

**FILED**  
Superior Court of California  
County of Los Angeles

DEC 02 2021

Sherri R. Carter, Executive Officer/Clerk  
By *[Signature]*, Deputy  
Pedro Martinez

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

JESENIA DONAN, individually, and on behalf  
of all others similarly situated,

Plaintiff,

v.

PACIFIC AVIATION CORPORATION, a  
California corporation; PACIFIC AVIATION,  
LLC, a limited liability company; and DOES 1  
through 10, inclusive,

Defendants

Case No.: 19STCV19714

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

**I. BACKGROUND**

Plaintiff Jesenia Donan sues her former employer, Defendants Pacific Aviation Corporation and Pacific Aviation, LLC (collectively, "Pacific Aviation" or "Defendants") for alleged wage and hour violations. Defendants provide airport handling services for international airlines, and operate at Los Angeles International

1 Airport, San Francisco International Airport, and Seattle-Tacoma International Airport.  
2 Plaintiff seeks to represent a class of Defendants' current and former non-exempt  
3 employees.

4 On June 6, 2019, Plaintiff filed a putative Class Action alleging the following  
5 causes of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [Lab.  
6 Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation  
7 [Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Lab. Code §§  
8 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Lab. Code §§ 226.7]; (5)  
9 Failure to Timely Pay Final Wages at Termination [Lab. Code §§ 201-203]; (6) Failure  
10 to Provide Accurate Itemized Wage Statements [Lab. Code § 226]; and (7) Unfair  
11 Business Practices [Bus. & Prof. Code §§ 17200, et seq.].

12 On August 23, 2019, Plaintiff filed a First Amended Complaint adding a cause  
13 of action for Civil Penalties Under the Private Attorneys General Act ("PAGA") [Cal.  
14 Lab. Code § 2699, et seq.].

15 On September 15, 2020, Plaintiff filed a Second Amended Complaint adding  
16 causes of action for failure to reimburse necessary business expenses [Lab. Code §  
17 2802] and failure to pay wages owed under Los Angeles Administrative Code, Division  
18 10, Chapter 1, Article 11, § 10.37, et seq.

19 On March 25, 2020, the Parties mediated before Steven Rottman, Esq. and  
20 agreed to the basic terms of a proposed settlement, signing a Memorandum of  
21 Understanding regarding the substantive terms. The Parties subsequently finalized the  
22 *Joint Stipulation of Class Action and PAGA Action Settlement* ("Settlement  
23 Agreement"), a copy of which was filed with the Court on April 15, 2021, attached to  
24 the Declaration of H. Scott Leviant ("Leviant Decl.") ISO Preliminary Approval as  
25 Exhibit 1.

1 On May 3, 2021, the Court issued a “checklist” regarding deficiencies in  
2 Plaintiff’s motion for preliminary approval. In response, on May 28, 2021, the parties  
3 filed supplemental briefing, including the First Amended Settlement Agreement  
4 attached to the First Supplemental Declaration of H. Scott Leviant (“Leviant Supp.  
5 Decl.”) ISO Preliminary Approval as Exhibit 13.

6 The Court granted preliminary approval of the First Amended Settlement  
7 Agreement on June 28, 2021. Notice was given to the Class Members as ordered. (See  
8 Declaration of Taylor Mitzner (“Mitzner Decl.”).)

9 Now before the Court is Plaintiff’s motion for final approval of the Settlement  
10 Agreement, including for payment of fees, costs, and service awards to the named  
11 plaintiffs. One absent class member, Pourya Pooretamad (Pooretamad), contends he  
12 timely opted out but that the opt-out is contested. Pooretamad is the plaintiff in related  
13 case 19STCV31683, *Pourya Pooretamad v. Pacific Aviation Corporation*.

14 The Court issued a tentative order on November 10, 2021, concluding  
15 Pooretamad timely opted out. At oral argument Pooretamad and Defendant requested  
16 an opportunity to provide further evidence and briefing. That request was granted, with  
17 further submissions being filed November 19, 2021 and November 22, 2021. Based  
18 thereon, the oral argument of counsel on November 10, 2021, the plain wording of the  
19 Notice, and for the reasons set forth below, the Court grants final approval of the  
20 settlement and finds Pooretamad did *not* timely opt out of the settlement and is bound  
21 by it.

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1 **II. THE TERMS OF THE SETTLEMENT**

2 **A. SETTLEMENT CLASS DEFINITION**

3 “Class” or “Class Members” consist of: All nonexempt employees of Pacific  
4 Aviation who worked for Pacific Aviation in California during the Class Period.

5 “Settlement Class Members” are those Class Members who do not submit timely  
6 exclusion requests to the Settlement Administrator. (¶4)

7 The “Class Period” is June 6, 2015 through the date upon which the Court grants  
8 preliminary approval. (¶3)

9 “PAGA Employee” means all Class Members that worked during the PAGA  
10 Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA  
11 Employees are “aggrieved employees” as defined pursuant to PAGA. (¶11)

12 “PAGA Period” means the period between June 6, 2018 (one year prior to the  
13 filing of the action) through the date upon which the Court grants preliminary approval.  
14 (¶10)

15 Defendants’ best estimate is that the Class included approximately 3,089  
16 individuals who collectively worked approximately 175,000 workweeks between June 5,  
17 2015 and March 25, 2020. (¶4)

18 There are 2,727 Class Members, and there are 1,947 Class Members who also  
19 qualify as PAGA Employees. (Mitzner Decl., ¶3.)

20 Escalator Clause: If it is later determined that the number of workweeks through  
21 March 25, 2020 is more than 10% greater than the 175,000 estimated by Defendants,  
22 Defendants may elect to increase the Gross Settlement Amount by one percent for each  
23 percentage point over the 10% threshold that the actual number of workweeks exceeds  
24 the estimated number on the date of settlement. If Defendants decline to increase the  
25 Gross Settlement Amount, Plaintiff has the option of voiding the agreement by notifying

1 Defendants' counsel in writing of the election. The Gross Settlement Amount will not be  
2 reduced due to Defendants' estimate. The Parties both expect that the number of  
3 workweeks will increase pro rata through preliminary approval, and this Escalator Clause  
4 does not apply to that natural increase between the time this Settlement was reached, and  
5 Preliminary Approval is entered. (¶26.d)

6 The Class Members represented 189,297.14 Workweeks during the Class Period,  
7 and 55,676.21 Pay Periods worked during the PAGA Period, which did not trigger the  
8 escalator clause. (Mitzner Decl., ¶4.)

### 9 **B. THE MONETARY TERMS OF SETTLEMENT**

10 The essential monetary terms are as follows:

11 The Gross Settlement Amount ("GSA") is **\$875,000** (¶26.c). This includes  
12 payment of a PAGA penalty of **\$80,000** to be paid 75% to the LWDA (\$60,000) and 25%  
13 to the PAGA Employees (\$20,000) (¶26.g);

14 The Net Settlement Amount ("Net") (**\$464,333.34**) is the GSA less:

- 15 ○ Up to **\$291,666.66** (33 1/3%) for attorney fees (¶26.g);
  - 16 ○ Up to **\$12,000** for attorney costs (*Ibid.*);
  - 17 ○ Up to **\$5,000** for a service award to the proposed class representative  
18 (*Ibid.*);
  - 19 ○ **\$80,000** allocated for the PAGA Penalty (¶26.g); and
  - 20 ○ Estimated **\$22,000** for settlement administration costs (¶26.p).
- 21 ● Employer-side payroll taxes will be paid separately by Defendants (¶26.h).
  - 22 ● Assuming the Court approves all maximum requested deductions, approximately  
23 \$464,333.34 will be available for automatic distribution to participating class  
24 members. Therefore, the average settlement share will be approximately  
25 \$179.34. ( $\$464,333.34 \text{ Net} \div 2,726 \text{ class members} = \$170.34$ ). In addition, each

1 PAGA Employee will receive a pro rata portion of the PAGA Employees'  
2 PAGA Penalty Payment Share, which is \$20,000 (or 25% of \$80,000 PAGA  
3 penalty). Therefore, the average PAGA Penalty Share will be approximately  
4 \$10.27. ( $\$20,000 \text{ PAGA Penalty} \div 1,947 \text{ PAGA Employees} = \$10.27$ ).

- 5 • There is no Claim Requirement (§26.f).
- 6 • The settlement is not reversionary (§26.e).
- 7 • Individual Settlement Share Calculation: Each Settlement Class Member will be  
8 paid a pro-rata share of the Net Settlement Amount (less the \$20,000 amount  
9 allocated for PAGA penalties to aggrieved employees), as calculated by the  
10 Settlement Administrator. The pro-rata share will be determined by comparing  
11 the individual Settlement Class Member's Covered Workweeks employed  
12 during the Class Period in California to the total Covered Workweeks of all the  
13 Settlement Class Members during the Class Period as follows: [Workweeks  
14 worked by a Settlement Class Member]  $\div$  [Sum of all Covered Workweeks  
15 worked by all Settlement Class Members]  $\times$  [Net Settlement Amount - \$20,000]  
16 = individual Settlement Payment for a Settlement Class Member. (§26.i)
  - 17 ○ PAGA Payments: PAGA Settlement Payments will be paid out of the Net  
18 Settlement Amount. Each PAGA Employee will be paid a pro-rata share  
19 of the \$20,000 amount allocated for PAGA Employees' PAGA Penalty  
20 Payment Share, as calculated by the Settlement Administrator. Class  
21 Members will not be permitted to exclude themselves from this portion of  
22 the Settlement. The pro-rata share will be determined by comparing the  
23 individual PAGA Employee's PAGA Pay Periods during the PAGA  
24 Period to the total PAGA Pay Periods of all the Class Members during the  
25 PAGA Period as follows: [PAGA Pay Periods worked by a PAGA

1           Employee] ÷ [Sum of all PAGA Pay Periods worked by all PAGA  
2           Employees] × [\$20,000] = individual PAGA Employee's portion of the  
3           PAGA Employees' PAGA Penalty Payment Share. (§26.j)

- 4           ▪ Tax Withholdings: 40% to wages, 30% to penalties, and 30% to  
5           interest. (§26.k)

- 6     • **Uncashed Settlement Payment Checks:** Settlement Payment checks shall remain  
7       valid and negotiable for 180 calendar days from the date of their issuance.  
8       Settlement checks will automatically be cancelled by the Settlement  
9       Administrator if they are not cashed by the Class Member within that time, and  
10      the Class Member's claims will remain released by the Settlement. Settlement  
11      checks which have expired will not be reissued. (§34) Funds from un-cashed or  
12      abandoned checks, based on a 180-day void date, shall be transmitted to the  
13      California State Controller's Office for Unclaimed Property in the name of each  
14      check recipient who failed to cash their check prior to the void date. (§35)
- 15   • **Funding of Settlement:** Defendants will fund the settlement account within seven  
16      calendar days of the Effective Date of the Settlement provided that the  
17      Settlement Administrator has provided the Parties with an accounting of the  
18      amounts to be paid by Defendants pursuant to the terms of the Settlement  
19      Agreement. (§26.q)

### 20   **C.    TERMS OF RELEASES**

- 21   • Class members will release, for the entire Class Period: Any and all claims stated  
22      in the Second Amended Complaint, or that could have been stated based on the  
23      facts alleged in the Second Amended Complaint, implicitly or explicitly,  
24      including but not limited to state wage and hour claims (including all claims  
25      under the California Labor Code) for unpaid wages, minimum wage, overtime,

1 off-the-clock work, meal periods, rest periods, wage statement violations,  
2 unreimbursed business expenses, interest, penalties, and attorneys' fees, waiting  
3 time penalties, withholding from wages and the related provisions of the Labor  
4 Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226,  
5 226.3 , 226.7, 510, 512, 512.5, 558, 1194, 1194.2, 1198, 2802, derivative claims  
6 under California Business & Professions Code §§ 17200 et seq., Los Angeles  
7 Administrative Code, Division 10, Chapter 1, Article 11, § 10.37, et seq. and all  
8 claims under the governing Wage Order. (¶37.c.1, as amended by Notice, pg. 4.)

- 9 • As to any Class Member who cashes their Settlement Payment, the signing and  
10 negotiation of that check shall serve as the Class Member's consent to join the  
11 action for purposes of releasing claims arising under the Fair Labor Standards  
12 Act that are related to the claims stated in the Second Amended Complaint,  
13 implicitly or explicitly. (¶37.c.2, as amended by Notice, pg. 4.)
- 14 • As to all PAGA Employees, whether requesting exclusion from the Settlement  
15 or not, claims for penalties arising under the Private Attorneys General Act of  
16 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's  
17 administrative exhaustion letter submitted to the LWDA and attached as Exhibit  
18 "B" to the Settlement Agreement and the Second Amended Complaint in this  
19 matter. The penalty provision at issue in Plaintiff's administrative exhaustion  
20 letter include Labor Code §§ 201 – 203, 204, 226, 226.3, 226.7, 510, 512, 558,  
21 1174.5, 1194, 1197, 1197.1, 1198, and 2699(f)(2).
  - 22 ○ "Released PAGA Claims Period" means the period between June 6, 2018  
23 through the date upon which the Court grants preliminary approval. (¶15)
  - 24 ○ Class Members Cannot Exclude Themselves from the PAGA Payment:  
25 Class Members submitting a Request for Exclusion will nevertheless



1 receive their pro rata share of the 25% of the PAGA penalty payment  
2 allocated to the Class. If the Court approves the compromise of the PAGA  
3 Claim, all Class Members are bound by the Court's resolution of that  
4 Claim. (§26.u)

- 5 • Identity of Released Parties: The released parties are Defendants, and each of  
6 its/their former and present direct and/or indirect owners, dba's, affiliates,  
7 parents, subsidiaries, brother and sister corporations, divisions, related  
8 companies, successors and predecessors, and current and former employees,  
9 attorneys, officers, directors, shareholders, owners, trustees, attorneys,  
10 fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents,  
11 servants, insurers, representatives, administrators, employee benefit plans, and  
12 assigns of said entities (collectively "Releasees"). (§37.a)
- 13 • The named Plaintiff will also provide a general release and a waiver of the  
14 protections of Cal. Civ. Code §1542. (§26.n)
- 15 • The Released Claims will be released upon the later of (1) the Settlement's  
16 Effective Date, or (2) the satisfaction of Defendants' obligation to provide to the  
17 Settlement Administrator a sum in the amount required to satisfy all required  
18 payments and distributions pursuant to this Settlement and the Order and  
19 Judgment of final approval. Class Members will not release claims until both the  
20 Effective Date of the Settlement has occurred, and Defendants have paid all  
21 amounts owing under the Settlement. (§37.b)

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

23 "Before final approval, the court must conduct an inquiry into the fairness of the  
24 proposed settlement." Cal. Rules of Court, rule 3.769(g). "If the court approves the  
25 settlement agreement after the final approval hearing, the court must make and enter

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

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

19 “The burden is on the proponent of the settlement to show that it is fair and  
20 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is  
21 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to  
22 allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
23 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91  
24 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,  
25 1802. Notwithstanding an initial presumption of fairness, “the court should not give

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

14 **A. A Presumption of Fairness Exists**

15 The Court preliminarily found in its Order of June 28, 2021, that the presumption  
16 of fairness should be applied. No facts have come to the Court’s attention that would  
17 alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption  
18 of fairness as set forth in the preliminary approval order.

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

20 The settlement was preliminarily found to be fair, adequate and reasonable.  
21 Notice has now been given to the Class and the LWDA. (Exhibit 16 to Leviant Supp.  
22 Decl. ISO Preliminary Approval.)

23 The notice process resulted in the following according to the settlement  
24 administrator:

25 Number of Class Members: 2,727

1           Number of PAGA Employees:    1,947  
2           Number of notices mailed:       2,272  
3           Number of undeliverable notices:    18  
4           Number of opt-outs:                1  
5           Number of objections:             0  
6           Number of participating Class Members: 2,726

7 (Mitzner Decl. ¶¶3-13.)

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

12           **C. POORETEMAD DID NOT TIMELY OPT OUT**

13           Defendant and Pooretamad dispute whether Pooretamad timely opted out of the  
14 settlement. The Notice required that any opt out be “postmarked” by September 17, 2021  
15 to be timely.

16           The evidence is that on September 17, 2021, a Friday, Kimberly D. Madrid  
17 (Madrid), an employee of counsel for Pooretamad, placed Pooretamad’s opt out request  
18 in an envelope addressed to the settlement administrator, and placed the envelope into the  
19 firm’s postage meter. The metered stamp indicates a date of September 17, 2021 and  
20 postage of \$.53. (Declaration of Kimberly D. Madrid (“Madrid Decl.”) ¶7.) Madrid  
21 testifies that she took the envelope to the building’s mailbox, where she deposited it at  
22 approximately 3:07 p.m. on September 17, 2021. (*Id.* at ¶9.) This is evidence of timely  
23 mailing.

24           The post office postmarked the envelope the following Monday, September 20,  
25 2021. (Exhibit B to Mitzner Decl. filed October 12, 2021.)

1 Pooretemad argues that the settlement administrator was aware of the intention to  
2 opt out due to a conversation between Pooretemad’s counsel and the settlement  
3 administrator on September 17, 2021. (Declaration of Darren M. Cohen (“Cohen Decl.”))

4 ¶4.) Pooretemad further urges that because the opt out was placed in the mail on  
5 September 17, 2021, the opt-out was timely, noting that the United States Postal service  
6 (USPS) requires that “metered mail must have the actual date of mailing. Metered mail  
7 do not require a postmark as the postmark information (city, state, ZIP Code, and date) is  
8 already included within the meter strip.” (Exhibit 2 to Cohen Decl.)

9 Defendant counters that the opt out notice required a *postmark* on or before  
10 September 17, 2021. The notice further provided “If you do not submit a written request  
11 to be excluded from the Settlement on time (*as evidenced by the postmark*), your written  
12 request to be excluded from the Settlement will be rejected...” (Exhibit A to Mitzner  
13 Decl. filed October 12, 2021, page 6, emphasis added).

14 Defendant further urges that the USPS advises that:

15 **Note:** The United States Postal Service® examines metered mail to detect  
16 irregularities in preparation and dating. If stale dated metered mail is identified by  
17 a postal employee (machines do not catch stale meter dates) the mail piece(s) will  
18 be canceled with the correct date.

19 Exhibit 2 to Cohen Decl.p. 4, emphasis in the original.

20 It cites *Roos v. Honeywell Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1483,  
21 wherein an absent class member objected to a settlement, which objection was found to  
22 be untimely notwithstanding a timely postage meter stamp because the postmark itself  
23 was untimely, the court finding that this was evidence that the objection was mailed late.  
24 It also relies upon *Gibbs v. Am. Sav. & Loan Ass’n.* (1990) 217 Cal.App.3d 1372, 1375-  
25 1376, wherein it was found that a counter-offer was not timely mailed because the

1 postmarked envelope showed it to be late, despite testimony that it was mailed a day  
2 before the postmark.

3 These cases are not illuminating because the issue is not when the opt-out was  
4 placed in the mail but when it was *postmarked*. The Notice required a *postmark* by  
5 September 17, 2021. It further advised that timeliness would be evidenced by the  
6 *postmark*. That a metered stamp may contain the same information as a postmark does  
7 not determine the issue. The Notice required a *postmark* on or before September 17,  
8 2021. Lacking same, Pooretamad's opt out is untimely.

9 **D. CLASS CERTIFICATION IS PROPER**

10 For the reasons set forth in the preliminary approval order certification of the  
11 Class for purposes of settlement is appropriate.

12 **E. ATTORNEY FEES AND COSTS**

13 Class Counsel requests **\$291,666.66** (33 1/3%) for attorney fees and **\$12,000** for  
14 costs. (Motion ISO Final Approval, 18:23-24.)

15 Courts have an independent responsibility to review an attorney fee provision and  
16 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*  
17 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is  
18 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,  
19 503.

20 In the instant case, fees are sought pursuant to the percentage method. (Motion  
21 ISO Final Approval, pgs. 17-19.) The \$291,666.66 fee request is 33 1/3% of the Gross  
22 Settlement Amount.

23 Here, the \$291,666.66 fee request represents a reasonable percentage of the total  
24 funds paid by Defendant. Further, the notice expressly advised class members of the fee  
25

1 request, and no one objected. (Mitzner Decl., ¶11 and Exhibit A thereto.) Accordingly,  
2 the Court awards fees in the amount of **\$291,666.66**.

3 Class Counsel requests \$12,000 in costs. This is equal to the \$12,000 cap  
4 provided in the settlement agreement (¶26.g). The amount was disclosed to Class  
5 Members in the Notice, and no objections were received. (Mitzner Decl., ¶11 and  
6 Exhibit A thereto.) Class Counsel represents that it has incurred actual costs in the  
7 amount of \$12,818.59. (Leviant Decl. ISO Final, ¶32 and Exhibit 2 thereto.) The costs  
8 include, but are not limited to filing/service fees, mediation (\$9,000), expert costs  
9 (\$1,531.25). (*Ibid.*)

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

12 For all of the foregoing reasons, costs of **\$12,000** are approved.

13 **F. SERVICE AWARD TO CLASS REPRESENTATIVE**

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

1 Here, the Settlement Agreement provides for an enhancement award of \$5,000.  
2 (Settlement Agreement, ¶26.g.)

3 Ms. Donan represents that her contributions to this litigation include spending 35  
4 to 40 hours on the following tasks: having numerous discussion with counsel, searching  
5 for and reviewing documents, identifying witnesses, and reviewing the settlement  
6 agreements. (Donan Decl., ¶¶13-19.)

7 In light of the above-described contributions to this action, and in  
8 acknowledgment of the benefits obtained on behalf of the class, a **\$5,000** service award  
9 is reasonable and approved.

#### 10 **G. SETTLEMENT ADMINISTRATION COSTS**

11 The Settlement Administrator requests **\$22,000** in compensation for its work in  
12 administering this case. (Mitzner Decl., ¶16) At the time of preliminary approval, costs  
13 of settlement administration were estimated at \$22,000. (Settlement Agreement, ¶26.p)  
14 Class Members were provided with notice of this amount and did not object. (Mitzner  
15 Decl., ¶11 and Exhibit A thereto.)

16 Accordingly, claims administration costs are approved in the amount of **\$22,000**.

#### 17 **IV. CONCLUSION AND ORDER**

18 The Court hereby:

- 19 (1) Grants class certification for purposes of settlement;
- 20 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 21 (3) Awards **\$291,666.66** in attorney fees to Class Counsel;
- 22 (4) Awards **\$12,000** in litigation costs to Class Counsel;
- 23 (5) Approves payment of **\$60,000** (75% of \$80,000 PAGA penalty) to the LWDA;
- 24 (6) Awards **\$5,000** as a Class Representative Service Award;



- 1 (7) Awards **\$22,000** in claims administration costs to Phoenix Settlement  
2 Administrators;
- 3 (8) Adopts the [Proposed] Judgment lodged October 12, 2021;
- 4 (9) Orders class counsel to provide notice to the class members pursuant to  
5 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor  
6 Code §2699 (1)(3); and
- 7 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of  
8 Settlement Funds for August 9, 2022 at 8:30 a.m. Final Report is to be filed five  
9 (5) court days in advance.

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12  
13 Dated: 12/2/2021



14 MAREN E. NELSON  
15 Judge of the Superior Court  
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