

FILED
LOS ANGELES SUPERIOR COURT
JUL 29 2022
SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
By Nancy Navarro Deputy
NANCY NAVARRO

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

ROBERT VEGA, individually, on a representative basis, and on behalf of all others similarly situated,

Plaintiff,

v.

MARATHON PETROLEUM LOGISTICS SERVICES LLC, a Delaware Limited Liability Company; MARATHON PETROLEUM COMPANY LP, a Delaware Limited Partnership; and DOES 1 through 20, inclusive,

Defendants.

Case No.: 20STCV19405

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

I. BACKGROUND

Plaintiff Robert Vega sues his former employer, Defendants Marathon Petroleum Logistics Services LLC and Marathon Petroleum Company LP (collectively,

1 “Defendants”), for alleged wage and hour violations. Defendants are Ohio-based
2 companies specializing in petroleum refining, marketing, and transportation, with
3 refinery locations around the world, including California. Plaintiff seeks to represent a
4 class of Defendants’ current and former non-exempt employees.

5 On May 21, 2020, Plaintiff filed a class action complaint, alleging causes of
6 action for: (1) failure to provide accurate itemized wage statements under Labor Code §
7 226(a); and (2) a Private Attorneys General Act (“PAGA”) assessment for the same
8 claim. The putative class in this case consists of approximately 75 similarly situated
9 non-exempt employees who were paid overtime wages under a line-item entitled “Reg
10 Rate Adj,” yet the wage statement did not include any hours or rates of pay for this
11 overtime pay line-item.

12 The parties conducted negotiations between May 7, 2021 through June 25, 2021,
13 which ultimately resulted in settlement. The terms were finalized in a Joint Stipulation
14 of Class and PAGA Representative Action Settlement and Release (“Settlement
15 Agreement”), a copy of which was filed with the Court.

16 On January 10, 2022, the Court issued a “checklist” of items for the parties to
17 address. In response, on June 6, 2022, the parties filed supplemental briefing and a
18 Revised Settlement Agreement, a copy of which is attached to the Second Supplemental
19 Declaration of Brian J. Mankin (“Second Supp. Mankin Decl.”) as Exhibit 1.

20 The matter came on for hearing on June 27, 2022, at which time the Court asked
21 for clarification on certain matters and suggested revisions to the release. Supplemental
22 papers were filed July 21, 2022, including the Third Supplemental Declaration of Brian
23 J. Mankin and a *Revised Joint Stipulation of Class and PAGA Representative Action*
24 *Settlement and Release* (Agreement) attached Mr. Mankin’s Declaration as Exhibit 1.

25 All references below are to that Agreement.

1 Before the Court is Plaintiff's motion for preliminary approval of the settlement.
2 For the reasons set forth below, the Court preliminarily grants approval for the
3 settlement.

4
5 **II. THE TERMS OF THE SETTLEMENT**

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

7 "Class Members" or "Class" means all current and former non-exempt
8 employees employed by Defendant Marathon Petroleum Logistics Services LLC in the
9 State of California who, in the same pay period, worked overtime and received a
10 "Regular Rate Adj." payment from April 6, 2019 through the Preliminary Approval
11 Date. (§1.7)

12 "Class Period" means the period from April 6, 2019 through the Preliminary
13 Approval Date. (§1.9)

14 "PAGA Employees" means Class Members employed during the PAGA Period.
15 PAGA Employees cannot opt out of the PAGA portion of this Settlement. However,
16 they may opt out of the Settlement of the Class Claims provided they timely submit a
17 Request for Exclusion. (§1.24)

18 "PAGA Period" means the period from April 6, 2019 through the Preliminary
19 Approval Date. (§1.25)

20 "Participating Class Members" means Class Members who do not submit a
21 timely Request for Exclusion from this Settlement. (§1.29)

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

24 The essential monetary terms are as follows:
25

1 The Total Settlement Amount is **\$165,000** (¶1.41). This includes payment of a
2 PAGA penalty of **\$10,000** to be paid 75% to the LWDA (\$7,500) and 25% to the
3 Aggrieved Employees (\$2,500) (¶1.22).

4 The Net Settlement Amount (“Net”) (**\$79,000**) is the Total Settlement Amount
5 less:

- 6 ○ Up to **\$55,000** (33 1/3%) for attorney fees (¶1.5);
- 7 ○ Up to **\$10,000** for attorney costs (¶1.4);
- 8 ○ Up to **\$5,000** for a service award to the proposed class representative
9 (¶1.35); and
- 10 ○ Estimated **\$6,000** for settlement administration costs (¶1.37).
- 11 ● Assuming the Court approves all maximum requested deductions, approximately
12 \$79,000 will be available for automatic distribution to participating class
13 members. Assuming full participation, the average settlement share will be
14 approximately \$79,000. ($\$79,000 \text{ Net} \div 75 \text{ class members} = \$1,053.33$). In
15 addition, each PAGA Employee will receive a portion of the PAGA penalty,
16 estimated to be \$33.33 per PAGA Employee. ($\$2,500 \text{ 25\% of } \$10,000 \text{ PAGA}$
17 $\text{penalty} \div 75 \text{ PAGA Employees} = \$ 33.33$)
- 18 ● There is no Claim Requirement (Notice, pg. 1)
- 19 ● The settlement is not reversionary (¶4.2)
- 20 ● Individual Settlement Share Calculation: Defendants will identify the number of
21 pay periods each of the Participating Class Members worked during the Class
22 Period (“Total Class Pay Periods”) where, in the same pay period, the employees
23 worked overtime and received a “Regular Rate Adj.” payment. The value of
24 each pay period shall be determined by the Settlement Administrator by dividing
25 the Net Distribution Fund (less the 25% of the PAGA Award to be distributed to

1 PAGA Employees) by the total number of pay periods worked by all
2 Participating Class Members during the Class Period where, in the same pay
3 period, these employees worked overtime and received a "Regular Rate Adj."
4 payment ("Class Pay Period Value"). To determine the Individual Settlement
5 Payment for each Participating Class Member, the Settlement Administrator will
6 multiply the individual's Total Class Pay Periods by the Class Pay Period Value.

7 (§4.2.5.1.a)

- 8 ○ PAGA Payments: For PAGA Employees, Defendants will identify the
9 number of pay periods each PAGA Employee worked during the PAGA
10 Period where, in the same pay period, these employees worked overtime
11 and received a "Regular Rate Adj." payment ("Total PAGA Pay
12 Periods"). (For purposes of this case, and as specified in the definitions
13 above, the Class Period and PAGA Period are the same.) The value of
14 each PAGA Pay Period shall be determined by the Settlement
15 Administrator by dividing the 25% of the PAGA Award allocated for
16 PAGA Employees (i.e., \$2,500) by the Total PAGA Pay Periods for all
17 PAGA Employees ("PAGA Pay Period Value"). (§4.2.5.1.b)

- 18 ■ A Class Member who is also a PAGA Employee will receive a
19 payment for their prorated portion of the PAGA Award even if
20 s/he opt-outs of the Class settlement and will be bound by the
21 release of the PAGA Claims released through this Settlement.

22 (*Ibid.*)

- 23 ● Tax Withholdings: Each Individual Settlement Payment shall be comprised
24 entirely of non-taxable consideration for penalties and interest and for which an
25 IRS Form 1099 will issue. (§4.2.5.2) The Individual Settlement Payments will

1 not be subject to withholdings because Plaintiff's two claims for wage statement
2 penalties and PAGA penalties are solely for the recovery of penalties, and not
3 wages. (¶4.2.5.1.a)

- 4 • **Uncashed Settlement Payment Checks:** Any checks issued to Participating Class
5 Members shall remain valid and negotiable for one hundred and eighty (180)
6 calendar days from the date of their issuance and then shall become void on the
7 181st day after mailing, i.e., the Void Date. The Parties agree that any unclaimed
8 funds in the Settlement Fund Account as a result of the failure to cash Individual
9 Settlement Payment checks by the Void Date shall be transmitted by the
10 Settlement Administrator to the California State Controller Unclaimed Property
11 Fund. (¶4.2.5)
- 12 • **Funding and Distribution of Settlement:** Within fifteen (15) calendar days
13 following the date when all conditions of the Effective Date have been satisfied
14 (aside from funding by Defendants), Defendants shall fund the Settlement by
15 providing the Total Settlement Amount to the Settlement Administrator.
16 (¶10.1.2) The Settlement Administrator shall pay the Individual Settlement
17 Payments from the Net Distribution Fund and will mail them by First Class U.S.
18 Mail to Class Members' last known mailing address within ten (10) calendar
19 days following the date when Defendants fund the Settlement as specified in
20 Paragraph 10.1.2. (¶4.2.5)
- 21 • **Amendment or Modification:** This Settlement Agreement may be amended or
22 modified only by a written instrument signed by Defense Counsel and Class
23 Counsel or their successors-in-interest. (¶11.5)

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1 **C. TERMS OF RELEASES**

- 2 • Release: As of the Effective Date and Defendants’ funding of the Total
3 Settlement Amount, Plaintiff, Participating Class Members, PAGA Employees
4 and the State of California (acting through Plaintiff as its authorized PAGA
5 representative) release the Released Parties from all Class Claims and PAGA
6 Claims for the duration of the Class Period and PAGA Period, respectively. The
7 Class Period and PAGA Period include the period from April 6, 2019 through
8 the Preliminary Approval Date. The Class Member Released Claims include all
9 claims for any debts, liabilities, demands, obligations, guarantees, penalties,
10 damages, interest, attorneys’ fees, costs, and/or other amounts or relief
11 recoverable under state or other applicable law that Plaintiff asserted or could
12 have asserted in the Action – on behalf of himself and the putative Class
13 Members – based on the facts alleged in Plaintiff’s Complaint and/or arising out
14 of a claim for Failure to Provide Accurate Itemized Wage Statements (Lab. Code
15 § 226), whether for economic or non-economic damages, restitution, injunctive
16 relief or statutory penalties. The PAGA Released Claims include any and all
17 claims Plaintiff asserted or could have asserted in the Action under PAGA based
18 on the facts alleged in the Plaintiff’s Complaint for Failure to Provide Accurate
19 Itemized Wage Statements (Cal. Labor Code §§ 226 and 2698, et seq.) and/or
20 based on the Class Member Released, on behalf of himself, the State of
21 California and PAGA Employees for damages recoverable under PAGA,
22 including civil penalties, interest, attorneys’ fees, costs, and any other relief
23 recoverable under California Labor Code § 2698, et seq. It is the intent of the
24 Parties that the Final Approval Order entered by the Court shall have full res
25 judicata (i.e., preclusive) effect and be final and binding upon Participating Class

1 Members, PAGA Employees and the State of California regarding the Class
2 Member Released Claims and PAGA Released Claims. (¶5.1)

- 3 • “Class Member Released Claims” means the Class Claims from which
4 Participating Class Members are fully releasing the Released Parties under this
5 Settlement from April 6, 2019 through the end of the Class Period, including all
6 claims for any debts, liabilities, demands, obligations, guarantees, penalties,
7 damages, interest, attorneys’ fees, costs, and/or other amounts or relief
8 recoverable under state or other applicable law that Plaintiff asserted or could
9 have asserted in the Action – on behalf of himself and the putative Class
10 Members – based on the facts alleged in Plaintiff’s Complaint and/or arising out
11 of a claim for Failure to Provide Accurate Itemized Wage Statements (Lab. Code
12 § 226), whether for economic or non-economic damages, restitution, injunctive
13 relief or statutory penalties. (¶1.8)
 - 14 ○ “Complaint” means the operative Complaint in the Action. (¶1.10)
 - 15 ○ “Class Claims” means all claims for any debts, liabilities, demands,
16 obligations, guarantees, penalties, damages, interest, attorneys’ fees,
17 costs, and/or other amounts or relief recoverable under state or other
18 applicable law that Plaintiff asserted or could have asserted in the Action
19 – on behalf of himself and the putative Class Members – based on the
20 facts alleged in Plaintiff’s Complaint and/or arising out of a claim for
21 Failure to Provide Accurate Itemized Wage Statements (Lab. Code §
22 226), whether for economic or non-economic damages, restitution,
23 injunctive relief or statutory penalties. (¶1.2)
- 24 • “PAGA Released Claims” means the PAGA Claims from which Plaintiff, the
25 PAGA Employees, and the State of California are fully releasing the Released

1 Parties under this Settlement from April 6, 2019 through the end of the PAGA
2 Period, including any and all claims Plaintiff asserted or could have asserted in
3 the Action under PAGA based on the facts alleged in Plaintiff's Complaint for
4 Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §§ 226
5 and 2698, et seq.), and/or based on the Class Member Released Claims, on
6 behalf of himself, the State of California and PAGA Employees for damages
7 recoverable under PAGA, including civil penalties, interest, attorneys' fees,
8 costs, and any other relief recoverable under California Labor Code § 2698, et
9 seq. (§1.26)

10 ○ "PAGA Claims" means any and all claims Plaintiff asserted or could have
11 asserted in the Action under PAGA for Failure to Provide Accurate
12 Itemized Wage Statements (Cal. Labor Code §§ 226 and 2698, et seq.),
13 on behalf of himself, the State of California and PAGA Employees for
14 damages recoverable under PAGA, including civil penalties, interest,
15 attorneys' fees, costs, and any other relief recoverable under California
16 Labor Code § 2698, et seq. (§1.23)

17 ● "Released Parties" means Defendants Marathon Petroleum Logistics Services
18 LLC and Marathon Petroleum Company LP, and each of their respective
19 subsidiaries, affiliates and/or parents, attorneys, and each of their respective
20 successors and predecessors in interest; all of their respective officers, directors,
21 employees, administrators, fiduciaries, trustees, beneficiaries and agents; and
22 each of their past, present and future officers, directors, shareholders, employees,
23 agents, principals, heirs, representatives, accountants, auditors, consultants,
24 insurers and reinsurers. (§1.32)

- 1 • The named Plaintiff will also provide a general release and a waiver of the
2 protections of Cal. Civ. Code §1542. (¶¶ 1.11, 5.2)
- 3 • The releases are effective as of the Effective Date and Defendants’ funding of
4 the Total Settlement Amount, which will occur within fifteen (15) calendar days
5 following the Effective Date of the Settlement. (¶10.1.2)

6

7 **D. SETTLEMENT ADMINISTRATION**

- 8 • The proposed Settlement Administrator is Phoenix Settlement Administrators
9 (¶1.38), which has provided evidence that no counsel are affiliated with it and that
10 it has adequate procedures in place to safeguard the data and funds to be entrusted
11 to it. (See Declaration of Michael E. Moore.)
- 12 • Settlement administration costs are estimated to be \$6,000 (¶1.37).
- 13 • Notice: The manner of giving notice is described below.
- 14 • Opt Out/Objection Dates: “Response Deadline” means the date forty-five (45)
15 calendar days after the Settlement Administrator mails the Notice of Settlement to
16 Class Members, or fourteen (14) calendar days after the re-mailing of any Notice
17 of Settlement to any Class Member, whichever is later, and shall be the last date
18 on which Class Members may timely postmark Requests for Exclusion or Notices
19 of Objection to the Settlement. (¶1.34) The Response Deadline also applies to the
20 submission of pay period disputes. (¶10.1.4)
 - 21 ○ Defendants, at their sole discretion, shall have the right, but not the
22 obligation, to revoke the Settlement if ten percent (10%) or more of the
23 total number of Class Members timely submit a Request for Exclusion.
24 (¶8.4)

- 1 • Notice of Final Judgment will be given either on a postcard or as a detachable
2 portion of the check for the Participating Class Members. (MPA at 21:8-19.)
3

4 **III. SETTLEMENT STANDARDS AND PROCEDURE**

5 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
6 of an entire class action, or of a cause of action in a class action, or as to a party,
7 requires the approval of the court after hearing.” “Any party to a settlement agreement
8 may serve and file a written notice of motion for preliminary approval of the settlement.
9 The settlement agreement and proposed notice to class members must be filed with the
10 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
11 Court, rule 3.769(c).

12 “In a class action lawsuit, the court undertakes the responsibility to assess
13 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
14 dismissal of a class action. The purpose of the requirement [of court review] is the
15 protection of those class members, including the named plaintiffs, whose rights may not
16 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
17 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
18 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
19 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
20 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
21 agreement to the extent necessary to reach a reasoned judgment that the agreement is
22 not the product of fraud or overreaching by, or collusion between, the negotiating
23 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
24 concerned.”] [internal quotation marks omitted].
25

1 “The burden is on the proponent of the settlement to show that it is fair and
2 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
3 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
4 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
6 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

7 Notwithstanding an initial presumption of fairness, “the court should not give
8 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
9 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
10 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
11 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
12 members, the court must independently and objectively analyze the evidence and
13 circumstances before it in order to determine whether the settlement is in the best
14 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
15 In that determination, the court should consider factors such as “the strength of
16 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
17 the risk of maintaining class action status through trial, the amount offered in
18 settlement, the extent of discovery completed and stage of the proceedings, the
19 experience and views of counsel, the presence of a governmental participant, and the
20 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
21 factors is not exclusive and the court is free to engage in a balancing and weighing of
22 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
23 245.

24 At the same time, “[a] settlement need not obtain 100 percent of the damages
25 sought in order to be fair and reasonable. Compromise is inherent and necessary in the

1 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
2 substantially narrower than it would be if the suits were to be successfully litigated,’
3 this is no bar to a class settlement because ‘the public interest may indeed be served by
4 a voluntary settlement in which each side gives ground in the interest of avoiding
5 litigation.’” *Id.* at 250.

6
7 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

8
9 **A. THERE IS A PRESUMPTION OF FAIRNESS**

10 The settlement is entitled to a presumption of fairness for the following reasons:

11
12 **1. The settlement was reached through arm’s-length bargaining**

13 Class Counsel and Defense Counsel conducted negotiations between May 7,
14 2021 through June 25, 2021, which ultimately resulted in settlement. There was no
15 mediator involved. Class Counsel represents that because this was purely a legal issue
16 with no disputed facts, their office negotiated directly with defense counsel to reach this
17 settlement. The parties considered using a mediator but believed direct negotiation was
18 the better course of action given: (a) the straightforward arguments for each side on a
19 single legal issue, (b) the substantial cost of mediation, which would reduce the class
20 members’ shares, and (c) the lengthy delay that would have been necessitated in
21 booking a qualified mediator given the backlog during COVID-19. (Second Supp.
22 Mankin Decl. ¶8.) the Court concurs this was appropriate given the limited and specific
23 issue the case presented.

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2. The investigation and discovery were sufficient

After answering Plaintiff's complaint on October 23, 2020, the parties engaged in written discovery related to the scope and parameters of the putative Class and PAGA Employee group. Plaintiff responded to requests for production and Defendants responded to form and special interrogatories, requests for admission, and requests for production of documents, including providing responsive documents related to Plaintiff's claims. Defendants' document production included responsive documents and policies related to Plaintiff's claims (e.g., Marathon Petroleum's payroll and overtime policies, applicable collective bargaining agreements governing overtime and shift differentials, and Plaintiff's individual time and pay records during the Class Period). (Settlement Agreement ¶2.2)

After the exchange of written discovery, the Parties engaged in discussions regarding the limited nature of Plaintiff's two causes of action and the employees at issue who earned both "Reg Rate Adj Sched" payments and overtime in the same pay period during the Class Period. On March 18, 2021, Defendants' counsel also provided Plaintiff's counsel with the approximate number of current and former non-exempt employees employed by MPLS in California who, in the same pay period, worked overtime and received a "Regular Rate Adj Sched" payment from May 21, 2019 through February 13, 2021 (the last date data was available) along with the approximate number of workweeks in which this occurred. (*Ibid.*)

This is sufficient to value the case for settlement purposes.

3. Counsel is experienced in similar litigation

Class Counsel represent that they are experienced in class action litigation, including wage and hour class actions.

1 **4. Percentage of the class objecting**

2 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
3 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
4 the court receive objections to the proposed settlement, it will consider and either sustain
5 or overrule them at the fairness hearing.”].
6

7 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
8 **FAIR, ADEQUATE, AND REASONABLE**
9

10 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
11 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
12 does when it approves a settlement as in good faith under Code of Civil Procedure
13 section 877.6, the court must at least satisfy itself that the class settlement is within the
14 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
15 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
16 consider and weigh the nature of the claim, the possible defenses, the situation of the
17 parties, and *the exercise of business judgment* in determining whether the proposed
18 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
19 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).
20

21 **1. Amount Offered in Settlement**

22 The most important factor is the strength of the case for plaintiffs on the merits,
23 balanced against the amount offered in settlement.” (*Id.* at 130.)
24
25

1 In evaluating this settlement it is important to keep in mind that it involved a
2 single form of wage statement violation. Class Counsel estimated Defendant's maximum
3 exposure at \$542,000 and realistic exposure at \$235,000, based on the following analysis:

4 Violation	Maximum Exposure	Realistic Exposure
5 Wage Statement Claim	\$270,000.00	\$135,000.00
6 PAGA Penalties	\$272,000.00	\$100,000.00
7 Total	\$542,000.00	\$235,000.00

8 (MPA at 16:11-17:2; Second Supp. Mankin Decl. ¶¶3-18.)

9 Class Counsel represents that the \$10,000 allocated to the PAGA claim is fair,
10 just, and reasonable because it carries out the purpose of PAGA, which is "to remediate
11 present labor law violations, deter future ones, and to maximize enforcement of state
12 labor laws." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. 10. (Second Supp.
13 Mankin Decl. ¶9.) It is represented this litigation and settlement remediated present and
14 past violations because Plaintiff and the Class are getting a very high average payment on
15 a case alleging only a single underlying wage statement violation (with an estimated per-
16 wage-statement payment nearing \$50). This redresses and makes right the present and
17 past violations. (*Id.* at ¶10.) It is contended this litigation and settlement have also
18 deterred future violations in two ways. First, Defendants changed the format and content
19 of the wage statements issued to eliminate this issue entirely, meaning that any alleged
20 future violations will not occur. Second, the result obtained here (a gross settlement
21 amount over \$60 per wage statement) will deter future violations by making Defendants
22 and other employers aware of the substantial liability they face for not complying with
23 California law. (*Id.* at ¶11.) Moreover, this litigation ensured a maximal enforcement of
24 state labor laws. Plaintiff's case did not involve multiple claims with differing theories
25

1 and chances of success. Plaintiff brought a narrow claim for one specific alleged violation
2 of California law. (*Id.* at ¶12.)

3 Class Counsel obtained a gross settlement valued at \$165,000. This is
4 approximately 30% of Defendants' maximum exposure and 70.2% of Defendant's
5 realistic exposure.

6 7 **2. The Risks of Future Litigation**

8 Notwithstanding the narrow claim at issue, the case is likely to be expensive and
9 lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to
10 prolong the litigation as well as any recovery by the class members. Even if a class is
11 certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.*
12 (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts
13 should retain some flexibility in conducting class actions, which means, under suitable
14 circumstances, entertaining successive motions on certification if the court subsequently
15 discovers that the propriety of a class action is not appropriate."].) Further, the settlement
16 was negotiated and endorsed by Class Counsel who, as indicated above, are experienced
17 in class action litigation. Based upon their investigation and analysis, the attorneys
18 representing Plaintiff and the class are of the opinion that this settlement is fair,
19 reasonable, and adequate. (Mankin Decl. ¶24.)

20 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
21 which was sent copies of the original and revised settlement agreements. Any objection
22 by it will be considered at the final fairness hearing.

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1 **1. The Proposed Class is Numerous**

2 There are at least 75 putative Class Members. (Mankin Decl. ¶8.) Numerosity is
3 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
4 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
5 *class action is liberally construed,*” and citing examples wherein classes of as little as
6 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
7 (1972) 28 Cal.App.3d 1017, were upheld).

8 **2. The Proposed Class Is Ascertainable**

9 “A class is ascertainable, as would support certification under statute
10 governing class actions generally, when it is defined in terms of objective
11 characteristics and common transactional facts that make the ultimate identification
12 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
13 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

14 The class is defined above. Class Members are ascertainable through
15 Defendants’ records. (Settlement Agreement ¶4.2.5.1.a.)

16 **3. There Is A Community of Interest**

17 “The community of interest requirement involves three factors: ‘(1) predominant
18 common questions of law or fact; (2) class representatives with claims or defenses typical
19 of the class; and (3) class representatives who can adequately represent the class.’”
20 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

21 As to predominant questions of law or fact, Plaintiff contends that the Class was
22 subject to common policies and practices relating to Defendants’ wage statements which
23 are alleged to be uniform. (MPA at 11:12-18.)

24 As to typicality, the parties agree that Plaintiff asserts claims regarding wage
25 statements typical of the class, which are at the core of the lawsuit. (MPA at 11:20-25.)

1 As to adequacy, Plaintiff represents that he has been actively involved in this
2 action, he understands his obligations as class representative, and he has no conflict of
3 interest with the proposed class members. (Declaration of Robert Vega ¶¶3-5.) As
4 previously stated, Class Counsel have experience in class action litigation.

5 6 **4. Substantial Benefits Exist**

7 Given the relatively small size of the individual claims, a class action is superior to
8 separate actions by the class members.

9 10 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 11 OF DUE PROCESS**

12 The purpose of notice is to provide due process to absent class members. A practical
13 approach is required, in which the circumstances of the case determine what forms of
14 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
15 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
16 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
17 stake of the individual class members; (4) the cost of notifying class members; (5) the
18 resources of the parties; (6) the possible prejudice to class members who do not receive
19 notice; and (7) the res judicata effect on class members.

20 **1. Method of class notice**

21 The Stipulation provides that no more than twenty-one (21) calendar days after
22 entry of the Preliminary Approval Order, Defendants shall provide the Settlement
23 Administrator with the Class Information for purposes of mailing the Notice of
24 Settlement to Class Members. (¶7.1) Upon receipt of the Class Information, the
25 Settlement Administrator will conduct a national change of address search for the most

1 current address of all former employee Class Members and will update such addresses
2 as necessary. Fourteen (14) calendar days after receipt of the Class Information, the
3 Settlement Administrator shall mail the Notice of Settlement, in English and Spanish
4 languages, to all Class Members by First Class U.S. Mail. (§7.2)

5 Any Notice of Settlement returned to the Settlement Administrator as non-
6 deliverable through the Response Deadline shall be re-mailed to the forwarding address
7 affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
8 perform a and a skip trace to locate a new address. If those measures are not successful,
9 the Settlement Administrator shall have no further obligation to mail the Notice of
10 Settlement to a Class Member. Class Members to whom the Notice of Settlement is re-
11 sent shall have fourteen (14) calendar days thereafter or until the Response Deadline
12 has expired, whichever is later, to mail the Request for Exclusion or Notice of
13 Objection to the Settlement Administrator. The date of the postmark on the return
14 envelope shall be the exclusive means used to determine whether a Class Member has
15 timely mailed his/her Request for Exclusion or Notice of Objection on or before the
16 relevant deadline. If a Class Member's Notice of Settlement is returned to the
17 Settlement Administrator more than once as non-deliverable, then an additional Notice
18 of Settlement shall not be re-mailed. If, for any reason, a Notice of Settlement is non-
19 deliverable, the Settlement Administrator will not mail an Individual Settlement
20 Payment to the Class Member. Rather, the Settlement Administrator will hold the
21 Individual Settlement Payment until the Void Date to make it available to the Class
22 Member upon request, with proof of identity. If the payment is not claimed by the Void
23 Date, the funds shall be delivered to the California State Controller Unclaimed Property
24 Fund in the name of the Class Member along with the funds for uncashed checks. (§7.3)

1 **2. Content of class notice.**

2 A copy of the revised class notice is attached to the Third Supplemental
3 Declaration of Mankin as Exhibit A. The notice includes information such as: a
4 summary of the litigation; the nature of the settlement; the terms of the settlement
5 agreement; the maximum deductions to be made from the gross settlement amount (i.e.,
6 attorney fees and costs, the enhancement award, and claims administration costs); the
7 procedures and deadlines for participating in, opting out of, or objecting to, the
8 settlement; the consequences of participating in, opting out of, or objecting to, the
9 settlement; and the date, time, and place of the final approval hearing. See Cal Rules of
10 Court, rule 3.766(d). It is to be given in both English and Spanish. (¶1.21) .

11 **3. Settlement Administration Costs**

12 Settlement administration costs are estimated at **\$6,000**, including the cost of
13 notice (¶4.2.2). Prior to the time of the final fairness hearing, the settlement
14 administrator must submit a declaration attesting to the total costs incurred and
15 anticipated to be incurred to finalize the settlement for approval by the Court.
16

17 **E. ATTORNEY FEES AND COSTS**

18 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
19 implied, that has been entered into with respect to the payment of attorney fees or the
20 submission of an application for the approval of attorney fees must be set forth in full in
21 any application for approval of the dismissal or settlement of an action that has been
22 certified as a class action.”

23 Ultimately, the award of attorney fees is made by the court at the fairness
24 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
25 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*

1 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
2 1132-1136. In common fund cases, the court may use the percentage method. If
3 sufficient information is provided a cross-check against the lodestar may be conducted.
4 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
5 agreement by the parties to the contrary, “the court ha[s] an independent right and
6 responsibility to review the attorney fee provision of the settlement agreement and
7 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
8 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

9 The question of class counsel’s entitlement to **\$55,000** (33 1/3%) in attorney fees
10 will be addressed at the final fairness hearing when class counsel brings a noticed
11 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
12 the court with current market tested hourly rate information and billing information so
13 that it can properly apply the lodestar method and must indicate what multiplier (if
14 applicable) is being sought.

15 Class counsel should also be prepared to justify the costs sought (capped at
16 **\$10,000**) by detailing how they were incurred.

18 **F. SERVICE AWARDS**

19 The Settlement Agreement provides for a service award of up to **\$5,000** for the
20 class representative. Trial courts should not sanction enhancement awards of thousands
21 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
22 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
23 quantification of time and effort expended on the litigation, and in the form of reasoned
24 explanation of financial or other risks incurred by the named plaintiffs, is required in
25 order for the trial court to conclude that an enhancement was ‘necessary to induce [the

1 named plaintiff] to participate in the suit” *Clark v. American Residential Services*
2 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

3 In connection with the final fairness hearing, the named Plaintiffs must submit a
4 declaration attesting to why they should be compensated for the expense or risk they
5 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

6 [remove if not needed]

7 The Court will decide the issue of the enhancement award at the time of final
8 approval.

9
10 **V. CONCLUSION AND ORDER**

11 The Court hereby:

- 12 (1) Grants preliminary approval of the settlement as fair, adequate, and
13 reasonable;
- 14 (2) Grants conditional class certification;
- 15 (3) Appoints Robert Vega as Class Representative;
- 16 (4) Appoints Lauby Mankin & Lauby, LLP as Class Counsel;
- 17 (5) Appoints Phoenix Settlement Administrators as Settlement Administrator;
- 18 (6) Approves the proposed notice plan; and
- 19 (7) Approves the proposed schedule of settlement proceedings as follows:
- 20 • Preliminary approval hearing: July 29, 2022
 - 21 • Deadline for Defendant to provide class list to settlement administrator: August
22 19, 2022 (within 21 calendar days from preliminary approval)
 - 23 • Deadline for settlement administrator to mail notices: September 2, 2022 (within
24 35 calendar days from preliminary approval)
- 25

- 1 • Deadline for class members to opt out: October 17, 2022 (45 calendar days from
- 2 the initial mailing of the Notice Packets)
- 3 • Deadline for class members to object: October 17, 2022 (45 calendar days from
- 4 the initial mailing of the Notice Packets)
- 5 • Deadline for class counsel to file motion for final approval: November 10, 2022
- 6 (16 court days prior to final fairness hearing)
- 7 • Final fairness hearing: December 7, 2022 at 10:00 a.m.

8
9 Dated: 7/29/2022



10 MAREN E. NELSON

11 Judge of the Superior Court