

FILED
Superior Court of California
County of Los Angeles

MAY 11 2018

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY [Signature] Deputy
BENIGNO DEL BARRIO

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JOEL UTTERBACH, individually and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

v.

DAYLIGHT TRANSPORT, LLC, a California limited liability company, and DOES 1 through 100, inclusive,

Defendants.

Case No.: BC600994

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

Date: April 24, 2018
Time: 11:00 a.m.
Dept.: 17

I. BACKGROUND

In this wage and hour class action lawsuit, Plaintiffs Joel Utterbach and Valerie Gonzalez sue their former employer, Defendant Daylight Transport, LLC, a long-haul shipping company headquartered in Long Beach, CA.

Utterbach filed the action on November 12, 2015. The complaint alleges the following causes of action: (1) Unpaid Overtime [Labor Code §§510, 1198]; (2) Unpaid Meal Period Premiums [Labor Code §§ 226.7, 512(a)]; (3) Unpaid Rest Period Premiums [Labor Code

1 §226.7]; (4) Unpaid Minimum Wages [Labor Code §§ 1194, 1197, and 1197.1]; (5) Final
2 Wages Not Timely Paid [Labor Code §204]; (6) Wages Not Timely Paid During Employment
3 [Labor Code §204]; (7) Non-Compliant Wage Statements [Labor Code §226(a)]; (8) Failure to
4 Keep Requisite Payroll Records [Labor Code §1174(d)]; (9) Unreimbursed Business Expenses
5 [Labor Code §§ 2800, 2802]; (10) Unfair Business Practices [Bus. & Prof. Code §17200, *et*
6 *seq.*]; (11) Private Attorney General Act (PAGA) [Labor Code §2698, *et seq.*].

7 On April 4, 2017, the parties attended mediation with Mark Rudy. Although the parties
8 failed to reach an agreement at that time, the parties continued to negotiate and eventually
9 reached agreement regarding the essential terms of settlement. These terms were formalized in
10 the parties' *Joint Stipulation of Class Action and PAGA Settlement and Release* ("Settlement
11 Agreement"). As a part of settlement negotiations, the Parties stipulated that Plaintiff would
12 amend the current operative complaint to add Valerie Gonzalez as a named Plaintiff to this
13 action.

14 After reviewing the initial settlement agreement, the Court issued a checklist of suggested
15 revisions and items in need of further briefing. The parties filed supplemental briefing and a
16 signed, amended settlement agreement on November 16, 2017.

17 The Court granted preliminary approval of the settlement on December 4, 2017. On
18 April 24, 2018 the matter came on for final approval of the settlement. The Court requested
19 supplemental information, which was provided April 26, 2018 (Declaration of Davis).

20 The Court now issues its order approving the settlement.

21 **II. DISCUSSION**

22 **A. SETTLEMENT CLASS DEFINITION**

23 Under the terms of the Settlement Agreement "Class Member(s)" or "Settlement Class"
24 means: (1) all individuals who are or were employed by Defendant in the State of California in a
25 non-exempt position as a direct employee of Defendant at any time from November 12, 2011,

1 through April 30, 2017, and temporary personnel who worked in Defendant's California facilities
2 through various staffing agencies at any time from November 12, 2011, through April 30, 2017.

3 (¶8.)

4 The Parties agree to stipulate to class action certification only for purposes of the
5 Settlement. (¶83)

6 “PAGA Class Period” means the period between November 12, 2014 and August 30,
7 2017. (¶23)

8 “Released Claims Period” for all claims except the PAGA Class Period, means the period
9 from November 12, 2011 through August 30, 2017. (¶30)

10 There are 674 putative Class Members. (Declaration of Jeremiah Kincannon, ¶5.)

11 **B. TERMS OF SETTLEMENT AGREEMENT**

12 The essential terms are as follows:

- 13 • The Class Settlement Amount is **\$1,650,000, non-reversionary**. (¶10)
 - 14 ○ Should the Settlement Class Members increase by 10% or the workweeks exceed
15 66,000, Class Counsel may elect to rescind the Settlement Agreement at any time
16 before Final Approval. (¶2)
 - 17 ○ Should an Adjustment of the Class Settlement Amount be triggered [by an
18 increase to the number of Class Members or workweeks], the Parties agree to
19 meet and confer for the adjustment based on a pro-rata increase based on
20 workweeks. (¶2)
- 21 • The Net Settlement Amount (**\$1,001,770**) is the Class Settlement Amount minus:
 - 22 ○ Up to **\$577,500** (35%) for attorney fees (¶3);
 - 23 ○ Up to **\$25,000** for attorney costs (*Ibid.*);
 - 24 ○ Up to **\$10,000** for service awards to the two class representatives (\$5,000 x 2)
25 (¶9);

- Up to **\$16,980** for claims administration costs (§5, as amended); and
- **\$18,750** (75% of \$25,000 PAGA penalty) to the LWDA (§18).
- Defendants will pay employer taxes in addition to the Gross Fund Value. (§10)
- There is no claims process. Class members will receive a settlement payment unless they opt-out. (§35)
- The Response Deadline is 60 days from the initial mailing of the Notice Packets. Class members who receive re-mailed notices will receive a 15-day extension to the deadline to submit opt-outs and objections. (§33, as amended)
 - Defendant has the right to rescind if opt-outs equal or exceed 2% of the settlement class. (§55)
 - The request for exclusion does not apply to PAGA claims. Class Members who submit valid requests for exclusion will still receive a check for their share of the PAGA settlement amount. (§54, as amended)
- Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Settlement Class Period. Specific calculations of Individual Settlement Payments will be made as follows (§45):
 - The Defendant will calculate the total number of weeks actually worked by each Class Member ("Individual Workweeks") and the total number of Workweeks actually worked by all Class Members ("Class Workweeks") during the Settlement Class Period. (§45.a)
 - To determine each Class Member's Individual Settlement Payment, the Claims Administrator will use the following formula: Individual Settlement Payment = (Individual Workweeks / Total Workweeks of Participating Class Members) x Net Settlement Amount. (§45.b, as amended)

1 ○ Each Class Member who worked during the PAGA Class Period is eligible to
2 receive from the Net Settlement Amount the proportionate amount of the Labor
3 and Workforce Development Agency Payment based on the number of
4 Workweeks worked during the PAGA Class Period. (§45.c)

5 ○ If any Class Member requests to be excluded from the settlement these funds shall
6 remain part of the Net Settlement Amount and shall proportionally increase each
7 participating Class Member's final Individual Settlement Payment. (§45.d, as
8 amended)

9 ● For tax purposes, payments to class members will be allocated: 1/3 wages, 2/3 interest
10 and penalties. (§62)

11 ● Any checks issued by the Claims Administrator to Participating Class Members will be
12 negotiable for at least 180 calendar days. (§60, as amended)

13 ○ Those funds represented by settlement checks returned as undeliverable and those
14 settlement checks remaining un-cashed for more than 180 calendar days after
15 issuance will be tendered in accordance with California Code of Civil Procedure
16 §384(b)(3): 25% to the California State Treasury for deposit in the Trial Court
17 Improvement and Modernization Fund; 25% to the California State Treasury for
18 deposit into the Equal Access Fund of the Judicial Branch; 50% to a non-profit
19 organization or further distribution to the Equal Access Fund of the Judicial
20 Branch. The parties agree to distribute the discretionary funds set forth in
21 §384(b)(3)(C) to the Equal Access Fund of the Judicial Branch for a total of 75%
22 of un-cashed checks used for this purpose. (*Ibid.*)

23 ● The settlement administrator is Simpluris, Inc. (§4)

24 ● Upon the Final Approval by the Court of this Settlement Agreement, and except as to
25 such rights or claims as may be created by this Settlement Agreement, the Class

1 Members shall fully release and discharge the Released Parties from any and all
2 Released Claims for the entire Released Claims Period. This release shall be binding on
3 all Class Members who have not timely submitted a valid and complete Request for
4 Exclusion, including each of their respective attorneys, agents, spouses, executors,
5 representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the
6 benefit of the Released Parties, who shall have no further or other liability or obligation
7 to any Settlement Class Member with respect to the Released Claims, except as
8 expressly provided herein. (¶67)

- 9 ○ "Released Claims" means all claims, rights, demands, liabilities, and causes of
10 action, that were or could have been pleaded based on, arising from, or related to,
11 the factual allegations set forth in the First Amended Class Action Complaint,
12 including: (i) all claims for unpaid minimum wages; (ii) all claims for unpaid
13 overtime; (iii) all claims for meal and rest break violations; (iv) all claims for the
14 failure to timely pay wages upon termination; (v) all claims for the failure to
15 timely pay wages during employment; (vi) all claims for wage statement
16 violations; (vii) all claims for failure to reimburse business expenses; and (viii)
17 all claims asserted through California Business & Professions Code §§ 17200, et
18 seq., and California Labor Code §§ 2698, et seq. based on the preceding claims.
19 Released Claims also means any claims, rights, demands, liabilities, damages,
20 wages, benefits, expenses, penalties, debts, obligations, attorneys' fees, costs, any
21 other form of relief or remedy in law, equity, or whatever kind or nature, whether
22 known or unknown, suspected or unsuspected, and causes of action, that could
23 potentially arise from the receipt of any monies as a result of this settlement by
24 any member of the Settlement Class. (¶29)

- 1 ○ "Released Parties" means Defendant and any of its former and present parents,
2 subsidaries, affiliates, divisions, corporations in common control, predecessors,
3 successors, and assigns, as well as all past and present officers, directors,
4 employees, partners, shareholders and agents, attorneys, insurers, and any other
5 successors, assigns, or legal representatives, if any. (§31)
- 6 ○ Class Representatives will also provide a general release and §1542 waiver. (§68)
 - 7 ▪ The releases appear to be proper. The class release is appropriately
8 tethered to the pleading and limited to the relevant time period.
9 Plaintiff's broader release is acceptable as he was represented by counsel
10 when these terms were negotiated.

11 **C. ANALYSIS OF SETTLEMENT AGREEMENT,**

12 **1. Standards for Final Fairness Determination**

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

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

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

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

23 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order
24 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.
25 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it

1 would be if the suits were to be successfully litigated,' this is no bar to a class settlement
2 because 'the public interest may indeed be served by a voluntary settlement in which each side
3 gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at pg.
4 250.)

5 **2. Does a presumption of fairness exist?**

- 6 a. Was the settlement reached through arm's-length bargaining? Yes. On April 4,
7 2017, the parties attended mediation with Mark Rudy, a neutral mediator.
8 Although the parties failed to reach an agreement at that time, the parties
9 continued negotiating and eventually accepted a mediator's proposal for a non-
10 reversionary settlement for \$1,650,000.00 to resolve the alleged claims.
11 (Declaration of Heather Davis ISO Preliminary Approval, ¶14.)
- 12 b. Were investigation and discovery sufficient to allow counsel and the court to act
13 intelligently? Yes. The parties engaged in formal discovery including two sets of
14 Special Interrogatories, Form Interrogatories, and Requests for Production. Once
15 the parties began to discuss the possibility of settlement, Defendant informally
16 produced a 15% sampling of time and payroll records for the class, sample
17 paystubs, and other relevant documents. Defendant provided Plaintiffs with the
18 contact information for a 15% sampling of the class list, whom Plaintiff contacted
19 prior to attending mediation. Plaintiffs were able to receive declarations from a
20 significant number of class members in support of their claims. Plaintiffs also
21 took a full day deposition of Defendant's Person Most Qualified prior to
22 mediation. (*Id.* at ¶13.)
- 23 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in
24 class action litigation, including wage and hour class actions. (*Id.* at ¶¶2-10.)
- 25 d. What percentage of the class has objected? Zero. (Kincannon Decl., ¶12.)

1 CONCLUSION: The settlement is entitled to a presumption of fairness.

2 **2. Is the settlement fair, adequate, and reasonable?**

3 a. Strength of Plaintiff's case. "The most important factor is the strength of the case
4 for plaintiff on the merits, balanced against the amount offered in settlement."
5 (*Kullar, supra*, 168 Cal.App.4th at pg. 130.)

6 Class Counsel estimated Defendant's maximum potential exposure,
7 assuming the Litigation was successful at trial on the principal claims at issue, at
8 \$9,324,653.40. (Davis Decl. ISO Preliminary Approval, ¶29)

9 This amount is based on the total estimated maximum liability for all the
10 workweeks at issue during the class period. There are approximately 59,668
11 workweeks during the relevant class period. Counsel estimated at least two hours
12 of unpaid overtime per week, per class member, at an overtime rate of \$25.44,
13 based on uncompensated time worked before and after an employee's full-time
14 shift, and which was not properly compensated as a result of Defendant's
15 rounding policy. Total overtime damages then equaled \$3,035,907.80. (*Ibid.*)

16 Next, Counsel assumed there would be approximately two missed meal
17 periods per week and three missed rest periods at an average rate of pay of \$16.96
18 per hour. The total meal break damages equaled \$2,023,938.56. Rest break
19 damages equaled \$3,035,970.80. (*Ibid.*)

20 Further, waiting time penalties were assumed for the 223 employees
21 terminated between November 2012 and January 2017 and totaled \$907,699.20
22 (8 x \$16.96 x 30 x 223). (*Ibid.*)

23 Penalties for inaccurate wage statements amounted to \$150,000 based on
24 the maximum statutory penalty of \$4,000 for the 375 eligible class members who
25 worked for Defendant within the past year. (*Ibid.*)

1 Counsel discounted these maximum exposures based on potential defenses
2 available to Defendant and other circumstances impacting the risk of proceeding with the case.
3 (*Id.* at ¶30) Specifically, one of the biggest risks was the fact that a large percentage of the class
4 entered into arbitration agreements with Defendant after the lawsuit was filed. Based on the
5 arbitration agreements, there was risk as to whether the action would proceed in court rather than
6 through arbitration and whether there would be a reduction in the number of individuals who
7 could participate in the class. Furthermore, based on Defendant's ability to quickly and
8 efficiently obtain arbitration agreements for a large percentage of the class, Plaintiffs' counsel
9 also considered the possibility that Defendants might attempt to settle with individual class
10 members and resolve these claims. See *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th
11 796. Counsel represent that as a result of these risks, the value of the case decreased by
12 approximately one-third. This reduced the total sum to \$6,102,302.29. (*Id.* at ¶31.)

13 There were also risks associated with Plaintiffs' waiting time penalties and wage
14 statement claims. Based on these arguments and defenses and the risk of being unable to certify
15 the class, Plaintiffs reduced the estimated potential recovery by 50%, reducing the estimated
16 recovery to \$3,051,151.15. This amount was reduced an additional 50% by the inherent dangers
17 of proceeding after class certification and actually prevailing on the merits at trial. This left an
18 estimated value of \$1,525,575.57.

19 Class Counsel obtained a gross settlement valued at \$1,650,000. This is 17.7% of
20 Defendant's maximum potential exposure, which is within the "ballpark of reasonableness."

- 21 b. Risk, expense, complexity and likely duration of further litigation. Given the
22 nature of the class claims, the case is likely to be expensive and lengthy to try.
23 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong
24 the litigation as well as any recovery by the class members.
25

1 c. Risk of maintaining class action status through trial. Even if a class is certified,
2 there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*
3 (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that
4 trial courts should retain some flexibility in conducting class actions, which
5 means, under suitable circumstances, entertaining successive motions on
6 certification if the court subsequently discovers that the propriety of a class
7 action is not appropriate.”].)

8 d. Amount offered in settlement. As indicated above, the Class Settlement Amount
9 is \$1,650,000. Assuming the Court approves all of the maximum requested
10 deductions, approximately \$1,003,663 will be available for automatic
11 distribution to participating class members. The average settlement share will be
12 approximately **\$1,489.11**. [$\$1,003,663 \text{ net} \div 671 \text{ participating class members} =$
13 $\$1,491.98$]. The highest Settlement Share to be paid is approximately \$4,671.75.
14 (Supp. Kincannon Decl., ¶3)

15 e. Extent of discovery completed and stage of the proceedings. As discussed above,
16 at the time of the settlement, the parties had conducted extensive discovery.

17 f. Experience and views of counsel. The settlement was negotiated and endorsed by
18 Class Counsel who, as indicated above, is experienced in class action litigation,
19 including wage and hour cases.

20 g. Presence of a governmental participant. This factor is not applicable here.

21
22 h. Reaction of the class members to the proposed settlement.

23 Number of class members: 674

24 Number of notices mailed: 674

25 Number of undeliverable notices: 4

1 Number of opt-outs: 3
2 Number of objections: 0
3 Number of participating class members: **671**

4 (Kincannon Decl., ¶¶5-13; Kincannon Supp. Dec. filed April 23, 2018 at ¶ 1.)

5 CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.” The
6 Court finds that the notice was adequate and conforms to due process requirements.

7 **D. ATTORNEY FEES AND COSTS**

8 Class Counsel requests **\$577,500** for attorney fees and **\$22,453** for costs. (Declaration of
9 Heather Davis ISO Final Approval, ¶¶32, 46.)

10 In determining the appropriate amount of a fee award, courts may use the lodestar
11 method, applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22
12 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (*Laffitte v.*
13 *Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the
14 contrary, courts have an independent responsibility to review an attorney fee provision and
15 award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone*
16 *Company* (2004) 118 Cal.App.4th 123, 128.)

17 In the instant case, fees are sought pursuant to the percentage method. (Davis Decl. ISO
18 Final Approval, ¶32.) The \$577,500 fee request is 35% of the \$1,650,000 gross settlement
19 amount, which is slightly in excess of average. (*In re Consumer Privacy Cases* (2009) 175
20 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage
21 method or the lodestar method is used, fee awards in class actions average around one-third of
22 the recovery.”].)

23 Here, the \$577,500 fee request represents a reasonable percentage of the total funds paid
24 by Defendant. Further, the notice expressly advised class members of the fee request, and no one
25

1 objected. (See Kincannon Decl., ¶12 and Exhibit A.) Accordingly, the Court awards fees in the
2 amount of **\$577,500**.

3 Class Representatives have consented, in writing, to a fee sharing arrangement in which
4 Lawyers for Justice, PC receives 66.667% of the fee award, and Protection Law Group receives
5 the remaining 33.33%. (Supplemental Brief ISO Preliminary Approval at Exhibit E; Declaration
6 of Joel Utterbach, ¶6; Declaration of Valerie Gonzalez, ¶4.)

7 As for costs, Class Counsel requests **\$22,453**. (Davis Decl. ISO Final Approval, ¶46.)
8 This is less than the \$25,000 maximum provided for in the Settlement Agreement. (¶3.) To date,
9 Class Counsel has incurred actual costs in the amount of \$22,453, this includes \$9,271.64
10 incurred by Lawyers for Justice, PC and \$13,181.36 incurred by Protection Law Group. (Davis
11 Decl. ISO Final Approval, ¶46; Aiwazian Decl. ISO Final Approval, ¶17.) The costs to date
12 include travel (\$2,688.25), photocopies/postage (\$2,534.02), filing/court fees (\$1,585), and
13 attorney service (\$1,000.60). (Aiwazian Decl. ISO Final Approval, Ex. B.) Protection Law
14 Group, LLP also filed a detailed breakdown of its costs, attached as Exhibit A to the
15 Declaration of Heather Davis filed April 26, 2018, which appear to be reasonable in nature and
16 amount, consisting of Case Anywhere fees, parking, filing fees, postage, as well as travel costs
17 for the mediation (\$1,443.85); mediation fees (\$7,000), and court reporter fees (\$2,317.97).

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

20 For all of the foregoing reasons, costs of **\$22,453** are approved.

21 **E. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

22 An incentive fee award to a named class representative must be supported by evidence
23 that quantifies time and effort expended by the individual and a reasoned explanation of
24 financial or other risks undertaken by the class representative. (See *Clark v. American*
25 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone*

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

7 Here, Class Representatives Joel Utterbach and Valerie Gonzalez each request an
8 enhancement award of \$5,000 [**\$10,000 total**]. (Davis Decl. ISO Final Approval, ¶47.)

9 Plaintiff Joel Utterbach worked for Defendant as an hourly employee from September
10 2012 to October 2015. (Declaration of Joel Utterbach, ¶2.) Mr. Utterbach’s contributions to this
11 litigation include searching for and providing relevant documents in response to inquiries by
12 Class Counsel and discovery demands by Defendant, and educating Class Counsel regarding
13 Defendant’s policies and practices. (*Id.* at ¶9.)

14 Plaintiff Valerie Gonzalez worked for Defendant, as an hourly employee, from
15 September 2014 until August 2016. (Declaration of Valerie Gonzalez, ¶2.) She joined this
16 lawsuit in May 2017 to serve as a PAGA and Class Representative. (*Id.* at ¶3.) Ms. Gonzalez’s
17 contributions to this litigation include searching for and providing relevant documents in
18 response to inquiries by Class Counsel and discovery demands by Defendant, and educating
19 Class Counsel regarding Defendant’s policies and practices (*Id.* at ¶7.)

20 In light of the above, as well as the benefits obtained on behalf of the class, awards of
21 \$5,000 to Mr. Utterbach and \$5,000 to Ms. Gonzalez appear to be a reasonable inducement for
22 Plaintiffs’ participation in this case.

23 **F. CLAIMS ADMINISTRATION COSTS**

24 Claims administrator, Simpluris, Inc., requests **\$17,634** in compensation for its work in
25 administrating this case. (Kincannon Decl., ¶14.) At the time of preliminary approval, costs for

1 settlement administration were estimated to be \$16,980. (Settlement Agreement, ¶5, as
2 amended.) This amount was disclosed to Class Members and deemed unobjectionable.
3 (Kincannon Decl., ¶12 and Exhibit A.) The increase of \$654 from the preliminary estimate is
4 due to the postcard notice sent to all class members regarding the change in location for the final
5 approval hearing and Spanish language translation. (Kincannon Decl., ¶14; Kincannon Supp.
6 Dec. ¶ 4.)

7 Accordingly, claims administration costs are approved in the amount of **\$17,634**.

8 **III. CONCLUSION AND ORDER**

9 The Court:

- 10 (1) Grants class certification for purposes of settlement;
- 11 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 12 (3) Awards \$577,500 in attorney fees to Class Counsel – Lawyers for Justice, PC and
13 Protection Law Group, LLP;
- 14 (4) Awards \$22,453 in litigation costs to Class Counsel – Lawyers for Justice, PC and
15 Protection Law Group, LLP;
- 16 (5) Awards \$5,000 as Class Representative Service Awards to Plaintiffs Joel Utterbach and
17 Valerie Gonzalez (\$10,000 total);
- 18 (6) Awards \$17,634 in claims administration costs to Simpluris, Inc.;
- 19 (7) Approves payment of \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA;
- 20 (8) Orders class counsel to lodge a proposed Judgment, approved as to form by defense
21 counsel, consistent with this ruling and containing the class definition, release language,
22 and the names of all class members who opted out, by May 25, 2018;
- 23 (9) Orders class counsel to provide notice to the class members pursuant to California
24 Rules of Court, rule 3.771(b); and
25

1 (10) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds

2 is set for 12/3, 2018 at 8:30 am

3 Final Report is to be filed by 11/26/18.

4
5 Dated: 5/11/18

Maren E Nelson

6 MAREN E. NELSON

7 Judge of the Superior Court