provide meal periods and rest breaks in violation of the IWC
9 Wage Order and Labor Code sections 226.7 and 512(a), (4) failure to provide compliant
10 wage statements in violation of Labor Code section 226, (5) failure to pay unpaid wages
11 at time of discharge in violation of Labor Code sections 201 and 202, (6) failure to
12 reimburse for necessary expenditures in violation of Labor Code section 2802, (7) unfair
13 business practices in violation of Business & Professions Code sections 17200, et seq.,
14 and (8) recovery of civil penalties under PAGA.

15 In July 2019, the Parties entered into a Settlement Agreement.

16 On October 8, 2019, Plaintiff filed a motion for preliminary approval with a fully
17 executed Settlement Agreement attached to the Declaration of Aaron Gundzik (“Gundzik
18 Decl.”) as Exhibit 1.

19 The settlement was preliminarily approved on January 15, 2020. Notice was given
20 to the Class Members as ordered. (Declaration of Elizabeth Kruckenberg (“Kruckenberg
21 Decl.”), ¶¶3-18.) Now before the Court is Plaintiff’s motion for final approval of the
22 Settlement Agreement, including for payment of fees, costs, and a service award to the
23 named plaintiff. For the reasons set forth below the Court grants final approval of the
24 settlement on the condition that counsel confirms that the escalator clause in Paragraph
25 IV.J. of the Settlement Agreement is not triggered, or, if it is triggered, explaining how

1 the settlement is still fair, adequate, and reasonable. It was previously represented that
2 there were approximately 65 members who worked approximately 5,050 workweeks.
3 However, now there are 89 Class Members and neither the administrator nor counsel
4 have indicated whether the amount of workweeks exceeds 5,300 in light of the increase
5 in Class Members.

6 7 **II. THE TERMS OF THE SETTLEMENT**

8 9 **A. SETTLEMENT CLASS DEFINITION**

10 “Class” all persons who worked as truck drivers for Defendants and drove
11 company-owned trucks in California during the Class Period. (Settlement Agreement,
12 ¶II.C.)

- 13 • “Class Period” means the period from November 7, 2013 through July 23, 2019.
14 (II.I)
- 15 • There are 89 Class Members. (Kruckenberg Decl., ¶5.)
 - 16 ○ If, upon Defendant’s delivery of the Class Data to the Settlement
17 Administrator, the total number of Class Member’s Qualifying Work
18 Weeks exceeds 5,300, Defendants will increase the Gross Settlement
19 Amount by the same percentage that Qualifying Work Weeks exceed
20 5,300. (IV.J)
- 21 • The parties stipulate to class certification for settlement purposes only. (¶IV.A)

22 23 **B. THE MONETARY TERMS OF SETTLEMENT**

24 The essential terms are as follows:
25

- 1 • The Gross Settlement Amount (“GSA”) is **\$330,000**. (¶II.R.) This includes
2 payment of a PAGA penalty of \$10,000 to be paid 75% to the Labor Workforce
3 Development Agency (“LWDA”) (**\$7,500**) and 25% to the Aggrieved Employees
4 (**\$2,500**) (¶I.E.);
- 5 • The Net Settlement Amount (“Net”) (**\$184,000**) is the GSA less:
- 6 ○ Up to **\$110,000** (1/3) for attorney fees (¶I.B);
- 7 ▪ **Split:** 60% to Gartenberg Gelfand Hayton LLP and 40% to Caskey
8 & Holzman. (Gundzik Decl. ISO Prelim., ¶39, Exh. 2.)
- 9 ○ Up to **\$18,000** for attorney costs (¶I.C);
- 10 ○ Up to **\$10,000** for a Service Award to the Class Representative (¶I.D.);
- 11 ○ Estimated **\$8,000** for settlement administration costs (¶I.A.).
- 12 • Employer-side payroll taxes will be paid by Defendants. (¶IV.L.6.)
- 13 • Assuming the Court approves all maximum requested deductions, approximately
14 \$184,000 will be available for automatic distribution to participating class
15 members. Assuming full participation, the average settlement share will be
16 approximately \$2,067.42. ($\$184,000 \text{ Net} \div 89 \text{ class members} = \$2,067.42$). In
17 addition, each class member will receive a portion of the PAGA penalty, estimated
18 to be \$28.09 per class member. ($\$2,500 \text{ 25\% of } \$10,000 \text{ PAGA penalty} \div 89$
19 $\text{class members} = \$28.09$).
- 20 • There is no Claim Requirement. (¶I.JJ.)
- 21 • The settlement is non reversionary. (¶II.R.)
- 22 • Individual Settlement Share Calculation: Payment will be made to Settlement
23 Class Members based on the number of Qualifying Work Weeks worked by
24 Settlement Class Members. Each Settlement Class Member’s settlement payment
25 will be calculated using the following formula: (Individual Settlement Class

1 Member's Qualifying Work Weeks ÷ by All Settlement Class Members'
2 Qualifying Work Weeks) X Net Settlement Amount. (§IV.L.1.)

- 3 • Tax withholdings: Settlement Payments will be allocated as follows: 1/3 as wages;
4 1/3 as interest; and 1/3 as penalties. (§IV.L.4.)
- 5 • Uncashed Settlement Payment Checks: Settlement Payment checks paid to Class
6 Members will remain valid and negotiable 180 days from the date of their
7 issuance. If any Class Member's settlement check is not cashed within that time,
8 the check will be voided, and a stop payment order maybe placed on the check.
9 The funds represented by all uncashed settlement checks will be distributed to the
10 California State Controller's Office Unclaimed Property Fund in the name of the
11 individual Settlement Class Member. (§IV.S.)
- 12 • Payment of GSA to be made by Defendants on: If the Gross Settlement Amount
13 does not escalate, Defendants will pay the Gross Settlement Amount in 24 equal
14 monthly installments of \$13,750. The First Installment was made by Defendants
15 on August 30, 2019. The 23 subsequent installments are to be paid on or before
16 the 30th day of each month, beginning on September 30, 2019 (or the Monday
17 following the 30th day of the month if it falls on a Saturday or Sunday, or the next
18 banking day if the 30th day falls on a bank holiday). Defendants shall pay the
19 required portion of the Employer's Withholding Share at least 15 calendar days
20 prior to each distribution of settlement proceeds. (§IV.M.)
 - 21 ○ Defendant has provided a declaration evidencing its need of an installment
22 plan. (See Declaration of Shang Il Roh Aka Sean Roh.)

1 **B. TERMS OF RELEASES**

2 • Class members will release: It is the desire of the Representative Plaintiff, Class
3 Members (except those who exclude themselves from the Settlement), and
4 Defendants to fully, finally, and forever settle, compromise, and discharge the
5 Released Claims. Upon entry of the Final Approval Order and Defendants’
6 payment of the Gross Settlement Amount and Employer’s Withholding Share, and
7 except as to such rights or claims as may be created by the Settlement Agreement,
8 the Class Members, on behalf of themselves, and each of their heirs,
9 representatives, successors, assigns, and attorneys, will be deemed to have, and by
10 operation of the final judgment will have, fully released and discharged the
11 Released Parties from any and all Released Claims that accrued during the Class
12 Period. The release will be binding on all Class Members who have not timely
13 submitted a valid and complete Request for Exclusion, including each of their
14 respective attorneys, agents, spouses, executors, representatives, guardians ad
15 litem, heirs, successors, and assigns, and will inure to the benefit of the Released
16 Parties. (¶VI.I.)

17 ○ “Released Parties” means Defendants, their past, present and/or future,
18 direct and/or indirect, officers, directors, members, managers, employees,
19 agents, representatives, attorneys, insurers, partners, investors,
20 shareholders, administrators, parent companies, subsidiaries, affiliates,
21 divisions, predecessors, successors, assigns, and joint venturers, but only as
22 to the Released Claims. (¶II.BB.)

23 ○ “As determined by the Court, “Released Claims” means all causes of action
24 and factual or legal theories that were alleged in the Complaint or arise
25 from facts alleged in the Complaint, including all damages, penalties,

1 interest and other amounts recoverable under said claims, causes of action
2 or legal theories of relief. The time period governing these Released Claims
3 shall be at any time from November 7, 2013 through July 23, 2019. Claims
4 and damages that were not alleged in the Complaint and do not arise from
5 the facts alleged in the Complaint are specifically excluded from the
6 release. (§II.AA.)

7 ○ “Final Approval Order” means the Order Granting Final Approval of Class
8 Action Settlement and Judgment entered by the Court. (§II.P.)

9 ○ “Request for Exclusion” means a written and signed request by a Class
10 Member to be excluded from the Settlement Class that is submitted in
11 accordance with the procedure set forth herein by the Response Deadline.
12 (§II.DD.)

13 ○ “Employer’s Withholding Share” means the employer’s mandated share of
14 all federal, state, and local taxes and required withholdings, including
15 without limitation, FICA, Medicare tax, FUTA, and state unemployment
16 taxes. (§II.O.)

17 ● The named Plaintiff will also provide a general release and a waiver of the
18 protections of Cal. Civ. Code §1542. (§V.II.)

19 ● The releases are effective as of the Final Approval Order and Defendants’
20 payment of the Gross Settlement Amount and Employer’s Withholding Share.
21 (§VI.I.)

22 23 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

24 “Before final approval, the court must conduct an inquiry into the fairness of the
25 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the

1 settlement agreement after the final approval hearing, the court must make and enter
2 judgment. The judgment must include a provision for the retention of the court's
3 jurisdiction over the parties to enforce the terms of the judgment. The court may not
4 enter an order dismissing the action at the same time as, or after, entry of judgment.”
5 Cal. Rules of Court, rule 3.769(h).

6 As discussed more fully in the Order conditionally approving the settlement, “[i]n
7 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
8 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
9 action. The purpose of the requirement [of court review] is the protection of those class
10 members, including the named plaintiffs, whose rights may not have been given due
11 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
12 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
13 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
14 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
15 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
16 extent necessary to reach a reasoned judgment that the agreement is not the product of
17 fraud or overreaching by, or collusion between, the negotiating parties, and that the
18 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
19 quotation marks omitted].

20 “The burden is on the proponent of the settlement to show that it is fair and
21 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
22 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
23 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
24 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
25 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,

1 1802. Notwithstanding an initial presumption of fairness, “the court should not give
2 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
3 116, 130. “Rather, to protect the interests of absent class members, the court must
4 independently and objectively analyze the evidence and circumstances before it in order
5 to determine whether the settlement is in the best interests of those whose claims will be
6 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
7 that determination, the court should consider factors such as “the strength of plaintiffs’
8 case, the risk, expense, complexity and likely duration of further litigation, the risk of
9 maintaining class action status through trial, the amount offered in settlement, the extent
10 of discovery completed and stage of the proceedings, the experience and views of
11 counsel, the presence of a governmental participant, and the reaction of the class
12 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
13 the court is free to engage in a balancing and weighing of factors depending on the
14 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.

15 **A. A Presumption of Fairness Exists**

16 The Court preliminarily found in its Order of January 15, 2020 that the
17 presumption of fairness should be applied. No facts have come to the Court’s attention
18 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
19 presumption of fairness as set forth in the preliminary approval order.

20 **B. The Settlement Is Fair, Adequate, and Reasonable**

21 The settlement was preliminarily found to be fair, adequate and reasonable.
22 Notice has now been given to the Class and the LWDA. The notice process resulted in
23 the following:

24 Number of class members: 89

25 Number of notices mailed: 89

1 Number of undeliverable notices: 3
2 Number of opt-outs: 0
3 Number of objections: 0
4 Number of participating class members: **89**

5 (Kruckenberg Decl., ¶¶5-12.)
6

7 The Court finds that the notice was given as directed and conforms to due process
8 requirements. Given the reactions of the Class Members and the LWDA to the proposed
9 settlement and for the reasons set for in the Preliminary Approval order, the settlement is
10 found to be fair, adequate, and reasonable.
11

12 **C. CLASS CERTIFICATION IS PROPER**

13 For the reasons set forth in the preliminary approval order certification of the
14 Class for purposes of settlement is appropriate.
15

16 **D. ATTORNEY FEES AND COSTS**

17 Class Counsel requests **\$110,000** (1/3) for attorney fees and **\$18,000** for costs.
18 (Gundzik Decl. ISO Final, ¶¶ 37, 48; Declaration of Daniel Holzman (“Holzman Decl.”),
19 ¶¶10-12.)

20 Courts have an independent responsibility to review an attorney fee provision and
21 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
22 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
23 permitted in common fund cases. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480,
24 503.
25

1 In the instant case, fees are sought pursuant to the percentage method. (Gundzik
2 Decl. ISO Final, ¶¶37, 52.) The \$110,000 fee request is 1/3 of the Gross Settlement
3 Amount.

4 Here, the \$110,000 fee request represents a reasonable percentage of the total
5 funds paid by Defendant. Further, the notice expressly advised class members of the fee
6 request, and no one objected. (Kruckenberg Decl., ¶11, Exh. A.) Accordingly, the Court
7 awards fees in the amount of **\$110,000**.

8 Class Counsel have agreed in writing and signed by Plaintiff, to split the
9 attorney's fees as follows: 60% to Gartenberg Gelfand Hayton LLP and 40% to Caskey
10 & Holzman. (Gundzik Decl. ISO Prelim., ¶39, Exh. 2.)

11 Class Counsel requests \$18,000 in costs. This is equal to the \$18,000 cap
12 provided in the settlement agreement. (¶I.C.) The amount was disclosed to Class
13 Members in the Notice, and no objections were received. (Kruckenberg, ¶11, Exh. A.)
14 Costs include: Filing/Service Fees (\$4,070.48), Mediation Fees (\$6,000), and
15 Translation/Interpreter Fees (\$5,846). (Gunkzik Decl. ISO Final, ¶¶45-47, Exh. C;
16 Holzman Decl., ¶12, Exh. C.)

17 The costs appear to be reasonable and necessary to the litigation, are reasonable
18 in amount, and were not objected to by the class.

19 For all of the foregoing reasons, costs of **\$18,000** are approved.

20 21 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

22 A service (or incentive) fee award to a named class representative must be
23 supported by evidence that quantifies the time and effort expended by the individual and
24 a reasoned explanation of financial or other risks undertaken by the class representative.

25 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;

1 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
2 [“Criteria courts may consider in determining whether to make an incentive award
3 include: (1) the risk to the class representative in commencing suit, both financial and
4 otherwise; (2) the notoriety and personal difficulties encountered by the class
5 representative; (3) the amount of time and effort spent by the class representative; (4) the
6 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
7 class representative as a result of the litigation. (Citations.)”].

8 Here, the Class Representative requests an enhancement award totaling **\$10,000**.
9 (Declaration of Sam Yoo (“Yoo Decl.”), ¶12.) He urges that an award is appropriate for
10 the following reasons: Both before and after filing this action, he communicated with
11 counsel about all aspects of the case and his employment with Defendant, was prompt
12 and responsive to counsel’s inquiries, travelled to counsel’s office, identified witnesses,
13 provided documents in his possession, and spoke with other employees regarding their
14 treatment. (*Id.* at ¶9.) He also spent many hours preparing for his deposition, which
15 lasted a full day. (*Id.* at ¶10.) He contributed to the mediation that took place in June
16 2018 by reviewing and analyzing documents with counsel, contacting other employees
17 to be interviewed prior to the mediation, attending the mediation, and reviewing and
18 signing the settlement agreement. (*Id.* at ¶11.) He estimates he spent in excess of 75
19 hours on this case. (*Ibid.*)

20
21 From the Court’s point of view, paying approximately \$100 per hour for the
22 services of the Class Representative is more than adequate considering the amount of
23 compensation other class members will receive. Moreover, under the terms of the
24 settlement, the LWDA will only be paid \$7,500. The Court therefore reduces the
25 incentive award to \$7,500.

1
2 **F. SETTLEMENT ADMINISTRATION COSTS**

3 The Settlement Administrator, Rust Consulting, Inc., requests **\$8,000** in
4 compensation for its work in administrating this case. (Kruckenberg Decl., ¶16.) At the
5 time of preliminary approval, costs of settlement administration were estimated at
6 **\$8,000.** (¶I.A.) Class Members were provided with notice of this amount and did not
7 object. (Kruckenberg Decl., ¶11, Exh. A.)

8 Accordingly, claims administration costs are approved in the amount of **\$8,000.**
9

10 **IV. CONCLUSION AND ORDER**

11 The Court hereby:

- 12 (1) Grants class certification for purposes of settlement;
13 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
14 (3) Awards **\$110,000** in attorney fees to Class Counsel, ;
15 (4) Awards **\$18,000** in litigation costs to Class Counsel;
16 (5) Approves payment of **\$7,500** (75% of \$10,000 PAGA penalty) to the LWDA;
17 (6) Awards **\$7,500** as a Class Representative Service Award to Sam Yoo;
18 (7) Awards **\$8,000** in claims administration costs to Phoenix Settlement
19 Administrators;
20 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
21 and containing the class definition and full release language, by
22 6/24, 2020;
23 (9) Orders class counsel to provide notice to the class members pursuant to
24 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
25 Code §2699 (1)(3); and

1 (10) Sets a Non-Appearence Case Review re: Final Report re: Distribution of
2 Settlement Funds for

3 March 28, 2022, at 10:00 am.

4 Final Report is to be filed by

5 March 18, 2022.

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7
8 Dated: 6-24-2022

9 
10 Hon. Amy Hogue

11 Judge of the Superior Court
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