

FILED

Superior Court of California
County of Los Angeles

08/12/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: N. Navarro Deputy

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

SCOTT OSKO, DAVID BECERRA,
DAVID BEAUDOIN, and MICHAEL
LANG, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

THE ELITE GROUP PROPERTY
INSPECTION SERVICE, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20STCV28718

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

Date: August 10, 2022

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiffs Scott Osko, David Becerra, David Beaudoin, and Michael Lang sue
their former employer, Defendant The Elite Property Inspection Service, Inc.

1 (“Defendant” or “Elite”), for alleged wage and hour violations. Defendant is a property
2 inspection company that provides property inspection services throughout Southern
3 California. Plaintiffs seek to represent a class of Property Inspectors who worked for
4 Defendant and were allegedly misclassified as independent contractors.

5 On July 30, 2020, Plaintiffs filed the initial class action complaint alleging
6 causes of action for: (1) willful misclassification of employees as independent
7 contractors (Labor Code §§ 226.8, 2750.3); (2) failure to provide required meal periods
8 (Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 4-2001, § 11); (3)
9 failure to provide required rest breaks (Labor Code §§ 226.7, 512; IWC Wage Order
10 No. 4-2001, § 12; (4) failure to pay overtime wages (Labor Code §§ 510, 1194, 1198;
11 IWC Wage Order No. 4-2001, § 3); (5) failure to pay minimum wages (Labor Code §§
12 1194, 1197; IWC Wage Order No. 4-2001, § 4); (6) failure to pay timely wages (Labor
13 Code §§ 204, 210); (7) failure to pay all wages due to discharged and quitting
14 employees (Labor Code §§ 201, 202, 203); (8) failure to maintain required records
15 (Labor Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 7); (9) failure to furnish
16 accurate itemized statements (Labor Code § 226; IWC Wage Order No. 4-2001, § 7);
17 (10) failure to indemnify employees for necessary expenditures incurred in discharge of
18 duties (Labor Code § 2802); (11) failure to produce or make available requested records
19 (Labor Code §§ 226, 432, 1198.5); and (12) unfair and unlawful business practices
20 (Bus. & Prof. Code § 17200, *et seq.*).

21 On September 18, 2020, Plaintiffs filed a First Amended Complaint (“FAC”),
22 adding a cause of action for penalties under the Private Attorneys General Act (Labor
23 Code §§ 2698-2699.5) (“PAGA”).
24
25

1 Prior to mediation, Defendant procured *Pick-Up Stix* release agreements from
2 approximately 54 putative class members, or approximately 82% of the estimated class
3 of 66 members, for the Labor Code claims alleged.

4 On May 14, 2021, the Parties participated in a mediation session with Jeff Ross,
5 which resulted in a settlement. The terms were finalized in the *Class Action Settlement*
6 *Agreement and Release* (“Settlement Agreement”), a copy of which was filed with the
7 Court.

8 On October 12, 2021, the Court issued a “checklist” to the parties pertaining to
9 deficiencies in the Settlement Agreement. In response, the parties filed further briefing,
10 including the Amended Settlement Agreement.

11 The settlement was preliminarily approved on March 17, 2022, on condition that
12 proof of service of the settlement on the LWDA be filed prior to the final approval
13 hearing. The proof of service is attached to the Declaration of Aubry Wand In Support
14 of Final Approval at Ex. D. Notice was given to the Class Members as ordered (see
15 Declaration of Makenna Snow).

16 Plaintiff’s motion for final approval, attorneys’ fees, costs, and a service award
17 came on for hearing on August 10, 2022. At oral argument the Court inquired of
18 counsel as to whether the “escalator” provision in Paragraph 64 of the Settlement
19 Agreement was triggered. By posting on Case Anywhere on August 11, 2022 counsel
20 represented that it was not.

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

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3 **A. SETTLEMENT CLASS DEFINITION**

4 “Class” means all Property Inspectors who were classified as independent
5 contractors by Defendant, and who performed work for Defendant in California, during
6 the Class Period. (¶2) “Class Member(s)” means each person who is a member of the
7 Class and who is eligible to participate in this Settlement. (¶6)

8 “Class Period” means the time period from July 30, 2016 through the
9 Preliminary Approval Date. (¶8)

10 Number of Workweeks: Prior to the mediation, Defendant represented that there
11 are 66 Class Members who have worked approximately 9,134 Workweeks during the
12 Class Period. This is a material representation, and if at the time Defendant provides the
13 Class Information to the Settlement Administrator it is discovered that Class Members
14 have worked 10,047 Workweeks or more during the Class Period (a 10% increase), then
15 the Parties stipulate that the Class Period shall end on the date one calendar day
16 immediately prior to the date that the 10,047th Workweek threshold is met,
17 notwithstanding the definition of the Class Period in ¶8 of the Agreement. (¶64)

18 “PAGA Aggrieved Employees” means all Property Inspectors who were
19 classified as independent contractors by Defendant, and who performed work for
20 Defendant in California, during the PAGA Period. (¶26)

21 “PAGA Period” means any time between July 16, 2019 through the Preliminary
22 Approval Date. (¶27)

23 “Settlement Class” or “Settlement Class Members” means all Class Members
24 who have not opted out of the Class by submitting a valid and timely Request for
25 Exclusion. (¶44)

1
2 **B. THE MONETARY TERMS OF SETTLEMENT**

3 The essential monetary terms are as follows:

- 4 • The Gross Settlement Amount (“GSA”) is **\$533,250** (¶20). This includes
5 payment of a PAGA penalty of **\$60,000** to be paid 75% to the LWDA (\$45,000)
6 and 25% to the PAGA Aggrieved Employees (\$15,000) (¶62.j).
- 7 • The Net Settlement Amount (“Net”) (**\$154,675**) is the GSA less:
- 8 ○ **\$97,825** to be credited as the amount Defendant already paid to 54 Class
9 Members as *Pick-up Stix* Payments (¶20);
 - 10 ○ Up to **\$177,750** (33 1/3%) for attorney fees (¶62.h);
 - 11 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
 - 12 ○ Up to **\$20,000 total [\$5,000 per Plaintiff]** for service awards to the
13 proposed class representatives (¶62.g); and
 - 14 ○ Estimated **\$3,000** for settlement administration costs (¶62.i).
- 15 • Employer-side payroll taxes will be paid by Defendant separately from, and in
16 addition to, the GSA (¶17).
- 17 • Assuming the Court approves all maximum requested deductions, approximately
18 \$163,500.68 will be available for distribution to participating class members.
19 According to the Settlement Administrator, the Class Members that received a
20 prior settlement payment from Defendant will receive an estimated average
21 gross payment of \$2,153.49. The Class Members that did not receive a prior
22 settlement payment from Defendant will receive an estimated average gross
23 payment of \$3,797.35. (Snow Decl. ¶13.) In addition, each PAGA Aggrieved
24 Employee will receive a portion of the PAGA penalty, estimated to be \$300 per
25

1 PAGA Aggrieved Employee. ($\$15,000$ or 25% of $\$60,000$ PAGA penalty \div 50
2 PAGA Aggrieved Employees = $\$300$). (*Id.* at ¶14.)

- 3 • There is no Claim Requirement (Notice pg. 1).
- 4 • The settlement is not reversionary (¶20).
- 5 • Individual Settlement Share Calculation: The Settlement Administrator shall
6 calculate the Total Compensable Workweeks for all Settlement Class Members
7 based on the Class Information. The respective Compensable Workweeks for
8 each Settlement Class Member will be divided by the Total Compensable
9 Workweeks for all Settlement Class Members, resulting in the Payment Ratio for
10 each Settlement Class Member. Each Settlement Class Member's Payment Ratio
11 will then be multiplied by the Net Settlement Amount to determine his or her
12 Individual Settlement Payment. (¶62.a)

- 13 ○ "Compensable Workweek(s)" means the number of weeks worked by
14 each Class Member individually and used as a value to calculate
15 Individual Settlement Payments. The number of Compensable
16 Workweeks for each Class Member will be determined by counting any
17 week within the Class Period during which a Class Member performed
18 work (measured by whether the Class Member performed an inspection in
19 that week). If a Class Member did not receive a prior settlement payment
20 from The Elite Group Property Inspection Service, Inc., then the Class
21 Member's Compensable Workweeks will be multiplied by 1.90 times.
22 (¶10) Plaintiffs' counsel represents that the 1.90 multiplier, applied to
23 Class Members who did not receive a prior settlement payment, achieves
24 the goal of providing every Class Member with the same dollar
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1 compensation on a per workweek basis. (See Supp. Wand Decl. ISO
2 Prelim, ¶27; see also Declaration of Michael A. Wahlander.)

3 ○ “Total Compensable Workweeks” means the sum of the Compensable
4 Workweeks for all Class Members determined by the process described in
5 ¶10. The Total Compensable Workweeks will include the increased
6 number of Workweeks for Class Members who did not receive a prior
7 settlement payment from The Elite Group Property Inspection Services,
8 Inc. Thus, for example, if a Class Member who did not receive a prior
9 settlement payment worked 10 Compensable Workweeks, the total
10 number of workweeks that that employee worked for the purpose of
11 calculating the Total Compensable Workweeks will be 19 ($10 * 1.9 = 19$).
12 (¶11)

13 ○ PAGA Payments: The Settlement Administrator shall calculate the total
14 PAGA Workweeks for all PAGA Aggrieved Employees based on the
15 Class Information. The respective PAGA Workweeks for each PAGA
16 Aggrieved Employee will be divided by the total PAGA Workweeks for
17 all PAGA Aggrieved Employees, resulting in the PAGA Payment Ratio
18 for each PAGA Aggrieved Employee. Each PAGA Aggrieved
19 Employee’s PAGA Payment Ratio will then be multiplied by \$15,000 to
20 determine his or her Individual PAGA Payment. (¶62.b)

21 ● Tax Withholdings: In light of the Class Members’ classification as Independent
22 Contractors, one hundred percent (100%) of the Individual Settlement Payment
23 and Individual PAGA Payment shall represent payment for penalties, interest,
24 and miscellaneous income. These payments will not be subject to withholding of
25 local, state, and federal taxes. If required, the Settlement Administrator shall

1 issue an IRS Form 1099 to each Settlement Class Member in relation to these
2 payments. (¶62.c)

- 3 • **Uncashed Settlement Payment Checks:** Individual Settlement Payment checks
4 shall remain negotiable for one hundred and twenty (120) calendar days from the
5 postmark date of issuance. If the Individual Settlement Payment check is not
6 cashed, deposited, or otherwise negotiated within the 120-day deadline, the
7 check will be voided, and the funds associated with any such voided checks shall
8 be distributed to the Cy Pres Recipient. In compliance with California Code of
9 Civil Procedure § 384, after all amounts paid to Class Members have been made
10 (i.e., the time for Class Members to negotiate the checks has expired), the
11 Settlement Administrator shall provide a report, and if there are any remaining
12 unclaimed funds (i.e., funds from checks not negotiated by Class Members), the
13 Final Approval Order and Judgment shall be amended to direct said funds to be
14 paid to Legal Aid at Work or other Court-approved Cy Pres Recipient. (¶62.d)

- 15 ○ “Cy Pres Recipient” means the charitable organization that will receive
16 any settlement funds that are not negotiated by Settlement Class
17 Members. The Parties selected Legal Aid at Work, a 501(c)(3)
18 organization, as the Cy Pres Recipient. (¶13)

- 19 • **Funding and Distribution:** Defendant previously paid \$97,825 to 54 Class
20 Members as *Pick-up Stix* Payments, and shall be obligated to pay an additional
21 \$435,425 to fully fund the Gross Settlement Amount. (¶20) Within fourteen (14)
22 calendar days of the Effective Date, Defendant shall wire transfer the full Gross
23 Settlement Amount, plus the Employer’s Share of Payroll Taxes (to the extent
24 applicable), to the Settlement Administrator. (¶61) Individual Settlement
25 Payments to Settlement Class Members and all other payments under the

1 settlement shall be distributed by the Settlement Administrator within seven (7)
2 calendar days of receipt by the Settlement Administrator of the Gross Settlement
3 Amount from Defendant. (§63)

4
5 **C. TERMS OF RELEASES**

- 6 • Release of Class Claims by Settlement Class Members: Settlement Class
7 Members release the “Released Claims by Settlement Class Members” as of the
8 date that the Gross Settlement Amount is fully-funded by Defendant. The
9 Settlement Administrator shall notify the Parties in writing upon receipt of the
10 full Gross Settlement Amount. (§57)
 - 11 ○ “Released Class Claims by Settlement Class Members” means: in
12 exchange for the consideration provided under this Settlement, Settlement
13 Class Members shall fully and finally release and discharge Released
14 Parties, from any and all claims, debts, liabilities, demands, obligations,
15 guarantees, costs, expenses, attorneys’ fees, damages, action or causes of
16 action, pleaded or that could have been pleaded based on facts and claims
17 asserted in the operative Complaint, including: any and all claims for: (a)
18 willful misclassification of employees as independent contractors; (b)
19 failure to prove meal periods; (c) failure to provide rest breaks; (d) failure
20 to overtime wages; (e) failure to pay minimum wages; (f) failure to pay
21 timely wages; (g) failure to pay all wages owed and due upon termination;
22 (h) failure to maintain required records; (i) failure to furnish accurate
23 itemized wage statement; (j) failure to provide reimbursement for
24 employment-related expenses; (k) failure to produce or make available
25 requested records; (l) violation of California Business & Professions Code

1 section 17200, et seq.; and (m) violation of California Private Attorneys'
2 General Act, California Labor Code § 2699, et seq., predicated on any of
3 the violations of the California Labor Code and applicable IWC Wage
4 Order alleged in the operative Complaint. This release shall apply to all
5 claims arising at any point during the Class Period. (¶38)

- 6 • Release of PAGA Claims by PAGA Aggrieved Employees: PAGA Aggrieved
7 Employees release the “Released PAGA Claims” as of the date that the Gross
8 Settlement Amount is fully-funded by Defendant. (¶58)

- 9 ○ “Released PAGA Claims by PAGA Aggrieved Employees” means all
10 claims for civil penalties under the PAGA that Plaintiffs, on behalf of
11 themselves, the State of California, and all PAGA Aggrieved Employees,
12 disclosed in Plaintiffs’ LWDA letter [attached as Exhibit 3 to Amended
13 Settlement Agreement], and that Plaintiffs and PAGA Aggrieved
14 Employees are fully and irrevocably releasing the Released Parties from,
15 in exchange for the consideration provided by this Settlement. PAGA
16 Aggrieved Employees will only release claims alleged in, or that could
17 have been alleged, based on the facts asserted in Plaintiffs’ LWDA letter.
18 PAGA Aggrieved Employees will release the PAGA Claims even if they,
19 as a Class Member, request exclusion from the class. Released PAGA
20 Claims include any claims for attorneys’ fees, costs, or other damages that
21 may be recoverable under the PAGA claims that are alleged or could have
22 been alleged in the Operative complaint. This release shall apply to
23 PAGA claims arising at any point during the PAGA Period. (¶39)

- 24 • “Released Parties” means Defendant and its predecessors, successors,
25 subsidiaries, parent companies, other corporate affiliates, owners and assigns,

1 and all of their officers, directors, employees, agents, servants, registered
2 representatives, attorneys, insurers, successors and assigns, and any other
3 persons acting by, through, under or in concert with any of them. (¶36)

- 4 • The named Plaintiffs will each also provide a general release and a waiver of the
5 protections of Cal. Civ. Code §1542. (¶¶ 37, 56)
- 6 • The releases are effective as of the date that the Gross Settlement Amount is
7 fully funded by Defendant. (¶57) Funding will occur within fourteen (14)
8 calendar days of the Effective Date. (¶61)

9 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

10 “Before final approval, the court must conduct an inquiry into the fairness of the
11 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
12 settlement agreement after the final approval hearing, the court must make and enter
13 judgment. The judgment must include a provision for the retention of the court’s
14 jurisdiction over the parties to enforce the terms of the judgment. The court may not
15 enter an order dismissing the action at the same time as, or after, entry of judgment.”
16 Cal. Rules of Court, rule 3.769(h).

17 As discussed more fully in the Order conditionally approving the settlement, “[i]n
18 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
19 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
20 action. The purpose of the requirement [of court review] is the protection of those class
21 members, including the named plaintiffs, whose rights may not have been given due
22 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
23 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
24 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
25 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*

1 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
2 extent necessary to reach a reasoned judgment that the agreement is not the product of
3 fraud or overreaching by, or collusion between, the negotiating parties, and that the
4 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
5 quotation marks omitted].

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

1 **A. A PRESUMPTION OF FAIRNESS EXISTS**

2 The Court preliminarily found in its Order of March 17, 2022 that the presumption
3 of fairness should be applied. No facts have come to the Court’s attention that would
4 alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption
5 of fairness as set forth in the preliminary approval order.

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

10 The settlement was preliminarily found to be fair, adequate and reasonable.
11 Notice has now been given to the Class and the LWDA. The notice process resulted in
12 the following:

13 Number of class members: 67

14 Number of notices mailed: 67

15 Number of undeliverable notices: 3

16 Number of opt-outs: 1

17 Number of objections: 0

18 Number of participating class members: 66

19 (Declaration of Makenna Snow (“Snow Decl.”) ¶¶ 5-12.)

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

24 **C. CLASS CERTIFICATION IS PROPER**

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

3 **D. ATTORNEY FEES AND COSTS**

4 Class Counsel requests \$177,750 (33 1/3%) for attorney fees and \$11,174.32 for
5 costs. (Motion for Attorneys' Fees at 3:16-18, 12:19-21.)

6 Courts have an independent responsibility to review an attorney fee provision and
7 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
8 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
9 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
10 503.

11 Counsel also request a cross-check based on a lodestar analysis. As discussed at
12 oral argument, the Court declines to do such a crosscheck as insufficient evidence is
13 provided to do same. A lodestar is calculated by multiplying the number of hours
14 reasonably expended by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler*
15 (2000) 22 Cal.4th 1084, 1095-1096 (*PLCM*). "Generally, '[t]he lodestar is calculated
16 using the reasonable rate for comparable legal services in *the local community* for
17 noncontingent litigation of the same type, multiplied by the reasonable number of hours
18 spent on the case.' " *Environmental Protection Information Center v. Dept. of Forestry*
19 *& Fire Protection* (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft*
20 (2007) 155 Cal.App.4th 1233, 1242-1243.

21 As to the reasonableness of the rate and hours charged, trial courts consider
22 factors such as "the nature of the litigation, its difficulty, the amount involved, the skill
23 required in its handling, the skill employed, the attention given, the success or failure,
24 and other circumstances." *PLCM, supra*, 22 Cal.4th at p. 1096. "The evidence should
25 allow the court to consider whether the case was overstaffed, how much time the

1 attorneys spent on particular claims, and whether the hours were reasonably expended.”

2 *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

3 Counsel rely on the Laffey Matrix, which considers all work for all types of
4 counsel. They also rely on rates charged by other counsel in complex class actions
5 which counsel are informed and believes were charged and by orders in which their rates
6 were “approved” by the Court.

7 This case presented certain untested issues as to whether plaintiffs were properly
8 characterized as independent contractors and whether payments made to proposed class
9 members should be included under a “catalyst” theory in awarding fees. However, it
10 presented little in the way of complexity such as is faced in the consumer and civil rights
11 class action cases cited by counsel. The rates charged in such cases do not provide a
12 useful comparison.

13 Counsel also represent that their hourly rates have been approved as reasonable
14 by other courts. No copies of the orders are provided. The cases cited to in Los Angeles
15 County by Wand either made no finding as to reasonableness (*Santos v Walsh-Shea*,
16 BC721303) or found that the rate was reasonable but did not indicate what the rate was
17 (*Garcia v. Satvinder Sraon, Inc., et al.*, Los Angeles County Sup. Ct. Case No.
18 18STCV08728). The cases cited to by Wheeler have no citations.

19 As to the Laffey Matrix, it is a nationwide survey with no indicia as to rates
20 charged for wage and hour cases (such as by defense counsel).

21 The \$177,750 fee request is 33 1/3% of the Gross Settlement Amount, which
22 includes the amount of \$97,825 that Defendant previously paid to 54 Class Members as
23 *Pick-Up Stix* payments. Counsel contends that the *Pick-Up Stix* payments should be
24 included in the GSA under the catalyst theory, as counsel is of the belief that the case was
25 the catalyst for the *Pick-Up Stix* payments. (See Motion for Attorneys’ Fees at 7:22-8:20;

1 Wand Decl. ISO Final ¶¶ 77-79.) This is supported as well by the Declaration off
2 Michael Spiers filed July 5, 2022.

3 The \$177,750 fee request represents a reasonable percentage of the total funds
4 paid by Defendant. Further, the notice expressly advised class members of the fee
5 request, and no one objected. (Snow Decl. ¶11, Exhibit A thereto.) Accordingly, the
6 Court awards fees in the amount of \$177,750 with no finding as to the reasonableness of
7 the rates charged or the hours billed.

8 Fee Split: Class Counsel represents that the fee award will be distributed as
9 follows: 55% to Law Office of Scott E. Wheeler and 45% to the Wand Law Firm, P.C.
10 (Wand Decl. ISO Final ¶61.) Each of the four Plaintiffs approved the fee agreement in
11 writing at the commencement of this case. (Beaudoin Decl. ¶6; Becerra Decl. ¶6; Lang
12 Decl. ¶6; Osko Decl. ¶6.)

13 Class Counsel requests \$11,174.32 in costs. (Wand Decl. ISO Final ¶83.) This is
14 less than the \$20,000 cap provided in the settlement agreement (¶62.h). The amount was
15 disclosed to Class Members in the Notice, and no objections were received. (Snow
16 Decl. ¶11, Exhibit A thereto.) Costs include: Mediation Fees (\$7,000), Case Anywhere
17 Costs (\$2,018.70), and Filing/Service of Process Fees (\$2,002.85). (Wand Decl. ISO
18 Final ¶82; Wheeler Decl. ISO Final ¶30.)

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

21 For all of the foregoing reasons, costs of \$11,174.32 are approved.

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

23 A service (or incentive) fee award to a named class representative must be
24 supported by evidence that quantifies the time and effort expended by the individual and
25 a reasoned explanation of financial or other risks undertaken by the class representative.

1 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
2 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
3 [“Criteria courts may consider in determining whether to make an incentive award
4 include: (1) the risk to the class representative in commencing suit, both financial and
5 otherwise; (2) the notoriety and personal difficulties encountered by the class
6 representative; (3) the amount of time and effort spent by the class representative; (4) the
7 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
8 class representative as a result of the litigation. (Citations.)”].

9 Here, the Class Representatives request enhancement awards of **\$5,000 each**,
10 totaling **\$20,000**. (Motion for Attorneys’ Fees at 13:5-6.) In nearly identical
11 declarations, each Plaintiff represents that their contributions to the action included:
12 consulting with their attorneys, providing their attorneys with documents to review,
13 assisting in the preparation of pleadings, participating in settlement discussions, and
14 staying informed of case developments. Their total time spent on the case ranged from
15 36 to 45 hours per Plaintiff. They each state that they are aware of the risk that filing the
16 litigation would have on future employment opportunities, though they do not show that
17 this has occurred. (Declaration of David Beaudoin ISO Final ¶¶ 8-11; Declaration of
18 David Becerra ISO Final ¶¶ 8-11; Declaration of Michael Lang ISO Final ¶¶ 8-11;
19 Declaration of Scott Osko ISO Final ¶¶ 8-11.)

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

23 F. SETTLEMENT ADMINISTRATION COSTS

24 The Settlement Administrator, ILYM Group, Inc., requests **\$3,000** in
25 compensation for its work in administrating this case. (Snow Decl. ¶16.) At the time of

1 preliminary approval, costs of settlement administration were estimated at \$3,000.
2 (¶62.i.) Class Members were provided with notice of this amount and did not object.
3 (Snow Decl. ¶11, Exhibit A thereto.)

4 Accordingly, settlement administration costs are approved in the amount of
5 **\$3,000.**

6 7 **IV. CONCLUSION AND ORDER**

8 The Court hereby:

- 9 (1) Grants class certification for purposes of settlement;
- 10 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 11 (3) Awards **\$177,750** in attorney fees to Class Counsel, Law Office of Scott E.
12 Wheeler and The Wand Law Firm, P.C.;
- 13 (4) Awards **\$11,174.32** in litigation costs to Class Counsel;
- 14 (5) Approves payment of **\$45,000** (75% of \$60,000 PAGA penalty) to the LWDA;
- 15 (6) Awards **\$20,000 total (\$5,000 each)** as Class Representative Service Awards to
16 Plaintiffs Scott Osko, David Becerra, David Beaudoin, and Michael Lang;
- 17 (7) Awards **\$3,000** in settlement administration costs to ILYM Group, Inc.;
- 18 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
19 and containing the class definition, full release language, and the name of the
20 class member who opted out by August 16, 2022;
- 21 (9) Orders class counsel to provide notice to the class members pursuant to
22 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
23 Code §2699 (1)(3); and
- 24 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
25 Settlement Funds for April 27, 2023 at 8:30

1 (11) If there is unpaid residue or unclaimed or abandoned class member funds and/or
2 interest thereon to be distributed to Legal Aid at Work, Plaintiffs' counsel shall
3 also submit an Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 and
4 give notice of the Judicial Council of California upon entry of the Amended
5 Judgment, when entered, pursuant to Cal. Code of Civ. Pro. §384.5.
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7 Dated:

8/11/2022



8 MAREN E. NELSON

9 Judge of the Superior Court
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