

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 17

JCCP5062

United Refrigeration Wage and Hour Cases

June 27, 2022

2:38 PM

Judge: Honorable Maren Nelson
Judicial Assistant: Maribel Mata
Courtroom Assistant: Darla Tamayo

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 06/10/2022 for Hearing on Motion for Final Approval of Settlement on cases CIVDS1824087 and 19STCV18720, now rules as follows: Motions are granted on conditions.

Order is signed and filed this date.

Non-Appearance Case Review re: Receipt of Proof of Service is scheduled for 07/18/2022 at 08:30 AM in Department 17 at Spring Street Courthouse on cases 19STCV18720 and CIVDS1824087.

Judicial Assistant is to give notice.

Clerk's Certificate of Service By Electronic Service is attached.

A copy of this minute order will append to the following coordinated cases under JCCP5062: 19STCV18720 and CIVDS1824087.

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FILED
Superior Court of California
County of Los Angeles
JUN 27 2022
SHERRI R. CARTER EXECUTIVE OFFICER/CLERK
BY *[Signature]* Deputy
MARIBEL MATA

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

UNITED REFRIGERATION WAGE AND
HOUR CASES

Case No.: JCCP5062

Included Actions:

ORDER GRANTING
MOTION FOR FINAL
APPROVAL OF CLASS ACTION ON
CONDITIONS

Verduzco v. United Refrigeration, Inc.
Los Angeles Superior Court Case No.
19STCV18720

Saenz v. United Refrigeration, Inc.
San Bernardino Superior Court Case No.
CIVDS1824087

I. BACKGROUND

Plaintiffs Joel Saenz and Luis Steven Verduzco sue their former employer,
Defendant United Refrigeration, Inc., for alleged wage and hour violations. Defendant
is a distributor of refrigeration, air conditioning and heating parts and equipment in

1 North America. Plaintiffs seek to represent a class of Defendant's current and former
2 non-exempt employees.

3 On September 13, 2018, Plaintiff Saenz filed a class action complaint in San
4 Bernardino Superior Court, alleging a single cause of action for violation of California
5 Business and Professions Code §§ 17200, *et seq.* on behalf of all current and former
6 hourly-paid or non-exempt individuals employed by Defendant since September 18,
7 2014.

8 On May 30, 2019, Plaintiff Verduzco filed a class action complaint in the Los
9 Angeles Superior Court on behalf of himself and all others similarly situated, alleging
10 causes of action for: (1) failure to pay minimum wages (Labor Code §§ 1194, 1194.2,
11 IWC Wage Order No. 7-2001 §4A); (2) failure to pay overtime time wages (Labor
12 Code §§ 510, 1194, IWC Wage Order No. 7-2001, §3(A)); (3) failure to provide meal
13 periods (Labor Code §§ 512, 226.7, IWC Wage Order No. 7-2001, §11); (4) failure to
14 provide rest periods (Labor Code § 226.7, IWC Wage Order No. 7-2001, §12); (5)
15 willful failure to pay wages (Labor Code §§ 201, 203); (6) failure to provide itemized
16 wage statements (Labor Code §§ 226, 1174); (7) violation of Business and Professions
17 Code § 17200, *et seq.*; and (8) enforcement of the Private Attorneys General Act (Labor
18 Code § 2698, *et seq.*) ("PAGA").

19 Defendant filed its Answer to Plaintiff Verduzco's complaint and a Notice of
20 Related Cases regarding the *Saenz* action. On September 13, 2019, the Court denied
21 Defendant's Notice of Related Cases. On September 6, 2019, Defendant filed a
22 Petition for Coordination. On January 9, 2020, the two actions were coordinated to
23 proceed in Department 17 of this Court.

24 On April 29, 2020, the parties mediated the case before Steven J. Serratore. In
25 November 2020, the parties finalized and executed the *Joint Stipulation of Class Action*

1 *and PAGA Settlement and Release* (“Settlement Agreement”), a copy of which was
2 filed with the Court.

3 On March 5, 2021, the Court issued a “checklist” to the parties pertaining to
4 deficiencies in the Settlement Agreement. In response, the parties filed further briefing,
5 including a First Amended Settlement Agreement.

6 Plaintiffs’ motion for preliminary approval of the settlement came on for hearing
7 on November 30, 2021 following requested continuances by the parties. At hearing,
8 issues regarding the scope of the PAGA release and plaintiffs’ consent to fee splitting
9 were discussed.

10 Supplemental papers were filed December 14, 2021, including a Second
11 Amended Settlement Agreement, attached to the Declaration of A. Jacob Nalbandyan,
12 filed December 14, 2021.

13 On December 16, 2021 the Court granted preliminary approval of the settlement
14 on conditions. The terms of the Order were not complied with. As is apparent from the
15 Declaration of Taylor Mitzner dated May 10, 2022, the parties failed to amend the
16 notice as ordered on December 16, 2021 in that they failed to delete the term “respected
17 class action” from the portion of the notice that was mailed. See Order dated December
18 16, 2021 at page 3:15. In addition, plaintiffs’ counsel apparently did not serve the
19 LWDA with the settlement until after the hearing on final approval. See Declaration of
20 Vanoohi Torossian filed June 10, 2022.

21 Now before the Court are Plaintiffs’ motions for final approval of the settlement,
22 including for payment of fees, costs, and service awards to the named plaintiffs. For
23 the reasons set forth below, the Court grants final approval of the settlement and awards
24 fees, costs and service awards as set forth herein, effective July 18, 2022, and provided
25 that the LWDA is given notice of this Order by June 30, 2022 and files no objection to

1 the settlement prior to July 18, 2022. No funds are to be disbursed until further Order of
2 the Court.

3
4 **I. THE TERMS OF THE SETTLEMENT**

5 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

6 "Class Member(s)" or "Class" mean all current and former non-exempt
7 employees employed by Defendant at any time from September 13, 2014 through
8 October 13, 2020. Defendant represents that the number of Class Members is
9 approximately 311 as of October 13, 2020. (¶8.d)

10 "Class Period" means the time period from September 13, 2014 through October
11 13, 2020. (¶8.f)

12 "Settlement Class Members" means all Class Members who do not submit a
13 valid and timely Request for Exclusion. (¶8.kk)

14 "PAGA Members" means all current and former non-exempt employees
15 employed by Defendant at any time from February 1, 2018 through October 13, 2020.
16 Defendant represents that the number of PAGA Members is approximately 205 as of
17 October 13, 2020. (¶8.x)

18 "PAGA Period" means the time period from February 1, 2018 through October
19 13, 2020. (¶8.y)

20
21 **B. THE MONETARY TERMS OF SETTLEMENT**

22 The essential monetary terms are as follows:

23 The Total Settlement Amount is **\$2,800,000** (¶8.ll). This includes payment of a
24 PAGA penalty of **\$100,000** to be paid 75% to the LWDA (\$75,000) and 25% to PAGA
25 Members (\$25,000) (¶15).

1 Escalator Clause: In connection with preliminary approval, Defendant
2 represented that, for the period of September 13, 2014 to April 28, 2020, there were 306
3 individuals in the Class and approximately 35,000 Workweeks. If it is determined that
4 the total number of Class Members increases by more than ten percent (10%) during the
5 Class Period, then, the Total Settlement Amount will be increased on a proportional
6 basis by the same number of percentage points above ten percent (10%) by which the
7 actual number of Class Members exceeds 306 (e.g., if the threshold of 306 Class
8 Members is exceeded by 15%, the Total Settlement Amount will increase by 5%).
9 (¶39). The actual number of class members was 308. The total work weeks was
10 39,721.43. Mitzner Dec. ¶3. Based on the agreement, this would not appear to trigger
11 the escalator clause, although the number of work weeks in fact exceeds 10% of that
12 upon which the settlement was based.

13 The Net Settlement Amount (“Net”) (**\$1,650,000**) is the Total Settlement
14 Amount less:

- 15 ○ Up to **\$980,000** (35%) for attorney fees (¶12);
- 16 ○ Up to **\$40,000** for attorney costs (*Ibid.*);
- 17 ○ Up to **\$20,000 total** [\$10,000 per Plaintiff] for service awards to the
18 proposed class representatives (¶13); and
- 19 ○ Estimated **\$10,000** for settlement administration costs (¶14).
- 20 ● The employer's share of taxes and contributions on the wages portion of
21 Individual Settlement Shares will be paid separately and in addition to the Total
22 Settlement Amount. (¶27.a)
- 23 ● Assuming the Court approves all maximum requested deductions, approximately
24 \$1,650,000 will be available for distribution to participating class members.
25 Assuming full participation, the average settlement share will be approximately

1 \$5,357.14. ($\$1,650,000 \text{ Net} \div 308 \text{ class members} = \$5,357.14$). The lowest
2 payment will be \$41.54. The highest is \$13,185.76. See Mitzner Dec. ¶12. In
3 addition, each PAGA Member will receive a portion of the PAGA penalty,
4 estimated to be \$121.95 per PAGA Member. ($\$25,000 \text{ or } 25\% \text{ of } \$100,000$
5 $\text{PAGA penalty} \div 213 \text{ PAGA Members} = \117.37).

- 6 • There is no Claim Requirement (Notice pg. 1).
- 7 • The settlement is not reversionary (¶21).
- 8 • Individual Settlement Share Calculation: Individual Settlement Shares will be
9 calculated and apportioned from the Net Settlement Amount based on the Class
10 Members' Workweeks, as follows: (¶16.a) After Final Approval of the
11 Settlement, the Settlement Administrator will divide the final Net Settlement
12 Amount by the Workweeks of all Settlement Class Member to yield the "Final
13 Workweek Value," and multiply each Settlement Class Member's individual
14 Workweeks by the Final Workweek Value to yield his or her Individual
15 Settlement Share. (¶16.b) "Workweek(s)" means the number of weeks each
16 Class Member worked for Defendant as an hourly-paid or non-exempt employee
17 during the Class Period, which will be calculated by the Settlement
18 Administrator by determining the number of days between the start and end
19 dates of employment during the Class Period, divided by seven (7). Each Class
20 Member will be credited with at least one (1) Workweek. (¶8.mm). This work
21 was done and no work week disputes occurred. Mitzner Dec. ¶ 10.
 - 22 ○ PAGA Payment Calculation: Individual PAGA Payments will be
23 calculated and apportioned from the 25% of the PAGA Amount payable
24 to PAGA Members, based on the PAGA Members' PAGA Workweeks,
25 as follows: the Settlement Administrator will divide 25% of the PAGA

1 Amount by the PAGA Workweeks of all PAGA Members to yield the
2 "PAGA Workweek Value," and multiply each PAGA Member's
3 individual PAGA Workweeks by the PAGA Workweek Value to yield his
4 or her Individual PAGA Payment. (§16.b) "PAGA Workweek(s)" means
5 the number of weeks each PAGA Member worked for Defendant as an
6 hourly-paid or non-exempt employee during the PAGA Period, which
7 will be calculated by the Settlement Administrator by determining the
8 number of days between the start and end dates of employment during the
9 PAGA Period, divided by seven (7). Each PAGA Member will be
10 credited with at least one (1) PAGA Workweek. (§8.bb)

11 • Tax Withholdings: Each Individual Settlement Share will be allocated as one-
12 third (1/3) wages, one-third (1/3) penalties, and one-third (1/3) interest. (§27.a)
13 Each Individual PAGA Payment will be allocated as one hundred percent
14 (100%) penalties. (§27.b)

15 • Uncashed Settlement Payment Checks: Each Individual Settlement Payment and
16 Individual PAGA Payment check will be valid and negotiable for one hundred
17 and eighty (180) calendar days from the date the checks are issued, and
18 thereafter, shall be cancelled. All funds associated with such cancelled checks
19 will be transmitted to the Unclaimed Property Division of the State Controller's
20 Office in the name of the Settlement Class Member and/or PAGA Member
21 whose check is cancelled. PAGA Members whose Individual PAGA Payment
22 checks are cancelled shall, nevertheless, be bound by the PAGA Settlement.
23 (§21)

24 • Funding and Distribution of the Settlement Amount: Within fifteen (15) calendar
25 days after the Effective Date, the Settlement Administrator will provide the

1 Parties with an accounting of the amounts to be paid by Defendant pursuant to
2 the terms of the Settlement Agreement. Within thirty (30) calendar days of the
3 Effective Date, Defendant will make a one-time deposit of the Total Settlement
4 Amount into a settlement account to be established by the Settlement
5 Administrator. Within seven (7) calendar days of the funding of Total Settlement
6 Amount, the Settlement Administrator will issue payments due under the
7 settlement and approved by the Court. (¶11)

8
9 **C. TERMS OF RELEASES**

- 10
11 • Release of Claims by Settlement Class Members. Upon the Effective Date and
12 full funding of the Total Settlement Amount, Plaintiffs and all Class Members
13 who do not submit a valid and timely Request for Exclusion (i.e., Settlement
14 Class Members) will be deemed to have fully, finally and forever released,
15 settled, compromised, relinquished, and discharged the Released Parties of all
16 Released Class Claims he or she may have or had. (¶32)
- 17 ○ “Released Class Claims” means any and all claims and damages, but not
18 including any and all claims for civil penalties under the Private
19 Attorneys General Act of 2004, arising from any of the facts alleged in
20 Plaintiffs' Operative Complaints during the Class Period against Released
21 Parties, including Defendant's alleged failure to pay minimum wages,
22 failure to pay overtime wages, failure to provide meal and rest periods,
23 failure to issue accurate itemized wage statements, and violation of
24 California Business and Professions Code sections 17200, et seq., for,
25 *inter alia*, failure to pay overtime and minimum wages, provide meal and

1 rest periods and associated premium payments, timely pay wages during
2 employment and upon termination, provide compliant wage statements,
3 maintain complete and accurate payroll records, and reimburse necessary
4 business-related expenses. (§8.dd)

- 5 • Release of Claims by PAGA Members. Upon the Effective Date and full funding
6 of the Total Settlement Amount, Plaintiff Verduzco and all PAGA Members will
7 be deemed to have fully, finally and forever released, settled, compromised,
8 relinquished, and discharged the Released Parties of all Released PAGA Claims
9 he or she may have or had. (§33)

- 10 ○ “Released PAGA Claims” means any and all claims for civil penalties
11 under the Private Attorneys General Act of 2004 arising from any of the
12 facts and legal theories alleged in the Verduzco PAGA Notice during the
13 period from February 1, 2018 through October 13, 2020 against Released
14 Parties. (§8.ee)

- 15 • "Released Parties" means Defendant, and all its present and former parent
16 companies and trusts, subsidiaries, divisions, related or affiliated companies and
17 trusts, shareholders, officers, directors, employees, agents, attorneys, insurers,
18 successors and assigns. (§8.ff)
- 19 • The named Plaintiffs will also provide a general release and a waiver of the
20 protections of Cal. Civ. Code §1542. (§34)
- 21 • The releases are effective upon the Effective Date and full funding of the Total
22 Settlement Amount (§32), which is to occur within thirty (30) calendar days of
23 the Effective Date (§11).

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25 //

1 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

2 “Before final approval, the court must conduct an inquiry into the fairness of the
3 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
4 settlement agreement after the final approval hearing, the court must make and enter
5 judgment. The judgment must include a provision for the retention of the court's
6 jurisdiction over the parties to enforce the terms of the judgment. The court may not
7 enter an order dismissing the action at the same time as, or after, entry of judgment.”
8 Cal. Rules of Court, rule 3.769(h).

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

23 “The burden is on the proponent of the settlement to show that it is fair and
24 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
25 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to

1 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
2 litigation; and (4) the percentage of objectors is small.” See *Wershba, supra*, 91
3 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
4 1802. Notwithstanding an initial presumption of fairness, “the court should not give
5 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
6 116, 130. “Rather, to protect the interests of absent class members, the court must
7 independently and objectively analyze the evidence and circumstances before it in order
8 to determine whether the settlement is in the best interests of those whose claims will be
9 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
10 that determination, the court should consider factors such as “the strength of plaintiffs’
11 case, the risk, expense, complexity and likely duration of further litigation, the risk of
12 maintaining class action status through trial, the amount offered in settlement, the extent
13 of discovery completed and stage of the proceedings, the experience and views of
14 counsel, the presence of a governmental participant, and the reaction of the class
15 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
16 the court is free to engage in a balancing and weighing of factors depending on the
17 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

18 **A. A PRESUMPTION OF FAIRNESS EXISTS**

19 The Court preliminarily found in its Order of December 16, 2021 that the
20 presumption of fairness should be applied. Although the number of work weeks at issue
21 is approximately 12% higher than estimated, the average payout per class members does
22 not materially differ from that originally estimated. No other facts have come to the
23 Court’s attention that would alter that preliminary conclusion. Accordingly, the
24 settlement is entitled to a presumption of fairness as set forth in the preliminary approval
25 order.

1 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

2 The settlement was preliminarily found to be fair, adequate and reasonable.
3 Notice has now been given to the Class and the LWDA. The LWDA will be given an
4 opportunity to object to the settlement before this Order becomes final.

5 Number of class members: 308

6 Number of notices mailed: 308

7 Number of undeliverable notices: 5

8 Number of opt-outs: 0

9 Number of objections: 0

10 Number of participating class members: 308

11 (Mitzner Dec. ¶¶ 5-9).

12 Although the Notice did not fully conform to the Court's Order, the notice was
13 adequate as to the class members and complies with the requirements of due process.

14 Given the reactions of the Class Members to the proposed settlement and for the
15 reasons set for in the Preliminary Approval order, and subject to consideration of any
16 objection by the LWDA, the settlement is found to be fair, adequate, and reasonable.

17
18 **C. CLASS CERTIFICATION IS PROPER**

19 For the reasons set forth in the preliminary approval order, certification of the
20 Class for purposes of settlement is appropriate.

21
22 **D. ATTORNEY FEES AND COSTS**

23 Class Counsel requests \$980,000 for attorney fees (35%) and \$ 36,299.95 for
24 costs.

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

6 In the instant case, fees are sought pursuant to the percentage method. The fee
7 request is in excess of that customarily used in both state and federal court. The federal
8 courts in the Ninth Circuit apply a benchmark presumption that 25% is reasonable but
9 which may be modified based on circumstances in an individual case. See *Vizcaino v.*
10 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043; *Jones v. Abercrombie & Fitch Trading*
11 *Co.* (C.D.Cal. Nov. 19, 2018, No. CV 15-0105 JGB (Ex)) 2018 U.S. Dist. LEXIS
12 198001; *Fan v. Delta Air Lines* (C.D.Cal. May 20, 2020, No. 2:19-cv-04599-SVW-SS)
13 2020 U.S. Dist. LEXIS 157480; *Castro v. Paragon Indus.* (E.D.Cal. May 20, 2021, No.
14 1:19-cv-00755-DAD-SKO) 2021 U.S. Dist. LEXIS 97142. State courts usually use a
15 33.33% figure, which may be modified upward or downward in particular circumstances.
16 See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521.

17 Counsel argued that a percentage should reflect a lodestar increase so as to incentivize the
18 filing of cases and because of the risks undertaken by counsel. See Nalbandyan Dec. ¶¶ 48-52.
19 However, in considering that argument, it is to be considered that enhancement for risk may
20 not be appropriate because the same is reflected in the hourly rate and amounts to double
21 counting. See *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 626
22 and *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 647.

23 In any event, although a lodestar cross check may be performed, there is
24 inadequate information to do so or to consider the same as part of a percentage award. A
25 lodestar is calculated by multiplying the number of hours reasonably expended by the

1 reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-
2 1096 (*PLCM*). “Generally, ‘[t]he lodestar is calculated using the reasonable rate for
3 comparable legal services in *the local community* for noncontingent litigation of the
4 same type, multiplied by the reasonable number of hours spent on the case.’ ”
5 *Environmental Protection Information Center v. Dept. of Forestry & Fire Protection*
6 (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155
7 Cal.App.4th 1233, 1242-1243.

8 As to the reasonableness of the rate and hours charged, trial courts consider
9 factors such as “the nature of the litigation, its difficulty, the amount involved, the skill
10 required in its handling, the skill employed, the attention given, the success or failure,
11 and other circumstances.” *PLCM, supra*, 22 Cal.4th at p. 1096. “The evidence should
12 allow the court to consider whether the case was overstaffed, how much time the
13 attorneys spent on particular claims, and whether the hours were reasonably expended.”
14 *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

15 The total claimed lodestar is \$863,147.50, which results in an enhancement of
16 1.135 if the lodestar calculation as presented is accepted and a 35% fee is awarded.

17 The claimed lodestar for Levin & Nalbandyan is \$336,647.50. Counsel
18 Nalbandyan seeks \$850 per hour for time billed before November 2020 and \$1000 per
19 hour for his time billed after November 2020, although he states that his current rate is
20 \$750 per hour. See Nalbandyan Dec. ¶ 41 (stating that Mr. Nalbandyan’s current hourly
21 rate is \$750 per hour). He suggests that his recent experience in prevailing in FEHA
22 employment cases tried in Sutter County and two arbitrations and successful appellate
23 work justifies this amount. However, there is no factual showing that these rates are
24 charged by lawyers in the Los Angeles area with Mr. Nalbandyan’s experience who are
25 doing wage and hour class actions.

1 Mr. Nalbandyan's Declaration breaks down who worked on the matter, and the
2 accompanying Declarations of Torossian, Turner, Singer, S. Bautista, C. Bautista, and
3 Arias provide their billing detail. Absent, however, is an aggregation by task so as to
4 evaluate how much was spent in total on each area of work. What can be seen is some
5 duplication of effort with other counsel in reviewing the data provided for mediation and
6 in preparing and then revising the settlement agreement and motion for preliminary
7 approval.

8 Exhibit A to the Declaration of Aiwazian shows a total of 702 hours of billed time.
9 The claimed billing rate is \$750 by various timekeepers at Lawyers for Justice PC. The
10 represented lodestar is \$526,500. There is no showing as to which timekeepers did what
11 work or what their training and experience is, other than Mr. Aiwazian. Further, there
12 appears to be some work done that was excessively billed, including time devoted to a
13 motion for class certification (39.5 hours) that was not filed.

14 The Court declines to engage in a lodestar analysis or to consider an
15 "enhancement" to a percentage award without complete information from both firms.

16 At oral argument, counsel also argued that the case has been pending for some
17 time, resulting in a delay in payment to them, and that the amount to be paid to proposed
18 class members is relatively high compared to other wage and hour cases, justifying a 35%
19 fee. Where cases are long delayed through no fault of counsel, or there is an
20 extraordinary result, or a percentage award would be less than a reasonable lodestar, an
21 increased fee on a percentage basis may be reasonable. Those factors are not present
22 here.

23 The *Saenz* case, filed by Lawyers for Justice P.C., was a UCL class action alleging
24 wage and hour violations as the underlying predicate acts for the UCL claim and was
25

1 filed September 13, 2018. The *Verduzco* case, which is a wage and hour class action,
2 was filed May 30, 2019.

3 Defendant filed a petition for coordination on September 11, 2019, which was
4 unopposed and granted on November 26, 2019. The unopposed Petition for Coordination
5 states that as of its filing, no discovery had taken place in the *Saenz* case, and no class or
6 merits determinations had been made. See Petition for Coordination at 7:19-26. The cases
7 settled at mediation on April 29, 2020, after the receipt and analysis of informal
8 discovery.

9 A status conference was held on July 17, 2020, and the motion for preliminary
10 approval of the settlement was scheduled for November 18, 2020, with moving papers to
11 be filed 16 court days in advance. No papers were filed. The matter was continued to
12 March 5, 2021. See Status Report filed November 12, 2020 and Minute Order of
13 November 18, 2020.

14 Plaintiffs' motion was filed January 27, 2021. The matter was heard March 5,
15 2021. The Court issued a "checklist" of matters to be addressed, with further papers to be
16 filed by April 19, 2021. The matter was continued to May 11, 2021.

17 On April 16, 2021 the parties stipulated to continue the matter to August 4, 2021.
18 This request was granted, with the Court noting that no further continuances would be
19 granted absent good cause shown. See Stipulation and Order dated April 22, 2021.

20 On July 20, 2021, the parties again stipulated to continue the matter, requesting an
21 additional few days to file their papers. The Court's first available date was November
22 30, 2021.

23 The matter again came on for hearing on November 30, 2021. Amendments to the
24 release language were requested in light of the Court of Appeal's decision in *Uribe v.*
25

1 *Crown Building Maintenance Co.* (2021) 70 Cal. App. 5th 986. The matter was
2 continued to December 15, 2021.

3 An order preliminarily approving the settlement on conditions was entered
4 December 16, 2021.

5 No extraordinary amount of work needed to be done by plaintiffs' counsel on the
6 JCCP petition. The work done in this case was that which is routinely done in a wage
7 and hour case by experienced practitioners. Any delay in awarding fees is largely
8 attributable to the continuances requested by counsel and, to some extent, due to
9 clarifying appellate law regarding PAGA and class settlements that developed in the fall
10 of 2020.

11 While the amounts awarded to the individual class members are comparatively
12 large (average of approximately \$5,357), when considered in terms of amounts that often
13 are awarded in wage and hour cases, a comparison cannot be made simply by amount.
14 What is needed is a showing that the result achieved, based on the calculated liability, is
15 well in excess of what might be expected. The workweeks at issue in this case are high
16 (39,721) (September 13, 2014 through October 13, 2020) and class members had an
17 average hourly rate of pay of \$18.29 (See Aiwazian Dec. filed January 27, 2021, ¶22;
18 Mitzner Dec. ¶¶ 3,12). While counsel appropriately investigated the case and the
19 resulting settlement is fair, just and reasonable given the risks the case presented, no
20 extraordinary result is shown.

21 Fees in the amount of 33 1/3 % (\$933,333) are appropriate and are approved. This
22 results in a modest amount above the claimed lodestar. (1.08).

23 Costs: Class Counsel requests **\$36,299.95** in costs, being incurred as \$25,371.70
24 by Lawyers for Justice and \$10,928.25 by Levin & Nalbandyan LP. This is less than
25 the cap provided in the settlement agreement. The estimated amount (\$40,000) was

1 disclosed to Class Members in the Notice, and no objections were received. However,
2 Exhibit K to the Declaration of Nalbandyan shows costs of \$8,190.47.

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

5 Costs of **\$33,562.17** are approved.

6
7 **E. SERVICE AWARDS TO CLASS REPRESENTATIVE**

8 A service (or incentive) fee award to a named class representative must be
9 supported by evidence that quantifies the time and effort expended by the individual and
10 a reasoned explanation of financial or other risks undertaken by the class representative.
11 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
12 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
13 [“Criteria courts may consider in determining whether to make an incentive award
14 include: (1) the risk to the class representative in commencing suit, both financial and
15 otherwise; (2) the notoriety and personal difficulties encountered by the class
16 representative; (3) the amount of time and effort spent by the class representative; (4) the
17 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
18 class representative as a result of the litigation. (Citations.)”].

19 Here, the Class Representatives each request an enhancement award of **\$10,000**.
20 Plaintiff Verduzco testifies he spent over 52 hours on this matter and ran the risk of
21 stigmatization from serving as a plaintiff. Plaintiff Saenz indicates he spent
22 approximately 41 hours on this matter but does not indicate he has any other risk
23 associated with the case.

24 In light of the above-described contributions to this action, and in
25 acknowledgment of the benefits obtained on behalf of the class, a service award of

1 \$7,500 to each plaintiff is appropriate.

2
3 **F. SETTLEMENT ADMINISTRATION COSTS**

4 The Settlement Administrator, Phoenix Settlement Administrators, requests
5 \$10,000 in compensation for its work in administering this case. At the time of
6 preliminary approval, costs of settlement administration were estimated at \$ 10,000.
7 Class Members were provided with notice of this amount and did not object. Mitzner
8 Dec. ¶¶ 5, 9. Ex.A.

9 Accordingly, settlement administration costs are approved in the amount of
10 \$10,000.

11
12 **IV. CONCLUSION AND ORDER**

13 Effective July 18, 2002, and subject to any objection filed by the LWDA, the Court
14 hereby:

- 15 (1) Grants class certification for purposes of settlement;
- 16 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 17 (3) Awards **\$933,333** in attorney fees to Class Counsel to be paid 65% to Lawyers
18 for Justice PC and 35% to Levin & Nalbandyan LLP;
- 19 (4) Awards **\$33,562.17** in litigation costs to Class Counsel, payable \$25,371.70 to
20 Lawyers for Justice PC and \$8,190.47 to Levin & Nalbandyan, LLP, Client
21 Trust Account in accordance with the terms and methodology set forth in the
22 Settlement Agreement;
- 23 (5) Approves payment of **\$75,000** (75% of PAGA Payment) to the LWDA;
- 24 (6) Awards Class Representative Service Awards of **\$7,500** each to Steven
25 Verduzco and Joel Saenz;

- 1 (7) Awards **\$10,000** in settlement administration costs to Phoenix Settlement
2 Administrators;
- 3 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
4 and containing the class definition, full release language, and indicating that no
5 class members opted out by July 18, 2022;
- 6 (9) Orders class counsel to submit proof of compliance with the conditions herein
7 and a Proposed Order to the Settlement Administrator permitting the release of
8 settlement funds by July 18, 2022;
- 9 (10) Orders class counsel to provide notice to the class members pursuant to
10 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
11 Code §2699 (1)(3);
- 12 (11) Orders no funds are to be paid to any party, the class, or Class Counsel prior to
13 receipt of an order from this Court that the conditions in this Order have been
14 satisfied and an Order permitting disbursement entered;
- 15 (12) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
16 Settlement Funds for March 8, 2023, at 8:30 a.m. Final Report is to be filed
17 by March 1, 2023.

18 Dated: 6/27/2022



19 MAREN E. NELSON
20 Judge of the Superior Court
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22
23
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