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FILED
Superior Court of California
County of Los Angeles
JUN 12 2023
David W. Steyer, Executive Officer/Clerk of Court
By: S. Arizian, Deputy
M. Martin

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JOSEPH SHIFFLET, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SCREAMLINE INVESTMENTS CORPORATION, and DOES 1 through 500, inclusive,

Defendants.

Case No.: 19STCV24923

Mus
~~TENTATIVE~~ ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: June 12, 2023
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

Plaintiff Joseph Shifflet sues his former employer, Defendant Screamline Investments Corporation, for alleged wage and hour violations. Defendant operates a

1 bus touring company. Plaintiff seeks to represent a class of Defendant's current and
2 former non-exempt employees.

3 On July 17, 2019, Plaintiff filed a class action complaint. On February 6, 2020,
4 Plaintiff filed a First Amended Complaint alleging causes of action for: (1) failure to
5 provide rest periods (Labor Code § 226.7); (2) failure to provide meal periods (Labor
6 Code § 226.7); (3) failure to pay minimum wage (Labor Code § 1197); (4) violation of
7 California Business and Professions Code § 17200, et seq. (the "UCL"); (5) waiting
8 time penalties (Labor Code §§ 201-203); (6) inaccurate wage statements (Labor Code §
9 226); and 7) violations of the Private Attorneys General Act of 2004 (Labor Code §
10 2698 et seq.) ("PAGA").

11 On September 29, 2020, the Court granted Defendant's Motion for Judgment on
12 the Pleadings, striking the first and second causes of action for failure to provide rest
13 and meal periods based on federal preemption under 49 U.S.C. section 31141. As
14 litigation and discovery continued, Defendant proceeded with *Pick Up Stix* settlements
15 with various class members.

16 On April 20, 2022, the parties participated in a mediation before mediator Craig
17 Ackermann, which resulted in settlement. The terms of settlement were initially
18 finalized in the Class Action and PAGA Settlement Agreement, a copy of which was
19 attached to the Declaration of Prescott W. Littlefield filed December 15, 2022
20 ("Littlefield Decl.") as Exhibit A.

21 On March 14, 2023, the Court issued a "checklist" to the parties regarding
22 deficiencies in Plaintiff's Motion for Preliminary Approval that needed to be remedied
23 by additional briefing. On March 15, 2023, the Court called the matter of Plaintiff's
24 Motion for Preliminary Approval for hearing and conferred with counsel with respect to
25 the issues set forth in the Court's checklist. In response, counsel filed further briefing,

1 including an Amended Class Action and PAGA Settlement Agreement (“Settlement
2 Agreement”) attached to the Supplemental Declaration of Prescott W. Littlefield filed
3 May 3, 2023 (“Supp. Littlefield Decl.”) as Exhibit A-2.

4 The matter was called for hearing on May 30, 2023. Counsel and the Court
5 discussed issues remaining with the settlement and the matter was continued to June 12,
6 2023.

7 A Second Amended Settlement Agreement was filed and attached to the
8 Declaration of Prescott Littlefield filed June 8, 2023, together with supplemental
9 briefing. All references below are to the Second Amended Settlement Agreement. ____

10 —
11
12 **II. THE TERMS OF THE SETTLEMENT**

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

14 “Class” means: Plaintiff and all other non-exempt employees who are or were
15 employed by Defendant Screamline Investments Corporation (“Defendant”) in the State
16 of California, from July 17, 2015 through the earlier of (i) preliminary approval or (ii)
17 July 20, 2022 (the “Class Period”), who worked for more than one pay period.

18 Defendant approximates the Class consists of 140 Class Members as of April 20, 2022.
19 (¶1.5)

20 “Class Period” means the period from July 17, 2015 through the earlier of (i)
21 preliminary approval or (ii) July 20, 2022. (¶1.12)

22 “Aggrieved Employee” means: Those members of the Class who worked for
23 Defendant from May 6, 2018, to through the earlier of (i) preliminary approval or (ii)
24 July 20, 2022 (“the PAGA Covered Period”). (¶1.4)

1 “PAGA Period” means the period from May 6, 2018, to through the earlier of (i)
2 preliminary approval or (ii) July 20, 2022. (¶1.31)

3 “Participating Class Member” means a Class Member who does not submit a
4 valid and timely Request for Exclusion from the Settlement. (¶1.35)

5 Class Size Estimates: Based on its records, DEFENDANT estimates that, as of
6 the date of the Settlement Agreement, (1) there are 140 Class Members during the Class
7 period and (2) there were 86 Aggrieved Employees who worked an estimated 3,000 Pay
8 Periods during the PAGA Period. (¶9)

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

11 The essential monetary terms are as follows:

- 12 • The Gross Settlement Amount (“GSA”) is **\$150,000** (¶3.1). This includes
13 payment of a PAGA penalty of **\$7,500** to be paid 75% to the LWDA (\$5,625)
14 and 25% to the Aggrieved Employees (**\$1,875**) (¶3.2.5).
 - 15 ○ Escalator Clause: In the event that the total number of employees in the
16 Class Period is 15% more than the 140 individuals estimated by
17 Defendant, then the Gross Settlement Amount shall be increased
18 proportionately for each additional employee over the initial 140
19 employee estimate. (¶10.1)
- 20 • The Net Settlement Amount (“Net”) (**\$48,050**) is the GSA less:
 - 21 ○ **\$15,950** previously paid to certain Class Members (¶3.1);
 - 22 ○ Up to **\$50,000** (33 1/3%) for attorney fees (¶3.2.2);
 - 23 ○ Up to **\$11,000** for attorney costs (*Ibid.*);
 - 24 ○ Up to **\$10,000** for a service award to the proposed class representative
25 (¶3.2.1); and

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- Estimated **\$7,500** for settlement administration costs (§3.2.3).
- Defendant will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (§3.1)
- Assuming the Court approves all maximum requested deductions, approximately \$48,050 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$343.21. ($\$48,050 \text{ Net} \div 140 \text{ class members} = \343.21). In addition, each Aggrieved Employee will receive a portion of the PAGA penalty, estimated to be \$23.43 per Aggrieved Employee. ($\$1,875 \text{ or } 25\% \text{ of } \$7,500 \text{ PAGA penalty} \div 80 \text{ Aggrieved Employees} = \23.43).
- There is no Claim Requirement (§3.1).
- The settlement is not reversionary (§3.1).
- Individual Settlement Share Calculation: An Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. However, for Class Members who previously received settlements from Defendant, those Class Members shall only be entitled to a further distribution if their award under this calculation exceeds the amount previously recovered. For those Class Members, their recovery under this paragraph will only be for amounts in excess of what they previously recovered in their Pick Up Stix settlement. Any amounts that do not exceed Pick Up Stix Class Member settlements shall be distributed on a pro rata basis among the Class Members who did not receive a previous Pick Up Stix settlement from Defendant. However, these individuals shall still receive their respective portions of the

1 PAGA payments as Aggrieved Employees. For example, if a previous Pick Up
2 Stix settlement class member received \$500 already, and the share of this
3 settlement that this class member would otherwise be entitled to would be \$450,
4 that individual will not receive any funds from this settlement. The \$450 will be
5 distributed among the other class members. However, if this same individual
6 were entitled to \$550 under this settlement, then this individual will receive an
7 additional \$50 from this settlement, and the \$500 portion will be distributed
8 among the other class member (§3.2.4)

- 9 ○ Non-Participating Class Members will not receive any Individual Class
10 Payments. The Administrator will retain amounts equal to their Individual
11 Class Payments in the Net Settlement Amount for distribution to
12 Participating Class Members on a pro rata basis. (§3.2.4.2)

- 13 • PAGA Payment Calculation: The Administrator will calculate each Individual
14 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25%
15 share of PAGA Penalties \$1,875 by the total number of PAGA Period Pay
16 Periods worked by all Aggrieved Employees during the PAGA Period and (b)
17 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
18 (§3.2.5.1)
- 19 • Tax Withholdings: Each Participating Class Member's Individual Class Payment
20 will be allocated as 50% wages, 50% waiting time penalties/wage statement
21 penalties/interest. (§3.2.4.1)
- 22 • Funding of Settlement: On May 10, 2023, or the Effective Date, whichever is
23 later, Defendant shall deposit Eighty Thousand Four Hundred Thirty Dollars
24 Even (\$80,430.00) with the Settlement Administrator. No later than six months
25 thereafter, Defendant shall deposit the remaining amount of the Maximum

1 Settlement Fund, Fifty Three Thousand Six Hundred Twenty Dollars Even
2 (\$53,620.00), with the Settlement Administrator. (¶4.3)

- 3 • Distribution: Within 21 days after DEFENDANT funds the Gross Settlement
4 Amount, the Administrator will mail checks for all Individual Class Payments,
5 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
6 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
7 Litigation Expenses Payment, and the Class Representative Service Payment.
8 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
9 Expenses Payment and the Class Representative Service Payment shall not
10 precede disbursement of Individual Class Payments and Individual PAGA
11 Payments. (¶4.4)

- 12 • Uncashed Settlement Payment Checks: The face of each check shall prominently
13 state the date (not less than 180 days after the date of mailing) when the check
14 will be voided. (¶4.4.1) For any Class Member whose Individual Class Payment
15 check or Individual PAGA Payment check is uncashed and cancelled after the
16 void date, the Administrator shall transmit the funds represented by such checks
17 to the California Controller's Unclaimed Property Fund in the name of the Class
18 Member thereby leaving no "unpaid residue" subject to the requirements of
19 California Code of Civil Procedure Section 384, subd. (b). (¶4.4.3)

20 21 **C. TERMS OF RELEASES**

- 22 • Releases of Claims: Effective on the date when DEFENDANT fully funds the
23 entire Gross Settlement Amount and funds all employer payroll taxes owed on
24 the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members,
25

1 and Class Counsel will release claims against all Released Parties as follows:

2 (¶6)

- 3 • Release by Participating Class Members Who Are Aggrieved Employees: All
4 Participating Class Members, on behalf of themselves and their representatives,
5 agents, attorneys, heirs, administrators, successors, and assigns generally, release
6 and discharge Released Parties, and, for clarity's sake specifically including the
7 original individual defendant Shoeleh "Noonoosh" Sapir from all claims,
8 transactions, or occurrences that occurred during the Class Period, including, but
9 not limited to: (a) all claims that were, or reasonably could have been, alleged,
10 based on the facts contained, in the Operative Complaint (which, by way of
11 clarity, includes claims under Labor Code sections 201, 202, 203, 204, 210,
12 226(a) and (e), 226.7, 510, 512, 1194, 1194.2, 1197, FLSA claims based on the
13 facts alleged or that could have been pled based on the facts alleged, as well as
14 claims under Sections 3, 7, 11 and 12 of IWC Wage Order No. 9 and/or any
15 other applicable Wage Order(s), and the UCL) and (b) all PAGA claims that
16 were, or reasonably could have been, alleged based on facts contained in the
17 Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action.
18 However, this does not extend to any claims or actions to enforce this
19 Agreement, or to any claims for vested benefits, unemployment benefits,
20 disability benefits, social security benefits, workers' compensation benefits that
21 arose at any time, or based on occurrences outside the Class Period. Class
22 Members acknowledge that they may discover facts or law different from, or in
23 addition to, the facts or law that they now know or believe to be true but agree,
24 nonetheless, that this release shall be and remain effective in all respects,
25

1 notwithstanding such different or additional facts or the discovery of them.

2 (¶6.2)

- 3 • Release by Participating Class Members Who Are Not PAGA Aggrieved
4 Employees: All Participating Class Members, on behalf of themselves and their
5 representatives, agents, attorneys, heirs, administrators, successors, and assigns
6 generally, release and discharge Released Parties, and, for clarity's sake
7 specifically including the original individual defendant Shoeleh "Noonoosh"
8 Sapir from all claims, transactions, or occurrences that occurred during the Class
9 Period, including, but not limited to: (a) all claims that were, or reasonably could
10 have been, alleged, based on the facts contained, in the Operative Complaint
11 (which, by way of clarity, includes claims under Labor Code sections 201, 202,
12 203, 204, 210, 226(a) and (e), 226.7, 510, 512, 1194, 1194.2, 1197, FLSA claims
13 based on the facts alleged or that could have been pled based on the facts
14 alleged, as well as claims under Sections 3, 7, 11 and 12 of IWC Wage Order
15 No. 9 and/or any other applicable Wage Order(s), and the UCL). However, this
16 does not extend to any claims or actions to enforce this Agreement, or to any
17 claims for vested benefits, unemployment benefits, disability benefits, social
18 security benefits, workers' compensation benefits that arose at any time, or based
19 on occurrences outside the Class Period. Class Members acknowledge that they
20 may discover facts or law different from, or in addition to, the facts or law that
21 they now know or believe to be true but agree, nonetheless, that this release shall
22 be and remain effective in all respects, notwithstanding such different or
23 additional facts or the discovery of them. (¶6.3)

- 24 • Release by Non-Participating Class Members Who Are PAGA Aggrieved
25 Employees: All Non-Participating Class Members who are Aggrieved

1 Employees are deemed to release, on behalf of themselves and their respective
2 former and present representatives, agents, attorneys, heirs, administrators,
3 successors, and assigns, and, for clarity's sake specifically including the original
4 individual defendant Shoeleh "Noonoosh" Sapir, the Released Parties from all
5 claims for PAGA penalties that were alleged, or reasonably could have been
6 alleged, based on the PAGA Period facts stated in the Operative Complaint, and
7 the PAGA Notice and ascertained in the course of the Action. (§6.4)

8 ○ "PAGA Notice" means Plaintiff's May 6, 2019 letter to DEFENDANT
9 and the LWDA providing notice pursuant to Labor Code section 2699.3,
10 subd.(a). (§1.33)

- 11 • "Released Parties" means: DEFENDANT and each of its former and present
12 directors, officers, shareholders, owners, members, attorneys, insurers,
13 predecessors, successors, assigns, subsidiaries, and affiliates. (§1.41)
- 14 • The named Plaintiff will also provide a general release and a waiver of the
15 protections of Cal. Civ. Code §1542. (§6.1)
- 16 • The releases are effective on the date when Defendant fully funds the entire
17 Gross Settlement Amount, which will occur when Defendant deposits the
18 remaining amount of the Maximum Settlement Fund with the Settlement
19 Administrator no later than six months following the first installment. (§4.3)

20 21 **D. SETTLEMENT ADMINISTRATION**

- 22 • The proposed Settlement Administrator is Phoenix Class Action Administration
23 Solutions (§8.1), which has provided evidence that no counsel are affiliated with it
24 and that it has adequate procedures in place to safeguard the data and funds to be
25 entrusted to it. (See Declaration of Michael E. Moore).

- 1 • Settlement administration costs are estimated to be \$7,500 (¶3.2.3).
- 2 • Notice: The manner of giving notice is described below.
- 3 • "Response Deadline" means 60 days after the Administrator mails Notice to Class
4 Members and Aggrieved Employees, and shall be the last date on which Class
5 Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement,
6 or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to
7 whom Notice Packets are resent after having been returned undeliverable to the
8 Administrator shall have an additional 14 calendar days beyond the Response
9 Deadline has expired. (¶1.42) The same deadline applies to the submission of
10 workweek disputes. (¶8.6)
 - 11 ○ Non-Participating Class Members who are Aggrieved Employees are
12 deemed to release the claims identified in Paragraph 6.4 of this Agreement
13 and are eligible for an Individual PAGA Payment irrespective of their
14 submission of a Request for Exclusion. (¶8.5.4)
 - 15 ○ If the number of valid Requests for Exclusion identified in the Exclusion
16 List exceeds 15% of the total of all Class Members, Defendant may, but is
17 not obligated, elect to withdraw from the Settlement. (¶10)
- 18 • Notice of Final Judgment will be posted on the Settlement Administrator's website
19 (¶8.8.1).

21 **III. SETTLEMENT STANDARDS AND PROCEDURE**

22 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
23 of an entire class action, or of a cause of action in a class action, or as to a party,
24 requires the approval of the court after hearing." "Any party to a settlement agreement
25 may serve and file a written notice of motion for preliminary approval of the settlement.

1 The settlement agreement and proposed notice to class members must be filed with the
2 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
3 Court, rule 3.769(c).

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

17 “The burden is on the proponent of the settlement to show that it is fair and
18 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
19 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
20 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
21 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
22 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

23 Notwithstanding an initial presumption of fairness, “the court should not give
24 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
25 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a

1 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
2 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
3 members, the court must independently and objectively analyze the evidence and
4 circumstances before it in order to determine whether the settlement is in the best
5 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
6 In that determination, the court should consider factors such as “the strength of
7 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
8 the risk of maintaining class action status through trial, the amount offered in
9 settlement, the extent of discovery completed and stage of the proceedings, the
10 experience and views of counsel, the presence of a governmental participant, and the
11 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
12 factors is not exclusive and the court is free to engage in a balancing and weighing of
13 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
14 245.

15 At the same time, “[a] settlement need not obtain 100 percent of the damages
16 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
17 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
18 substantially narrower than it would be if the suits were to be successfully litigated,’
19 this is no bar to a class settlement because ‘the public interest may indeed be served by
20 a voluntary settlement in which each side gives ground in the interest of avoiding
21 litigation.’” *Id.* at 250.

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1 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

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3 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

5
6 **1. The settlement was reached through arm's-length bargaining**

7 On April 20, 2022, the parties participated in a mediation before mediator Craig
8 Ackermann, which resulted in settlement. (Littlefield Decl. ¶¶12-13.)

9
10 **2. The investigation and discovery were sufficient**

11 Class Counsel represents that Plaintiff engaged in written discovery, which
12 included interrogatories and document requests. (*Id.* at ¶12.) In connection with
13 mediation, the parties agreed to an exchange of representative data regarding a select
14 number of employees. Included in this data were employee time cards, pay data, and
15 data from the vehicles' "electronic logging device" (ELD's) which are utilized by
16 commercial drivers/vehicles to capture the movements of the vehicle, times of trips,
17 idle time, distance traveled, and are utilized by regulators to review driver activities,
18 among other things. (*Ibid.*) To determine the potential damages, counsel compared the
19 data from the ELD's to the pay/time data provided by Defendant. By looking at the
20 different types of compensation paid (e.g., flat rates, hourly rates) and the time worked
21 by drivers as evidenced on their time sheets and the ELD's, counsel concluded that
22 there were approximately .5625 hours per week of uncompensated time. (*Id.* at ¶14.)

23 Counsel further represents that they had analyzed the data of 15 drivers out of a
24 class of 140, or a 10.7% sample. (Supp. Littlefield Decl. ¶¶2-3.) Counsel asserts that,
25 by utilizing an online sample size calculator, a review of 14 drivers would produce a

1 margin of error of 21%. (*Id.* at ¶7.) This is a significant possible error and renders the
2 sample of limited utility. Nonetheless, the Court understands that data from all ELDs
3 was used and examined by Class Counsel.

4 In addition, Defendant’s Chief Financial Officer represents that its business was
5 prohibited from operating during the Covid pandemic, causing reductions in revenue
6 and significant losses in income. (Supplemental Declaration of Shoeleh Sapir ¶3.) He
7 asserts that with shutdown orders lifted, both the market and the company’s finances
8 are slowly improving and that Defendant is able to make the timely settlement
9 payments agreed upon in this case. (*Id.* at ¶5.)

10 This is sufficient to value the case for settlement purposes.

11
12 **3. Counsel is experienced in similar litigation**

13 Class Counsel represent that they are experienced in class action litigation,
14 including wage and hour class actions. (Littlefield Decl. ¶18, Exhibit B thereto; Decl. of
15 Brandon Littlefield.)

16
17 **4. Percentage of the class objecting**

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

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1 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
2 **FAIR, ADEQUATE, AND REASONABLE**

3
4 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
5 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
6 does when it approves a settlement as in good faith under Code of Civil Procedure
7 section 877.6, the court must at least satisfy itself that the class settlement is within the
8 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
9 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
10 consider and weigh the nature of the claim, the possible defenses, the situation of the
11 parties, and *the exercise of business judgment* in determining whether the proposed
12 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
13 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

14
15 **1. Amount Offered in Settlement**

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

18 Class Counsel estimated Defendant’s maximum exposure at \$2,335,379.98, based
19 on the following analysis:

20

Violation	Maximum Exposure
Unpaid Wages	\$211,379.98
Waiting Time Penalties	\$500,000.00
Wage Statement Penalties	\$560,000.00
PAGA Penalties	\$1,064,000.00
Total	\$2,335,379.98

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1 (Memo ISO Prelim at 8:14-9:4; Littlefield Decl. ¶¶5-16; Supp. Littlefield Decl. ¶¶2-6.)

2 Class Counsel obtained a gross settlement valued at \$150,000. This is
3 approximately 6.4% of Defendant’s maximum exposure.

4
5 **2. The Risks of Future Litigation**

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

18 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
19 which was sent a copy of the Settlement Agreement on May 1, 2023 and has not yet
20 objected. (Supp. Littlefield Decl., Exhibit D.) Any objection by it will be considered at
21 the final fairness hearing.

22
23 **3. The Releases Are Limited**

24 The Court has reviewed the Releases to be given by the absent class members and
25 the named plaintiff. The releases, described above, are tailored to the pleadings and

1 release only those claims in the pleadings. There is no general release by the absent
2 class. The named plaintiff's general release is appropriate given that he was represented
3 by counsel in its negotiation.

4 5 **4. Conclusion**

6 Class Counsel estimated Defendant's maximum exposure at \$2,335,379.98. Class
7 Counsel obtained a gross settlement valued at \$150,000. This is approximately 6.4% of
8 Defendant's maximum exposure, which, given Defendant's financial condition and the
9 uncertain outcomes, including the potential that the class might not be certified, that
10 liability is a contested issue, and that the full amount of penalties would not necessarily
11 be assessed even if the class is certified and liability found, the settlement is within the
12 "ballpark of reasonableness."

13 14 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

15 A detailed analysis of the elements required for class certification is not required,
16 but it is advisable to review each element when a class is being conditionally certified.
17 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
18 advocating class treatment must demonstrate the existence of an ascertainable and
19 sufficiently numerous class, a well-defined community of interest, and substantial
20 benefits from certification that render proceeding as a class superior to the alternatives."
21 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

23 There are approximately 140 putative Class Members. (Memo ISO Prelim at
24 11:26.) Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax*
25 *Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that the "requirement that there

1 *be many parties to a class action is liberally construed,”* and citing examples wherein
2 classes of as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28,
3 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

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

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

10 The class is defined above. Class Members are ascertainable through
11 Defendant’s records. (Memo ISO Prelim at 12:3-6.)

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

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

17 As to predominant questions of law or fact, Plaintiff contends that the proposed
18 Settlement Class members were non-exempt employees of Defendants who worked
19 during the class period within the state of California. As it is Plaintiff’s position that all
20 non-exempt employees of Defendant working within California during the class period
21 were subject to the same wage and hour violations, this presents a common issue for the
22 whole Settlement Class. (Memo ISO Prelim at 12:8-15.)

23 As to typicality, Plaintiff asserts that he was a non-exempt employee of Defendant
24 working within the State of California during the class period, and that the claims of
25

1 Plaintiff and the facts relating to his claims are identical amongst absent members of the
2 Class. (Memo ISO Prelim at 12:17-24.)

3 As to adequacy, each represents that he was informed of his responsibilities as
4 class representative and is willing to competently serve as such, and does not have
5 conflicts of interest with the class. (Declaration of Joseph Shifflett ¶¶2, 5.) As
6 previously stated, Class Counsel have experience in class action litigation.

7
8 **4. Substantial Benefits Exist**

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

11
12 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS
13 OF DUE PROCESS**

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

22 **1. Method of class notice**

23 **Not later than 30 days after the Court grants Preliminary Approval of the**
24 **Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a**
25 **Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as possible,**

1 and in no event later than 30 days after receiving the Class Data, the Administrator will
2 send to all Class Members identified in the Class Data, via first-class United States
3 Postal Service (“USPS”) mail, the Class Notice in English and Spanish. (¶8.4.2)

4 Not later than 3 business days after the Administrator’s receipt of any Class
5 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
6 Notice using any forwarding address provided by the USPS. If the USPS does not
7 provide a forwarding address, the Administrator shall conduct a Class Member Address
8 Search, and re-mail the Class Notice to the most current address obtained. The
9 Administrator has no obligation to make further attempts to locate or send Class Notice
10 to Class Members whose Class Notice is returned by the USPS a second time. (¶8.4.3)

11 The deadlines for Class Members’ written objections, Challenges to Workweeks
12 and/or Pay Periods, and Requests for Exclusion will be extended an additional 7 days
13 beyond the 60 days otherwise provided in the Class Notice for all Class Members
14 whose notice is re-mailed. The Administrator will inform the Class Member of the
15 extended deadline with the re-mailed Class Notice. (¶8.4.4)

16 **2. Content of class notice.**

17 A copy of the proposed class notice is attached to the Settlement Agreement as
18 Exhibit A. The notice includes information such as: a summary of the litigation; the
19 nature of the settlement; the terms of the settlement agreement; the maximum
20 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
21 the enhancement award, and claims administration costs); the procedures and deadlines
22 for participating in, opting out of, or objecting to, the settlement; the consequences of
23 participating in, opting out of, or objecting to, the settlement; and the date, time, and
24 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
25 given in both English and Spanish (¶1.11).

1 **3. Settlement Administration Costs**

2 Settlement administration costs are estimated at **\$7,500**, including the cost of
3 notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement
4 administrator must submit a declaration attesting to the total costs incurred and
5 anticipated to be incurred to finalize the settlement for approval by the Court.

6
7 **E. ATTORNEY FEES AND COSTS**

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

13 Ultimately, the award of attorney fees is made by the court at the fairness
14 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
15 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
16 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
17 1132-1136. In common fund cases, the court may use the percentage method. If
18 sufficient information is provided a cross-check against the lodestar may be conducted.
19 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
20 agreement by the parties to the contrary, “the court ha[s] an independent right and
21 responsibility to review the attorney fee provision of the settlement agreement and
22 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
23 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

24 The question of class counsel’s entitlement to **\$50,000** (33 1/3%) in attorney fees
25 will be addressed at the final fairness hearing when class counsel brings a noticed

1 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
2 the court with current market tested hourly rate information and billing information so
3 that it can properly apply the lodestar method and must indicate what multiplier (if
4 applicable) is being sought.

5 **Fee Split:** Plaintiff consented to the following fee split: 40% to Littlefield Law,
6 40% to Kearney Littlefield, LLP, and 20% to Naudi Law Group. (Littlefield Decl. ¶21,
7 Exhibit C thereto.) Jon Naudi of Naudi Law Group is the referring attorney and
8 assisted Class Counsel in certain aspects of the case and settlement. (Supp. Littlefield
9 Decl. ¶11.)

10 Class counsel should also be prepared to justify the costs sought (capped at
11 **\$11,000**) by detailing how they were incurred.

12 13 **F. SERVICE AWARD**

14 The Settlement Agreement provides for a service award of up to **\$10,000** for the
15 class representative. Trial courts should not sanction enhancement awards of thousands
16 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
17 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
18 quantification of time and effort expended on the litigation, and in the form of reasoned
19 explanation of financial or other risks incurred by the named plaintiffs, is required in
20 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
21 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
22 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

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

1 The Court will decide the issue of the enhancement award at the time of final
2 approval.

3
4 **V. CONCLUSION AND ORDER**

5 The Court hereby:

6 (1) Grants preliminary approval of the settlement as fair, adequate, and
7 reasonable;

8 (2) Grants conditional class certification;

9 (3) Appoints Joseph Shifflet as Class Representative;

10 (4) Appoints Kearney Littlefield, LLP and Littlefield Law as Class Counsel;

11 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
12 Administrator;

13 (6) Approves the proposed notice plan; and

14 (7) Approves the proposed schedule of settlement proceedings as follows:

- 15 • Preliminary approval hearing: June 12, 2023
- 16 • Deadline for Defendant to provide class list to settlement administrator: July 12,
17 2023 (within 30 calendar days from preliminary approval)
- 18 • Deadline for settlement administrator to mail notices: August 11, 2023 (within
19 30 calendar days from receipt of the class list)
- 20 • Deadline for class members to opt out: October 10, 2023 (60 calendar days from
21 the initial mailing of the Notice Packets)
- 22 • Deadline for class members to object: October 10, 2023 (60 calendar days from
23 the initial mailing of the Notice Packets)
- 24 • Deadline for class counsel to file motion for final approval:
25 10/16, 2023 (16 court days prior to final fairness hearing)

1 • Final fairness hearing: 11/7, 2023, at 9:00 am

2
3 Dated:

11/2/23

Maren E Nelson

MAREN E. NELSON

Judge of the Superior Court

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