

FILED
LOS ANGELES SUPERIOR COURT

JUN 18 2021

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY N. Navarro Deputy
NANCY NAVARRO

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

YELTER CRUZ, LUIS RODRIGUEZ,
NOE VISCARRA, PARANDZEM DONNA
EREMIAN, individually, and on behalf of
other members of the general public
similarly situated; ARTURO SANCHEZ,
EUGENIO RODRIGUEZ, MELODEE
DAVIS, JAIME ERAZO, AMADEO
ENRIQUE GOMEZ, individually, and on
behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

v.

GELSON'S MARKETS, a California
corporation; ARDEN GROUP, INC., an
unknown business entity; and DOES 2
through 100, inclusive,

Defendants.

Case No.: BC670061

ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: June 18, 2021
Time: 9:30 a.m.
Dept.: SSC-17

1 **I. BACKGROUND**

2 Plaintiffs Yelter Cruz, Arturo Sanchez, Eugenio Rodriguez, Melodee Davis, Luis
3 Rodriguez, Jaime Erazo, Amadeo Enrique Gomez, Noe Viscarra, and Parandzem
4 Donna Eremian (collectively, “Plaintiffs”) sue their former employer, Defendants
5 Gelson’s Markets and Arden Group, Inc. (collectively, “Defendant” or “Defendants”) for
6 alleged wage and hour violations.

7 On July 26, 2017, Plaintiff Yelter Cruz filed a Class Action Complaint for
8 Damages against Defendant Gelson’s Markets. On March 28, 2018, Cruz filed a First
9 Amended Complaint (“FAC”) which added Luis Rodriguez, Noe Viscarra, Parandzem
10 Donna Eremian, Arturo Sanchez, Eugenio Rodriguez, Melodee Davis, Jaime Erazo, and
11 Amadeo Enrique Gomez as named plaintiffs. The FAC alleged claims for the following
12 violations of the California Labor Code: (1) unpaid overtime; (2) unpaid meal period
13 premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) final wages
14 not timely paid; (6) wages not timely paid during employment; (7) non-compliant wage
15 statements; (8) failure to keep requisite payroll records; and (9) unreimbursed business
16 expenses, as well as (10) violation of California Business & Professions Code §§ 17200,
17 et seq. and (11) declaratory relief.

18 On July 9, 2018, Plaintiffs filed a Second Amended Complaint adding a twelfth
19 cause of action under the Private Attorney General Act, California Labor Code section
20 2698, et seq. (“PAGA”). On July 26, 2018, Plaintiffs filed an Amendment to Complaint
21 which added Defendant Arden Group, Inc. as a defendant.

22 On February 14, 2019, James Ryan filed a complaint pursuant to the PAGA
23 entitled *James Ryan v. Gelson’s Markets*, Orange County Superior Court, Case No. 30-
24 2019-01051563-CU-OE-CXC (the “Ryan Action”).
25

1 Following negotiations, the parties entered into the *Stipulation of Class Action and*
2 *PAGA Settlement and Release* (“Settlement Agreement”), a copy of which was filed with
3 the Court.

4 In response to the Court’s “Checklist” of items as to deficiencies in the motion,
5 Plaintiffs’ Counsel filed supplemental briefing on September 21, 2020, which included
6 the Amended Settlement Agreement. In response to additional concerns raised by the
7 Court, Plaintiffs’ Counsel filed further supplemental briefing on October 23, 2020,
8 which included a revised Class Notice.

9 The settlement was preliminarily approved on October 29, 2020, subject to
10 certain conditions, with which there has been compliance. Notice was given to the
11 Class Members as ordered (see Declaration of Elizabeth Kruckenberg).

12 Now before the Court is Plaintiff’s motion for final approval of the Settlement
13 Agreement, including for payment of fees, costs, and service awards to the named
14 plaintiffs. For the reasons set forth below, the Court grants final approval of the
15 settlement terms, except as to enhancement payments, attorneys fees, and costs, which
16 are approved in amounts set forth below.

17 18 **II. THE TERMS OF THE SETTLEMENT**

19 20 **A. SETTLEMENT CLASS DEFINITION**

21 “Class” or “Class Members” means all current and former hourly or non-exempt
22 employees of Defendants in California at any time from July 26, 2013 to the date of
23 preliminary approval of the Settlement. (Settlement Agreement ¶1.2)

24 “Class Period” means the period from July 26, 2013 through and including the
25 Preliminary Approval Date. (¶1.7)

1 “PAGA Period” means the period from July 26, 2016 through and including the
2 Preliminary Approval Date. (¶1.30)

3
4 **B. THE MONETARY TERMS OF SETTLEMENT**

5 The essential monetary terms are as follows:

- 6 • The Maximum Settlement Amount (“MSA”) is **\$4,904,532.60**, which includes
7 the amount of **\$654,532.60** that Defendants previously paid in Individual
8 Settlements to Class Members. Defendants’ obligation to additionally fund the
9 Maximum Settlement Amount is limited to **\$4,250,000**. (Settlement Agreement
10 ¶1.23).
 - 11 ○ This includes payment of a PAGA penalty of **\$550,000** to be paid 75% to
12 the LWDA (**\$412,500**) and 25% to Class Members (**\$137,500**) (¶1.28).
 - 13 • The Net Settlement Amount (“Net”) (**\$1,386,277.61**) is the MSA less:
 - 14 ○ **\$654,532.60** previously paid by Defendants in Individual Settlements to
15 Class Members (¶1.23);
 - 16 ○ Up to **\$1,863,722.39** (38%) for attorney fees (¶3.16);
 - 17 ○ Up to **\$350,000** for attorney costs;
 - 18 ○ Up to **\$70,000** total for service awards to the proposed class
19 representatives (\$7,500 each to Plaintiffs Yelter Cruz, Arturo Sanchez,
20 Eugenio Rodriguez, Melodee Davis, Luis Rodriguez, Jaime Erazo,
21 Amadeo Enrique Gomez and Noe Viscarra; \$5,000 each to Plaintiffs
22 James Ryan and Parandzem Donna Eremian) (¶1.16);
 - 23 ○ Up to **\$30,000** for settlement administration costs (¶1.44). Counsel
24 represented at the preliminary approval hearing that the bid amount is
25 \$20,000.

- 1 • Employer-side payroll taxes will be paid separately from, and in addition to, the
2 MSA. (§3.14.3)
 - 3 • Assuming the Court approves all maximum requested deductions, approximately
4 \$1,541,914.24 will be available for automatic distribution to participating class
5 members. The average settlement share will be approximately \$207.02.
6 (\$1,541,914.24 Net ÷ 7,448 class members = \$207.02). In addition, the Class
7 Members who worked during the PAGA Period will receive a portion of the
8 PAGA penalty, estimated to be \$24.21 per class member. (\$137,500 [25% of
9 \$550,000 PAGA penalty ÷ 5,680 PAGA class members = \$24.21)
 - 10 • There is no Claim Requirement (Notice pg. 1)
 - 11 • The settlement is not reversionary (Aiwazian Decl. ISO Prelim ¶14)
 - 12 • Settlement Payment Calculation. Each Settlement Class Member's share of the
13 Net Settlement Amount shall be determined as follows:
 - 14 ○ Total Workweeks = (1 x all Non-Released Weeks) x (0.8 x all Released
15 Weeks)
 - 16 ○ Workweek Value = Net Settlement Amount ÷ Total Workweeks
 - 17 ○ Individual Class Settlement Payment = [(1 x individual Non-Released
18 Weeks) x (0.8 x individual Released Weeks)] x Workweek Value
- 19 Compensable Weeks for which claims were previously released by acceptance
20 of an Individual Settlement (i.e., Released Weeks) shall have 0.8 of the
21 Workweek Value for Compensable Weeks that were not released by Individual
22 Settlements. The Class Settlement Payments will be reduced for employee's
23 share of payroll taxes on the wages portion for each Settlement Class Member.
24 In the event a Class Member opts out of the Settlement, their Class Settlement
25

1 Payment will remain a part of the Net Settlement Amount and distributed to
2 Settlement Class Members. (§3.14.2)

- 3 • The PAGA Penalties Payments payable to each Class Member shall be
4 determined as follows:
 - 5 ○ Pay Period Value = PAGA Settlement Amount ÷ total Compensable Pay
6 Periods
 - 7 ○ Individual PAGA Penalties Payment = individual Compensable Pay
8 Periods x Pay Period Value (§3.14.4)
- 9 • Tax Withholdings: Class Settlement Payments will be allocated as follows:
10 33.3% as wages, 66.7% as interest/penalties/non-wage damages. (§3.14.3)
- 11 • Uncashed Settlement Payment Checks: If a Settlement check is not cashed or
12 deposited within one hundred eighty (180) calendar days after the date it is
13 mailed to a Settlement Class Member, it will be voided. The funds from such
14 voided checks will be maintained by the Settlement Administrator and
15 transmitted to Legal Aid Foundation of Los Angeles pursuant to California Code
16 of Civil Procedure section 384. After funds from the voided checks are
17 transferred to Legal Aid Foundation of Los Angeles, Class Counsel will submit
18 to the court an amended judgment specifying the amount of such funds
19 transferred in compliance with California Code of Civil Procedure § 384 and
20 384.5 and Government Code § 68520. (§3.12)
- 21 • Funding and Distribution of the Settlement. Defendants are required to fully
22 fund and pay \$4,250,000 of the Maximum Settlement Amount within twenty
23 (20) calendar days of the Effective Date. (§3.13) Class Settlement Payments and
24 PAGA Penalties Payments shall be mailed by regular First-Class U.S. Mail to
25

1 Settlement Class Members' last known mailing address within thirty (30)
2 calendar days after the Effective Date. (§3.14.1)

3
4 **C. TERMS OF RELEASES**

- 5 • Release As To All Settlement Class Members. As of the Effective Date and after
6 Defendants fully fund the Maximum Settlement Amount, all Settlement Class
7 Members, including Plaintiffs, release the Released Parties from the Released
8 Class Claims and all Class Members, including Plaintiffs, release the Released
9 PAGA Claims. With respect to Released Class Claims which arise under the Fair
10 Labor Standards Act ("FLSA"), by endorsing, cashing, and/or depositing the
11 Class Settlement Payment check, Settlement Class Members, including
12 Plaintiffs, shall be deemed to have opted-in under FLSA, 29 U.S.C. § 216(b),
13 and shall have, by operation of the Final Approval Order and Judgment, fully,
14 finally, and forever released, relinquished, and discharged each and all of the
15 Released Parties from any and all Released Class Claims that arise under the
16 FLSA. The Settlement Administrator shall include a legend on the Class
17 Settlement Payment check stating: "By cashing this check, I am affirmatively
18 opting into the release of claims in *Yelter Cruz, et al. v. Gelson's Markets*, Case
19 No. BC670061, under FLSA, 29 U.S.C. § 216(b), and releasing the Released
20 Class Claims described in the Settlement Agreement." (§3.3.1)
- 21 • "Released Class Claims" means any and all California state and federal law
22 wage-and-hour claims, rights, demands, liabilities, and/or causes of action of
23 every nature and description, arising from or related to any and all claims that
24 were asserted or could have been asserted based on the facts alleged in the
25 Operative Complaint on file with the court in the Lawsuit during the Class

1 Period, including, without limitation, statutory, constitutional, contractual, and/or
2 common law claims for wages, reimbursements, damages, unpaid costs,
3 penalties, liquidated damages, punitive damages, interest, attorneys' fees,
4 litigation costs, restitution, or equitable relief. (§1.36)

- 5 • "Released PAGA Claims" means any and all individual and representative
6 claims that were alleged or could have been alleged against the Released Parties
7 under California Labor Code section 2698, et seq. based on the factual
8 allegations contained in the PAGA notices and Operative Complaint on file with
9 the court in this action during the PAGA Period, including but not limited to
10 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
11 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 and 2804, and
12 IWC Wage Orders including, inter alia, Wage Orders 4-2001, 5-2001, 7-2001,
13 and 9-2001, any resulting claim for attorneys' fees and costs under PAGA, and
14 claims asserted or that could have been asserted in the *Ryan* Action based on the
15 factual allegations contained in the operative complaint in that case during the
16 PAGA Period. (§1.37)

- 17 • "Released Parties" means Gelson's and Arden, and all of their respective current
18 and former parents, subsidiaries, predecessors and successors, and affiliated
19 entities, and each of their respective officers, directors, employees, partners,
20 shareholders, and agents, and any other successors, assigns, or legal
21 representatives. (§1.38)

- 22 • The named Plaintiffs will also provide a general release and a waiver of the
23 protections of Cal. Civ. Code §1542. (§3.3.2)

- 24 • The releases are effective as of the Effective Date and after Defendants fully
25 fund the Maximum Settlement Amount. (§3.3.1)

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 October 29, 2020 that the
20 presumption of fairness should be applied. No facts have come to the Court’s attention
21 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
22 presumption of fairness as set forth in the preliminary approval order.

23 //
24 //
25 //

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 notice process resulted in
4 the following:

5 Number of class members: 7,448

6 Number of notices mailed: 7,448

7 Number of undeliverable notices: 79

8 Number of opt-outs: 0

9 Number of objections: 0

10 Number of participating class members: **7,448**

11 (Declaration of Elizabeth Kruckenberg (“Kruckenberg Decl.”) ¶¶ 3-11.)

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

16 **C. CLASS CERTIFICATION IS PROPER**

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

19 **D. ATTORNEY FEES AND COSTS**

20 Class Counsel requests **\$1,863,722.36** (38% of both the new money and that
21 which was paid to class members in individual settlements during the class period) for
22 attorney fees and **\$204,363.37** for costs. (Motion for Final Approval at 1:5-10.). It is
23 represented that this results in a lodestar multiplier of 1.11. (Aiwazian Decl. ISO Final
24 Approval ¶11.) In support of the fee request are the Declarations of Edwin Aiwazian
25

1 (Aiwazian) of Lawyers for Justice, PC, Heather Davis of Protection Law Group, and
2 Michael Rubin of Altshuler Berzon LLP (Altshuler).

3 Courts have an independent responsibility to review an attorney fee provision and
4 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
5 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
6 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
7 503. It may be “cross-checked” against a “lodestar.” *Id.* Generally, “[t]he lodestar is
8 calculated using the reasonable rate for comparable legal services in the local community
9 for noncontingent litigation of the same type, multiplied by the reasonable number of
10 hours spent on the case.” *Environmental Protection Information Center v. Department of*
11 *Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 248, citing *Nichols v. City of*
12 *Taft* (2007) 155 Cal.App.4th 1233, 1242-1243. Where there is an enhancement to
13 lodestar the purpose “is to fix a fee at the fair market value for the particular action. In
14 effect, the court determines, retrospectively, whether the litigation involved a contingent
15 risk or required extraordinary legal skill justifying augmentation of the unadorned
16 lodestar in order to approximate the fair market rate for such services.” *In re Vitamin*
17 *Cases* (2003) 110 Cal.App.4th 1041, 1052.

18 Mr. Aiwazian avers that he is aware the “common and acceptable rate for
19 contingency representation in wage and hour class action litigation is normally 40%
20 before trial, with the range being from 33.3% up to 50%.” (Aiwazian Decl. ISO Final
21 Approval at ¶10.) *Laffitte*, cited by Plaintiffs, indicates that courts in the Ninth Circuit
22 have employed a “benchmark” of 25% with an upward or downward adjustment
23 depending on the case. *Id.* at 493. See also *Barbosa v. Cargill Meat Solutions* (E.D. Ca.
24 2013) 297 F.R.D. 431, 448. (“The typical range of acceptable attorneys' fees in the Ninth
25 Circuit is 20 percent to 33.3 percent of the total settlement value, with 25 percent

1 considered a benchmark percentage.”) In this Court’s experience, the typical award in a
2 wage and hour class action is 33 1/3%, with adjustments upwards or downwards taking
3 into account situations such as where the “lodestar” is significantly more or less than the
4 percentage or where counsel have a delay in payment because the payor is funding the
5 settlement over time. See also *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th
6 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method
7 or the lodestar method is used, fee awards in class actions average around one-third of the
8 recovery.”].)

9 Class Counsel has provided information, summarized below, from which a
10 lodestar may be calculated:

Law Firm	Hours	Rates	Totals
Lawyers for Justice, PC	1,883.60	\$700	\$1,318,520.00
Protection Law Group LLP	105.65	\$650	\$68,672.50
Altshuler Berzon LLP	351.30	\$720-1,150	\$306,338.00
Totals	2,340.55		\$1,693,530.50

16 (Aiwazian Decl. ISO Final ¶¶ 11-12, Exhibit A; Declaration of Heather Davis (“Davis
17 Decl.”) ISO Final ¶17; Declaration of Michael Rubin (“Rubin Decl.”) ISO Final ¶¶ 13,
18 19.)

19 Attorney Heather Davis of Protection Law Group, LLP represents that her firm’s
20 blended rate of \$650 per hour is based on their current rates charged to clients, ranging
21 from \$800 per hour for Ms. Davis to \$400 per hour for associates. (Davis Decl. ISO
22 Final ¶20.) However, Ms. Davis does not specify cases in which the aforementioned
23 rates were approved by courts in settlement approvals nor does she explain why a
24 blended rate calculation is appropriate.
25

1 Attorney Michael Rubin of Altshuler Berzon LLP represents that his firm charges
2 current commercial/market rates ranging from \$720 to \$1,150 per hour. (Rubin Decl.
3 ISO Final ¶19.) He indicates that the highest hourly rate he was approved for by a court
4 in the state in cases arising under fee-shifting statutes and/or involving common-fund fees
5 is \$980 per hour. (*Id.* at ¶18.) His lodestar is broken out by timekeeper. His firm's work
6 was largely related to a Motion for Judgment on the Pleadings and appeal of the order
7 regarding same.

8 Lawyers for Justice also used a "blended" hourly rate of \$700 per hour for its
9 services, but provides no facts as to the experience of any of the counsel who worked on
10 this matter other than Mr. Aiwazian. Mr. Aiwazian represents that various matters on
11 which his firm has worked "involved" rates in excess of \$700 hourly. (Aiwazian Decl.
12 ISO Final Approval ¶12). Based on the amounts claimed, it appears these are derived
13 from the total fees awarded and not rates approved by the Courts involved. None is in
14 Los Angeles County.

15 The Court expresses no view as to the reasonableness to any counsel's hourly rate
16 or the use of a "blended" rate in a lodestar calculation, and reaches no conclusion that the
17 lodestar amounts asserted are or are not reasonable.

18 The \$1,863,722.36 fee request is 38% of the Gross Settlement Amount. It appears
19 that, based on the information submitted, the lodestar to Lawyers for Justice is
20 approximately 1.33. This conclusion is reached because two of the firms in this case
21 (Protection Law Group and Altshuler) have agreed to capped fees of \$65,000 and
22 \$50,000 respectively. (See Supp. Aiwazian Decl. ISO Preliminary Approval filed
23 October 23, 2020 ¶13.) Deducting these amounts from the total fees sought would result
24 in payment to Lawyers for Justice of \$1,728,722.36. ($\$1,863,722.36 - \$65,000 - \$50,000$
25 $= \$1,748,722.36$) The represented "lodestar" of the firm is \$1,318,520.00. The implied

1 multiplier to Lawyers for Justice would be 1.33 on a 38% fee award, assuming that the
2 represented “lodestar” amounts are accepted (\$1,748,722.36 / \$1,318,520).

3 Counsel for Plaintiffs argued in their papers and at oral argument that this case
4 was litigated extensively and that the result (particularly to the LWDA) should be
5 considered. The Court has handled the *Cruz* matter from its inception. The parties
6 litigated the *Cruz* matter between the time the lawsuit was commenced on July 26, 2017
7 and resolution through mediation in October 2019. There was considerable discovery
8 done and some contested discovery motion practice, resolved through informal discovery
9 conferences. Defendants filed a Motion to Quash Service of Summons on Arden Group,
10 Inc., which was litigated and denied. Plaintiffs’ Motion for Class Certification and
11 Defendants’ oppositions thereto were filed before the case settled, with expert and
12 percipient witness declarations prepared. Defendants also filed a Motion for Judgment
13 on the Pleadings, which the Court granted as to the Eleventh Cause of Action and as to
14 two plaintiffs only, causing Plaintiffs to initiate an appeal which was fully briefed.
15 (Motion for Final Approval at 5:6-13.) The case involved three full-day mediation
16 sessions before settlement was reached. (Aiwazian Decl. ISO Final Approval ¶8.)

17 Counsel does not explain why a fee should be awarded for the amounts paid prior
18 to settlement. The Court assumes counsel seek these fees under a “catalyst” theory.

19 No significant detail is provided as to what was done in the *Ryan* matter.

20 While the matter was actively litigated, a fee award in excess of 33 1/3% is not
21 justified here. With the exception of the motion for Judgment on the Pleadings, which
22 was briefed, at least in part, by the Altshuler firm, the issues were routine for a case of
23 this type. The fact that a class certification motion was partially briefed did not add to
24 its complexity or novelty and consisted, in part, of the kind of work necessary in all
25 cases of this type to fairly inform settlement. The average recovery per Class Member

1 (\$207.02 plus \$24.21 in PAGA penalties) is modest. The recovery to the LWDA does
2 not justify a larger fee award to counsel.

3 Although the Notice expressly advised class members of the fee request, and no
4 one objected (Kruckenberg Decl. ¶10, Exhibit A thereto), there is an insufficient
5 showing that this case involved a contingent risk in excess of that ordinarily undertaken
6 in a case of this type, required extraordinary legal skill by Lawyers for Justice or
7 Protection Law Group, or resulted in extraordinary results such that a percentage in
8 excess of claimed lodestar could be considered fair and reasonable.

9 Accordingly, the Court awards fees in the amount of **\$1,634,844.20**, or 33 1/3%
10 of the settlement amount, to be allocated \$65,000 to Protection Law Group LLP,
11 \$50,000 to Altshuler Berzon LLP, and \$1,519,844.20 to Lawyers For Justice, an amount
12 slightly in excess of its claimed lodestar and reasonable and fair compensation for its
13 services.

14 Fee Split: Plaintiffs have provided written consent to a fee split agreement that
15 provides \$50,000 of attorneys' fees to Altshuler Berzon, LLP, \$65,000 to Protection
16 Law Group, LLP, and the rest of attorneys' fees to Lawyers for Justice, PC. (Further
17 Supp. Aiwazian Decl. ISO Prelim ¶13.)

18 Class Counsel requests **\$204,363.37** in costs. This is less than the \$350,000 cap
19 provided in the settlement agreement (¶3.16). The amount was disclosed to Class
20 Members in the Notice, and no objections were received. (Kruckenberg Decl. ¶10,
21 Exhibit A thereto.)

22 Counsel represents that each firm incurred actual costs in the following amounts:
23 Lawyers for Justice, PC - \$196,366.04; Protection Law Group, LLP - \$4,052.56;
24 Altshuler Berzson LLP - \$3,944.77. Costs include: Damages Consulting Expert Fees
25 (\$76,856.01), Mediation Fees (\$24,450), and Notice Mailing (\$14,996). (Aiwazian

1 Decl. ISO Final ¶19, Exhibit B; Davis Decl. ISO Final ¶23, Exhibit B; Rubin Decl. ISO
2 Final ¶20.)

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 For all of the foregoing reasons, costs of **\$204,363.37** are approved.

6 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

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

18 Incentive payments derive from class action procedures. PAGA has no provision
19 for incentive payments for the named plaintiffs. Its requirement that 25 percent of
20 recovered penalties “shall be” distributed to “the aggrieved employees” offers no
21 suggestion that any employee should receive more than his or her pro rata share. Labor
22 Code §2699(i). PAGA civil penalties “must be distributed to all aggrieved employees,”
23 rather than solely to the aggrieved employee who brings the PAGA action. *Moorer v.*
24 *Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 741-742. The *Moorer* court noted
25 that allocating 25 percent to all aggrieved employees “is consistent with the statutory

1 scheme under which the judgment binds all aggrieved parties, including nonparties” and
2 that a PAGA action “is fundamentally a law enforcement action designed to protect the
3 public and not benefit private parties.” *Id.* at pp. 742-743.

4 The Class Representatives seek enhancement awards totaling **\$70,000** (\$7,500
5 each to Plaintiffs Yelter Cruz, Arturo Sanchez, Eugenio Rodriguez, Melodee Davis, Luis
6 Rodriguez, Jaime Erazo, Amadeo Enrique Gomez and Noe Viscarra; \$5,000 each to
7 Plaintiffs Parandzem Donna Eremian and James Ryan). In largely duplicative
8 declarations, they urge that their awards are appropriate for the following reasons:

9 Plaintiff Yelter Cruz represents that he spent approximately 45 hours on the case,
10 and his contributions included meeting with her attorneys regarding the case, answering
11 his attorneys’ questions, providing guidance regarding Defendants’ employees’ duties,
12 identifying potential witnesses, describing Defendants’ policies, practices, and
13 procedures, reviewing Defendants’ discovery requests, providing documents and
14 responses to his attorneys, attending a full-day deposition on October 19, 2018,
15 reviewing his testimony and discussing its contents with his attorneys, and reviewing the
16 settlement agreement. (Declaration of Yelter Cruz ¶¶ 3-6.)

17 Plaintiff Arturo Sanchez represents that he spent approximately 33 hours on the
18 case, and his contributions included meeting with his attorneys regarding the case,
19 answering his attorneys’ questions, providing guidance regarding Defendants’
20 employees’ duties, identifying potential witnesses, describing Defendants’ policies,
21 practices, and procedures, reviewing Defendants’ discovery requests, providing
22 documents and responses to his attorneys, attending a five-hour deposition on October
23 30, 2018, reviewing his testimony and discussing its contents with his attorneys, and
24 reviewing the settlement agreement. (Declaration of Arturo Sanchez ¶¶ 3-6.)

1 Plaintiff Eugenio Rodriguez represents that he spent approximately 38.5 hours on
2 the case, and his contributions included meeting with his attorneys regarding the case,
3 answering his attorneys' questions, providing guidance regarding Defendants'
4 employees' duties, identifying potential witnesses, describing Defendants' policies,
5 practices, and procedures, reviewing Defendants' discovery requests, providing
6 documents and responses to his attorneys, attending a full-day deposition on October 17,
7 2018, reviewing his testimony and discussing its contents with his attorneys, and
8 reviewing the settlement agreement. (Declaration of Eugenio Rodriguez ¶¶ 3-6.)

9 Plaintiff Melodee Davis represents that she spent approximately 49.5 hours on the
10 case, and her contributions included meeting with her attorneys regarding the case,
11 answering her attorneys' questions, providing guidance regarding Defendants'
12 employees' duties, identifying potential witnesses, describing Defendants' policies,
13 practices, and procedures, reviewing Defendants' discovery requests, providing
14 documents and responses to her attorneys, attending a full-day deposition on February
15 25, 2019, reviewing her testimony and discussing its contents with her attorneys, and
16 reviewing the settlement agreement. (Declaration of Melodee Davis ¶¶ 3-6.)

17 Plaintiff Luis Rodriguez represents that he spent approximately 32.5 hours on the
18 case, and his contributions included meeting with his attorneys regarding the case,
19 answering his attorneys' questions, providing guidance regarding Defendants'
20 employees' duties, identifying potential witnesses, describing Defendants' policies,
21 practices, and procedures, reviewing Defendants' discovery requests, providing
22 documents and responses to his attorneys, attending a full-day deposition on November
23 8, 2018, reviewing his testimony and discussing its contents with his attorneys, and
24 reviewing the settlement agreement. (Declaration of Luis Rodriguez ¶¶ 3-6.)
25

1 Plaintiff Jaime Erazo represents that he spent approximately 32.5 hours on the
2 case, and his contributions included meeting with his attorneys regarding the case,
3 answering his attorneys' questions, providing guidance regarding Defendants'
4 employees' duties, identifying potential witnesses, describing Defendants' policies,
5 practices, and procedures, reviewing Defendants' discovery requests, providing
6 documents and responses to his attorneys, attending a full-day deposition on October 24,
7 2018, reviewing his testimony and discussing its contents with his attorneys, and
8 reviewing the settlement agreement. (Declaration of Jaime Erazo ¶¶ 3-6.)

9 Plaintiff Amadeo Enrique Gomez represents that he spent approximately 35.5
10 hours on the case, and his contributions included meeting with his attorneys regarding
11 the case, answering his attorneys' questions, providing guidance regarding Defendants'
12 employees' duties, identifying potential witnesses, describing Defendants' policies,
13 practices, and procedures, reviewing Defendants' discovery requests, providing
14 documents and responses to his attorneys, attending a full-day deposition on October 26,
15 2018, reviewing his testimony and discussing its contents with his attorneys, and
16 reviewing the settlement agreement. (Declaration of Amadeo Enrique Gomez ¶¶ 3-6.)

17 Plaintiff Noe Viscarra represents that he spent approximately 40 hours on the
18 case, and his contributions included meeting with his attorneys regarding the case,
19 answering his attorneys' questions, providing guidance regarding Defendants'
20 employees' duties, identifying potential witnesses, describing Defendants' policies,
21 practices, and procedures, reviewing Defendants' discovery requests, providing
22 documents and responses to his attorneys, attending a full-day deposition on July 16,
23 2018, reviewing his testimony and discussing its contents with his attorneys, and
24 reviewing the settlement agreement. (Declaration of Noe Viscarra ¶¶ 3-6.)

1 Plaintiff Parandzem Donna Eremian represents that she spent approximately 22
2 hours on the case, and her contributions included meeting with her attorneys regarding
3 the case, answering her attorneys' questions, providing guidance regarding Defendants'
4 employees' duties, identifying potential witnesses, describing Defendants' policies,
5 practices, and procedures, reviewing Defendants' discovery requests, providing
6 documents and responses to her attorneys, and reviewing the settlement agreement.

7 (Declaration of Parandzem Donna Eremian ¶¶ 3-5.)

8 Plaintiff James Ryan brought a PAGA claim only, and became a class
9 representative only as a function of the settlement and filing of the Third Amended
10 Complaint. He represents that his contributions included speaking with his attorneys
11 regarding the case, answering his attorneys' questions, discussing issues regarding
12 Defendants' policies, practices, and procedures and his employment, reviewing
13 Defendants' discovery requests, searching for documents for his attorneys, and
14 reviewing the settlement agreement. Ryan believes that he undertook risk in acting as a
15 PAGA representative. (Declaration of James Ryan ¶¶ 4-8.) He does not provide an
16 estimate of his total time spent on the case. An additional payment to Ryan for service
17 as a PAGA representative is not appropriate. However, given that Ryan is giving a full
18 release, recognition of the value of that release is appropriate.

19 Other than Ryan, none of the Declarants indicate that they undertook any
20 particular risk in bringing the case or suffered any adverse consequences as a result.
21 None attended the mediations.

22 In light of the above-described contributions to this action, and in
23 acknowledgment of the benefits obtained on behalf of the class, service awards of
24 **\$7,500 each** to Plaintiffs Yelter Cruz, Arturo Sanchez, Eugenio Rodriguez, Melodee
25 Davis, Luis Rodriguez, Jaime Erazo, Amadeo Enrique Gomez and Noe Viscarra, and

1 **\$5,000 each** to Plaintiffs Parandzem Donna Eremian and James Ryan, are reasonable
2 and approved.

3 **F. SETTLEMENT ADMINISTRATION COSTS**

4 The Settlement Administrator, Phoenix Settlement Administrators, requests
5 **\$20,000** in compensation for its work in administrating this case. (Kruckenberg Decl.
6 ¶14.) At the time of preliminary approval, costs of settlement administration were
7 estimated at \$30,000. (¶1.44.) Class Members were provided with notice of this amount
8 and did not object. (Kruckenberg Decl. ¶10, Exhibit A thereto.)

9 Accordingly, settlement administration costs are approved in the amount of
10 **\$20,000.**

11 **IV. CONCLUSION AND ORDER**

12 The Court hereby:

- 13 (1) Grants class certification for purposes of settlement;
- 14 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 15 (3) Awards **\$1,634,844.20** (33 1/3%) in attorney fees to Class Counsel, Lawyers for
16 Justice, PC, Altshuler Berzon, LLP, and Protection Law Group, LLP payable
17 \$65,000 to Protection Law Group LLP, \$50,000 to Altshuler Berzon LLP, and
18 \$1,519,844.20 to Lawyers For Justice;
- 19 (4) Awards **\$204,363.37** in litigation costs to Class Counsel, allocated Lawyers for
20 Justice, PC - \$196,366.04; Protection Law Group, LLP - \$4,052.56; Altshuler
21 Berzon LLP - \$3,944.77;
- 22 (5) Approves payment of **\$412,500** (75% of \$550,000 PAGA penalty) to the
23 LWDA;
- 24 (6) Awards **\$70,000 total** in Class Representative Service Awards of **\$7,500 each** to
25 Plaintiffs Yelter Cruz, Arturo Sanchez, Eugenio Rodriguez, Melodee Davis, Luis

1 Rodriguez, Jaime Erazo, Amadeo Enrique Gomez and Noe Viscarra, and **\$5,000**
2 **each** to Plaintiffs Paranzem Donna Eremian and James Ryan;

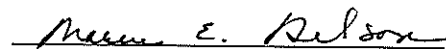
3 (7) Awards **\$20,000** in settlement administration costs to Phoenix Settlement
4 Administrators;

5 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
6 and containing the class definition, full release language, and a statement that no
7 class members opted out by July 1, 2021;

8 (9) Orders class counsel to provide notice to the class members pursuant to
9 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
10 Code §2699 (l)(3); and

11 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
12 Settlement Funds for May 22, 2022 at 8:30 a.m. Final Report is to be filed by
13 April 25, 2022. If there is unpaid residue or unclaimed or abandoned class
14 member funds and/or interest thereon to be distributed to the Legal Aid
15 foundation of Los Angeles, Plaintiffs' counsel shall also submit an Amended
16 Judgment pursuant to Cal. Code of Civ. Pro. § 384 and give notice of the
17 Judicial Council of California upon entry of the Amended Judgment, when
18 entered, pursuant to Cal. Code of Civ. Pro. §384.5.

19
20
21 Dated: 6/18/2021



22 MAREN E. NELSON

23 Judge of the Superior Court
24
25