SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2310

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS
DATE: JANUARY 17, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV387173	Perez v. NxEdge MH, LLC, et al.	See Line 1 for tentative ruling.
LINE 2	22CV405010	Student Loan Solutions, LLC v. Cung, et al. (Class Action)	See Line 2 for tentative ruling.
LINE 3	22CV405008	Student Loan Solutions, Inc. v. Guracar, et al. (Class Action)	See Line 3 for tentative ruling.
LINE 4	21CV384091	International Technological University Foundation v. Lam, et al.	See Line 4 for tentative ruling.
LINE 5	17CV319705	Group One Construction, Inc. v. La Encina Development, L.L.C., et al.	Off Calendar per filed dismissal of moving party.
LINE 6	22CV397281	Laplante v. The Floor Store, Inc. (Class Action/PAGA)	See Line 6 for tentative ruling.
LINE 7			
LINE 8			
LINE 9			
LINE 10			

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LAW AND MOTION TENTATIVE RULINGS

LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Perez v. NxEdge MH, LLC, et al.
Case No.: 21CV387173

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on January 17, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a putative class and Private Attorneys General Act ("PAGA") action arising out various alleged wage and hour violations. The operative Second Amended Complaint, filed on May 23, 2022, sets forth the following causes of action: (1) Failure to provide rest breaks and meal periods (Lab. Code §§ 226.7, 512, and 1198); (2) Failure to pay all wages earned for all hours worked (Lab. Code §§ 510, 1194, 1197, and 1198); (3) Failure to provide accurate wage statements (Lab. Code § 226); (4) Waiting time penalties (Lab. Code §§ 201-203); (5) Unfair Competition (Bus. & Prof. Code § 17200, et seq.); and (6) Civil Penalties/PAGA (Labor Code § 2698, et seq).

The parties reached a settlement. Plaintiff Felis A. Perez ("Plaintiff") moved for preliminary approval of the settlement and conditional class certification for settlement purposes. Defendants NXEdge MH, LLC, NXEdge San Carlos, LLC and NXEdge CSL, LLC (collectively, "Defendants") did not oppose the motion.

On February 8, 2023, the court continued the motion for preliminary approval of settlement to April 5, 2023. In its minute order, the court directed Plaintiff to provide an estimate of the net settlement amount that will be available for payments to class members as well as the average individual settlement award amount. The court further instructed the parties to identify a new *cy pres* recipient in compliance with Code of Civil Procedure section 384. The court also requested further information regarding the calculation of Defendants' maximum exposure. Additionally, the court asked the class representative to file a supplemental declaration specifically detailing the time he spent in connection with this action. Finally, the court requested the parties make several changes to the class notice and submit an amended notice for its approval.

Plaintiff filed supplemental declarations in support of the motion for preliminary approval of settlement on March 17, 2023.

On April 5, 2023, the court granted the motion for preliminary approval of settlement subject to approval of the amended class notice. Later that day, Plaintiff filed an amended class notice, which made the changes requested by the court.[1]

On September 5, 2023, the parties filed a Stipulation to Continue Hearing on Final Approval of Class Action Settlement, advising the court that Defendants recently identified a small number of additional class members who needed to receive notice of the settlement. The parties requested that the hearing of the motion for final approval of settlement be continued for 90 days in order to allow for proper settlement notification and administration.

On September 7, 2023, the court entered an order continuing the motion for final approval of settlement to January 17, 2024.

Plaintiff now moves for final approval of the settlement. The motion is unopposed.

II. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

[1] Upon review of the record, it does not appear that Plaintiff obtained the court's approval of the amended class notice filed on April 5, 2023. Nonetheless, as the amended notice made all of the changes requested by the court, the court will overlook this procedural defect.

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

III. DISCUSSION

> The case has been settled on behalf of the following class:
> all persons Defendants employed in California as regular full-time or part-time hourly, non-exempt employees (current and former) who have not executed releases of claims under the California Labor Code and/or applicable Wage Orders/regulations during the Class Period from September 29, 2017 through the earlier of the date of the court's preliminary approval order and the latest date before the Class exceeds 22,604 pay periods worked.

The class includes a subset of PAGA Members, who are defined as all individuals Defendants employed in California as hourly, non-exempt employees during the PAGA Period of September 10, 2020 through the earlier of the date of the court's preliminary approval order and the latest date before the Class exceeds 22,604 pay periods worked.

As discussed in connection with preliminary approval, Defendants will pay a total non-reversionary amount of $1,242,000. The total settlement payment includes attorney fees not to exceed $413,999 (one third of the settlement amount), litigation costs up to $25,000, an incentive award of $50,000 for the class representative, settlement administration costs up to $15,000, and a PAGA allocation of $20,000 of which $15,000 (75 percent) will be paid to the LWDA and $5,000 will be available for PAGA Members. Defendants will pay their share of any payroll taxes separately, without reducing the settlement fund.

Class members are not required to opt in to obtain their portions of the settlement amount; rather they may opt out if desired. In exchange for the settlement, class members who do not opt out will release

> [A]ll claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims during the period of September 29, 2017 through the earlier of the date of the Court's preliminary approval order and the latest date before the Class exceeds 22,604 pay periods asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiff to the LWDA concerning Defendants and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: failure to pay all wages for all hours worked, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to compensate employees at one hour's pay at employees regular rate of pay for each day on which employees did not receive one or more meal or rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2698, 2699, all applicable IWC Wage Orders and order provisions, and any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys fees or costs resulting therefrom.

With respect to how settlement shares are calculated, the settlement administrator will assign to each class member a settlement ratio, a fractional number comprised of (a) that class member's individual pay periods worked as the numerator, and (b) the aggregate total of all class members' individual pay periods worked as the denominator. The settlement administrator will assign to each class member the settlement share which will be calculated by multiplying that class member's settlement ratio by amount allocated to class members from the net settlement amount.

PAGA shares will be calculated similarly: the settlement administrator will assign to each class member a settlement ratio, a fractional number comprised of (a) that PAGA member's individual pay periods worked during the PAGA period as the numerator, and (b) the aggregate total of all PAGA members individual pay periods worked during the PAGA period as the denominator. The settlement administrator shall assign to each PAGA member the settlement share which shall be calculated by multiplying that PAGA member's settlement ratio by amount allocated to PAGA members from the net settlement amount. All PAGA

members, regardless of whether they submit timely and valid requests for exclusion from the settlement, will release all released claims under PAGA against Defendants.

The parties designated Legal Aid at Work as a *cy pres* recipient in compliance with Code of Civil Procedure section 384.

On June 15, 2023, the settlement administrator mailed notice packets to 334 class members. (Declaration of Lindsay Romo Regarding Notice and Settlement Administration ("Romo Dec."), ¶ 8.) After the initial mailing, Defendants informed the settlement administrator that nine class members were inadvertently omitted from the class list. (*Id.* at ¶ 11.) On September 14, 2023, the settlement administrator mailed notice packets to the additional nine class members. (Romo Dec., ¶ 12.) As of December 21, 2023, there were no objections and no requests for exclusion. (*Id.* at ¶¶ 15-16.)

The average estimated settlement payment is $2,142.11, the highest estimated settlement payment is $4,010.08, and the lowest estimated settlement payment is $32.08. (Romo Dec., ¶ 20.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

Plaintiff requests a service award in the amount of $50,000. Plaintiff submitted a declaration in support of his request, detailing his participation in the action. Plaintiff declares that he spent over 90 hours in connection with the litigation, including obtaining legal counsel, gathering information and documents for class counsel, discussing the case with class counsel, contacting class members about the lawsuit, participating in mediation, and reviewing the settlement agreement. (Declaration of Felis A. Perez in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, ¶ 7 & Ex. A.)

Moreover, Plaintiff undertook risk by putting his name on the case because it might impact his future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

However, as the court noted in its prior orders, the requested service award in the amount of $50,000 is excessive. Each class member will receive approximately $2,142.11. Consequently, the sought-after service award would amount to more than 20 times the

estimated average payout. In light of the foregoing, the court finds that a service award in the amount of $10,000 is reasonable and it approves the award in that lesser amount.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co*. (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel seek attorney fees in the amount of $414,000. Plaintiff's counsel provide evidence demonstrating a total combined lodestar of $122,015. (Declaration of David Spivak in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Spivak Dec."), ¶ 22 & Ex. O; Declaration of Walter Haines in Support of Plaintiff Felis A Perez's Motion for Final Approval of Class Action Settlement ("Haines Dec."), ¶¶ 5-10.) This results in multiplier of 3.39, which is at the high end of the range courts typically award. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 503-504 [the trial court did not abuse its discretion in approving a fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"].) Here, the settlement agreement provides for an award attorney fees in an amount of not more than $413,999 (1/3 of the gross settlement amount). The court finds that attorney fees in the amount of $413,999 are reasonable as a percentage of the common fund and are approved.

Plaintiff's counsel also request $12,257.64 in litigation costs. However, Plaintiff's counsel only provide evidence of incurred costs in the amount of $12,172.96. (Spivak Dec., ¶ 23 & Ex. P; Haines Dec., ¶ 11.) Anticipated expenses are not recoverable. Thus, the costs in the lesser amount of $12,172.96 appear to be reasonable and are approved. The administrative costs in the amount of $11,000 are also approved. (Romo Dec., ¶ 22.)

Accordingly, the motion for final approval of the class action settlement is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

The court will set a compliance hearing for September 11, 2024, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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Calendar Line 2

Case Name: Student Loan Solutions, LLC v. Cung, et al. (Class Action)
Case No.: 22CV405010

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on January 17, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IV. INTRODUCTION

According to the allegations of the Complaint, filed on October 3, 2022, plaintiff and cross-defendant Student Loan Solutions, LLC ("SLS") is the owner of debt owed by defendant and cross-complainant Thuy Cung ("Cung"). (Complaint, ¶¶ 4-5, 13.) Cung applied for and received a credit account with Bank of America, N.A. ("BOA"). (*Id.* at ¶¶ 5, 7.) Cung's contract with BOA was an installment contract. (*Id.* at ¶ 10 & Ex. 1.) Due to Cung's non-payment of the account, BOA charged-off and sold the account to SLS. (*Id.* at ¶¶ 6, 8.) The last activity on the account occurred within the four years prior to the filing of the Complaint. (*Id.* at ¶ 9.) Specifically, on or about October 19, 2018, Cung became indebted on the account at the accelerated sum of $18,854.10 (i.e., 135 installment payments in the amount of $139.66 each). (*Id.* at ¶ 12.) SLS alleged sent Cung written notice of the acceleration sum on July 8, 2022. (*Id.* at ¶ 12 & Ex. C) As of October 19, 2022, the accelerated sum was due, but Cung refused to pay it. (*Ibid.*) Cung's account was then sold to SLS. (*Id.* at ¶¶ 12-13.) SLS alleges that it "has complied with California Civil Code Section 1788.52." (*Id.* at ¶ 18.) Based on the foregoing allegations, the Complaint sets forth causes of action for: (1) Open Book Account; (2) Breach of Contract; and (3) Monies Had and Received.

On November 16, 2022, Cung filed a Class Action Cross-Complaint ("Cross-Complaint") against SLS and cross-defendants Christopher P. Ruh ("Ruh"), Williams & Fudge, Inc. ("W&F"), Goldsmith & Hull, A.P.C., and Stephen R. Goldsmith, alleging causes of action for: (1) California Fair Debt Buying Practices Act ("CFDBPA") (against SLS only); (2) Fair Debt Collection Practices Act ("FDCPA"); (3) Rosenthal Fair Debt Collection Practices Act ("RFDCPA"); and (4) Private Student Loan Collections Reform Act ("PSLCRA").

Subsequently, Goldsmith & Hull, A.P.C. and Stephen R. Goldsmith's (collectively, "Goldsmith Defendants") filed a special motion to strike the Cross-Complaint pursuant to Code of Civil Procedure section 425.16. Cung opposed the anti-SLAPP motion.

On July 31, 2023, the court granted Goldsmith Defendants' special motion to strike.

Now before the court is the motion by Goldsmith Defendants for an award of attorney fees pursuant to Code of Civil Procedure section 425.16, subdivision (c)(1). Cung opposes the motion.

II. REQUEST FOR JUDICIAL NOTICE

In connection with the opposition, Cung asks the court to take judicial notice of the entire court file in this action, documents filed in *Student Loan Solutions, LLC v. Osman Y. Guracar* (Santa Clara County Superior Court, Case No. 22CV405008) ("*Guracar* Action"), and documents filed in *Student Loan Solutions, LLC v. Brent Nunn* (Santa Cruz County Superior Court, Case No. 22CV02376) ("*Nunn* Action").

Preliminarily, the court declines to take judicial notice of the entire case file. This request is patently overbroad; it fails to list the specific items for which notice is sought and it is not readily apparent how the file on the whole would be relevant or necessary to resolving the issues raised in the special motions to strike. (See *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422 [matters to be judicially noticed must be relevant to a material issue]; see also Cal. Rules of Ct., rule 3.1113(l) [a request for judicial notice must list "specific items" for which notice is sought].)

Next, the court may properly take judicial notice of the documents filed in the *Guracar* Action and the *Nunn* Action that are specifically listed in the request for judicial notice as they are court records relevant to material issues raised in connection with the pending motion. (See Evid. Code, § 452, subd. (d).)

Accordingly, Cung's request for judicial notice is GRANTED IN PART and DENIED IN PART. The request is GRANTED as to the documents filed in the *Guracar* Action and the *Nunn* Action that are specifically listed in the request for judicial notice. The request is DENIED in all other respects.

III. LEGAL STANDARD

"The Supreme Court has noted that the anti-SLAPP statute contains provisions designed to 'limit the costs of defending' against a SLAPP lawsuit. [Citation.] And among those provisions is that a defendant that prevails 'is entitled to attorney's fees and costs.' [Citation.]". (*Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation* (2019) 33 Cal.App.5th 38, 46 (*Richmond*); *Jackson v. Yarbray* (2009) 179 Cal.App.4th 75, 92 (*Jackson*) citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 [" '[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees.' "].) "[O]nly those attorney fees and costs related to the special motion to strike, not the entire action, may be recovered under section 425.16, subdivision (c)." (*Jackson, supra*, 179 Cal.App.4th at p. 92; *Lafayette Morehouse, Inc. v. Chronicle Publishing Co*. (1995) 39 Cal.App.4th 1379, 1383-1384 (*Lafayette*) [holding that a prevailing defendant on a motion to strike can recover attorney fees and costs only on the motion to strike, not the entire suit].)

IV. DISCUSSION

Goldsmith Defendants contend they are entitled to an award of attorney fees in the amount of $46,123 because they prevailed on their special motion to strike. In support of the motion, Goldsmith Defendants submit a declaration from their counsel Tomio B. Narita ("Narita"). In his declaration, Narita describes his and his associates experience, and sets forth the basis for the hourly rate of $475 billed by each attorney. (Declaration of Tomio B. Narita in Support of Motion for Attorneys' Fees Pursuant to Section 425.16(c)(1) of the Code of Civil Procedure ("Narita Dec."), ¶¶ 6-11.) Narita states that counsel billed a total of 97.1 hours, which resulted in attorney fees in the amount of $46,123. (*Id.* at ¶ 15.) Narita submits a spreadsheet breaking down the time spent by the tasks performed by each attorney. (*Id.* at Ex. A.) Narita states that he reviewed each time entry billed and isolated only those time entries that relate to the tasks that were performed in connection with the anti-SLAPP motion. (*Id.* at ¶¶ 12-14.)

In opposition, Cung does not dispute that Goldsmith Defendants are prevailing defendants for purposes of Code of Civil Procedure section 425.16, subdivision (c). Instead, Cung argues the court should significantly reduce the requested award because the fees are unreasonable. Cung contends that the sought-after attorney fees are exorbitant because

Goldsmith Defendants' counsel filed a substantially identical special motion to strike in the *Nunn* Action, and recycled that motion in the *Guracar* Action. Cung concludes that the time spent for researching and drafting the brief in this action is excessive and duplicative given the work done in other cases. Finally, Cung asserts that any time spent on Goldsmith Defendants' demurrer should also be excluded from the award of attorney fees.

Cung's arguments are not well-taken. Narita acknowledges that his office is counsel of record in this case, the *Guracar* Action, and the *Nunn* Action, and states that his office "took great pains to avoid any duplicate billing between the three actions." (Supplemental Declaration of Tomio B. Narita in Support of Motion for Attorneys' Fees Pursuant to Section 425.16(c)(1) of the Code of Civil Procedure ("Narita Supp. Dec."), ¶ 2.) Narita declares that "[w]hen a task was performed that was helpful to more than one of the cases filed against [Goldsmith Defendants], [his] firm split the time between the cases, dividing it in half, or in thirds, as appropriate." (Narita Supp. Dec., ¶ 2.) Notably, Cung concedes that this practice of splitting the time billed on overlapping tasks between the cases is appropriate. (Memorandum of Points and Authorities in Opposition to Motion for Attorney Fees by Cross-Defendants Goldsmith & Hull, APC, and Stephen R. Goldsmith, pp. 5-6.) Furthermore, Narita confirms that "[n]one of the fees for the time that was devoted to the demurrer was included in the fee request in this matter." (Narita Supp. Dec., ¶ 3.) Consequently, the motion only seeks to recover time incurred on the anti-SLAPP motion.

Accordingly, Goldsmith Defendants' motion for attorney fees is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 3

Case Name: Student Loan Solutions, Inc. v. Guracar, et al. (Class Action)
Case No.: 22CV405008

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on January 17, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

V. INTRODUCTION

According to the allegations of the Complaint, filed on September 30, 2022, plaintiff and cross-defendant Student Loan Solutions, LLC ("SLS") is the owner of debt owed by defendant and cross-complainant Osman Yunus Guracar ("Guracar"). (Complaint, ¶¶ 4-6.) Guracar applied for and received a credit account with Bank of America, N.A. ("BOA"). (*Id.* at ¶¶ 5, 7.) Guracar's contract with BOA was an installment contract. (*Id.* at ¶ 10 & Ex. 1.) Due to Guracar's non-payment of the account, BOA charged-off and sold the account to SLS. (*Id.* at ¶¶ 6, 8.) The last activity on the account occurred within the four years prior to the filing of the Complaint. (*Id.* at ¶ 9.) Specifically, on or about October 15, 2018, Guracar became indebted on the account at the accelerated sum of $3,963.06 (i.e., 123 installment payments in the amount of $32.22 each). (*Id.* at ¶ 12.) SLS alleged sent Guracar written notice of the acceleration sum on June 27, 2022. (*Id.* at ¶ 12 & Ex. C) As of October 15, 2022, the accelerated sum was due, but Guracar refused to pay it. (*Ibid.*) Guracar's account was then sold to SLS. (*Id.* at ¶¶ 12-13.) SLS alleges that it "has complied with California Civil Code Section 1788.52." (*Id.* at ¶ 18.) Based on the foregoing allegations, the Complaint sets forth causes of action for: (1) Open Book Account; (2) Breach of Contract; and (3) Monies Had and Received.

On November 2, 2022, Guracar filed a Class Action Cross-Complaint ("Cross-Complaint") against SLS and cross-defendants Christopher P. Ruh ("Ruh"), Williams & Fudge, Inc. ("W&F"), Goldsmith & Hull, A.P.C., and Stephen R. Goldsmith, alleging causes of action for: (1) California Fair Debt Buying Practices Act ("CFDBPA") (against SLS only); (2) Fair Debt Collection Practices Act ("FDCPA"); and (3) Rosenthal Fair Debt Collection Practices Act ("RFDCPA").

On November 29, 2022, Guracar filed a First Amended Class Action Cross-Complaint ("FACC"), which sets forth the following claims: (1) CFDBPA (against SLS only); (2) FDCPA; (3) RFDCPA; and (4) Private Student Loan Collections Reform Act ("PSLCRA").

Subsequently, Goldsmith & Hull, A.P.C. and Stephen R. Goldsmith's (collectively, "Goldsmith Defendants") filed a special motion to strike the FACC pursuant to Code of Civil Procedure section 425.16. Guracar opposed the anti-SLAPP motion.

On July 31, 2023, the court granted Goldsmith Defendants' special motion to strike.

Now before the court is the motion by Goldsmith Defendants for an award of attorney fees pursuant to Code of Civil Procedure section 425.16, subdivision (c)(1). Guracar opposes the motion.

II. REQUEST FOR JUDICIAL NOTICE

In connection with his opposition, Guracar asks the court to take judicial notice of the entire court file in this action, documents filed in *Student Loan Solutions, LLC v. Thuy Cung* (Santa Clara County Superior Court, Case No. 22CV405010) ("*Cung* Action"), and documents filed in *Student Loan Solutions, LLC v. Brent Nunn* (Santa Cruz County Superior Court, Case No. 22CV02376) ("*Nunn* Action").

Preliminarily, the court declines to take judicial notice of the entire case file. This request is patently overbroad; it fails to list the specific items for which notice is sought and it is not readily apparent how the file on the whole would be relevant or necessary to resolving the issues raised in the special motions to strike. (See *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422 [matters to be judicially noticed must be relevant to a material issue]; see also Cal. Rules of Ct., rule 3.1113(l) [a request for judicial notice must list "specific items" for which notice is sought].)

Next, the court may properly take judicial notice of the documents filed in the *Cung* Action and the *Nunn* Action that are specifically listed in the request for judicial notice as they are court records relevant to material issues raised in connection with the pending motion. (See Evid. Code, § 452, subd. (d).)

Accordingly, Guracar's request for judicial notice is GRANTED IN PART and DENIED IN PART. The request is GRANTED as to the documents filed in the *Cung* Action

and the *Nunn* Action that are specifically listed in the request for judicial notice. The request is DENIED in all other respects.

III. LEGAL STANDARD

"The Supreme Court has noted that the anti-SLAPP statute contains provisions designed to 'limit the costs of defending' against a SLAPP lawsuit. [Citation.] And among those provisions is that a defendant that prevails 'is entitled to attorney's fees and costs.' [Citation.]". (*Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation* (2019) 33 Cal.App.5th 38, 46 (*Richmond*); *Jackson v. Yarbray* (2009) 179 Cal.App.4th 75, 92 (*Jackson*) citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 [" '[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees.' "].) "[O]nly those attorney fees and costs related to the special motion to strike, not the entire action, may be recovered under section 425.16, subdivision (c)." (*Jackson, supra*, 179 Cal.App.4th at p. 92; *Lafayette Morehouse, Inc. v. Chronicle Publishing Co*. (1995) 39 Cal.App.4th 1379, 1383-1384 (*Lafayette*) [holding that a prevailing defendant on a motion to strike can recover attorney fees and costs only on the motion to strike, not the entire suit].)

IV. DISCUSSION

Goldsmith Defendants contend they are entitled to an award of attorney fees in the amount of $49,210 because they prevailed on their special motion to strike. In support of the motion, Goldsmith Defendants submit a declaration from their counsel Tomio B. Narita ("Narita"). In his declaration, Narita describes his and his associates experience, and sets forth the basis for the hourly rate of $475 billed by each attorney. (Declaration of Tomio B. Narita in Support of Motion for Attorneys' Fees Pursuant to Section 425.16(c)(1) of the Code of Civil Procedure ("Narita Dec."), ¶¶ 6-11.) Narita states that counsel billed a total of 103.6 hours, which resulted in attorney fees in the amount of $49,210. (*Id.* at ¶ 15.) Narita submits a spreadsheet breaking down the time spent by the tasks performed by each attorney. (*Id.* at Ex. A.) Narita states that he reviewed each time entry billed and isolated only those time entries that relate to the tasks that were performed in connection with the anti-SLAPP motion. (*Id.* at ¶¶ 12-14.)

In opposition, Guracar does not dispute that Goldsmith Defendants are prevailing defendants for purposes of Code of Civil Procedure section 425.16, subdivision (c). Instead, Guracar argues the court should significantly reduce the requested award because the fees are unreasonable. Guracar contends that the sought-after attorney fees are exorbitant because Goldsmith Defendants' counsel filed a substantially identical special motion to strike in the *Nunn* Action, and recycled that motion in the *Cung* Action. Guracar concludes that the time spent for researching and drafting the brief in this action is excessive and duplicative given the work done in other cases. Finally, Guracar asserts that any time spent on Goldsmith Defendants' demurrer should also be excluded from the award of attorney fees.

Guracar's arguments are not well-taken. Narita acknowledges that his office is counsel of record in this case, the *Cung* Action, and the *Nunn* Action, and states that his office "took great pains to avoid any duplicate billing between the three actions." (Supplemental Declaration of Tomio B. Narita in Support of Motion for Attorneys' Fees Pursuant to Section 425.16(c)(1) of the Code of Civil Procedure ("Narita Supp. Dec."), ¶ 2.) Narita declares that "[w]hen a task was performed that was helpful to more than one of the cases filed against [Goldsmith Defendants], [his] firm split the time between the cases, dividing it in half, or in thirds, as appropriate." (Narita Supp. Dec., ¶ 2.) Notably, Guracar concedes that this practice of splitting the time billed on overlapping tasks between the cases is appropriate. (Memorandum of Points and Authorities in Opposition to Motion for Attorney Fees by Cross-Defendants Goldsmith & Hull, APC, and Stephen R. Goldsmith, pp. 5-6.) Furthermore, Narita confirms that "[n]one of the fees for the time that was devoted to the demurrer was included in the fee request in this matter." (Narita Supp. Dec., ¶ 3.) Consequently, the motion only seeks to recover time incurred on the anti-SLAPP motion.

Accordingly, Goldsmith Defendants' motion for attorney fees is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 4

Case Name: International Technological University Foundation v. Lam, et al.
Case No.: 21CV384091

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on January 17, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VI. INTRODUCTION

On July 8, 2021, plaintiff International Technological University Foundation ("Plaintiff") brought this action against defendants Edward Lam, Ramesh Konda, Kranthi Lammatha, Ravi Kumar Kethineni, Rama Krishna Prasad Kethineni, Bamboo Solutions, Inc., HireTechForce, Inc., BoxsterTech, Inc., TechGlobalSystems, Inc., Reves Global Services, Inc. f/k/a iBridge, Inc. (collectively, "Defendants").

On December 3, 20221, Plaintiff filed the operative First Amended Complaint against Defendants, which sets forth the following causes of action: (1) Intentional Misrepresentation/Fraud; (2) Fraudulent Concealment; (3) Civil Conspiracy; (4) Breach of Contract; (5) Negligence/Malpractice; (6) Breach of Fiduciary Duty; (7) Conversion; (8) Unjust Enrichment; (9) Accounting; (10) Money Had and Received; (11) Alter Ego; (12) Alter Ego; (13) Alter Ego; (14) Alter Ego; (15) Alter Ego; (16) Constructive Trust; (17) Conduct and Participation in a RICO Enterprise Through a Pattern of Racketeering Activity; and (18) Conspiracy to Engage in a Pattern of Racketeering Activity.

Now before the court are the following matters: (1) the motion by Michael D. Stanger ("Stanger") and Strong & Hanni, P.C. to be relieved as counsel of record for Plaintiff; and (2) the motion by Sandra L. Rappaport ("Rappaport") and Michael E. Turner ("Turner") of Hanson Bridgett LLP to be relieved as counsel of record for Plaintiff. The motions are unopposed.

II. LEGAL STANDARD

California Rules of Court, rule 3.1362 sets forth the requirements for a motion to be relieved as counsel. That rule provides that "[a] notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must

be made on the Notice of Motion and Motion to Be Relieved as Counsel-Civil (form MC-051)." (Cal. Rules of Ct., rule 3.1362(a).) "[N]o memorandum is required to be filed or served with a motion to be relieved as counsel." (Cal. Rules of Ct., rule 3.1362(b).) "The motion to be relieved as counsel must be accompanied by a declaration on the Declaration in Support of Attorney's Motion to Be Relieved as Counsel-Civil (form MC-052)," which "must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)." (Cal. Rules of Ct., rule 3.1362(c).)

"The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service, or mail." (Cal. Rules of Ct., rule 3.1362(d).) If the notice is served on the client by mail, it must be accompanied by a declaration stating facts showing that either: (1) the service address is the current residence or business address of the client; or (2) the service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved. (Cal. Rules of Ct., rule 3.1362(d)(1).) "If the notice is served on the client by electronic service under Code of Civil Procedure section 1010.6 and rule 2.251, it must be accompanied by a declaration stating that the electronic service address is the client's current electronic service address." (Cal. Rules of Ct., rule 3.1362(d)(2).) As used in the rule, "current" means that the address was confirmed within 30 days before the filing of the motion to be relieved. (*Ibid.*)

"The proposed order relieving counsel must be prepared on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053) and must be lodged with the court with the moving papers." (Cal. Rules of Ct., rule 3.1362(e).) "The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court may set one and specify the date in the order." (*Ibid.*)

The determination of whether to grant a motion to withdraw as counsel lies in the sound discretion of the trial court. (See *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1133; see also *People v. Horton* (1995) 11 Cal.4th 1068, 1106.)

III. MOTION BY STANGER AND STRONG & HANNI, P.C.

Stanger and Strong & Hanni, P.C. seek to be relieved as counsel of record for Plaintiff on the grounds that Plaintiff breached obligations under its engagement agreement with Strong & Hanni, P.C. and is not responding to emails. This motion and its basis are incorporated into the motion filed by California counsel, Hanson Bridgett LLP, as Stanger and Strong & Hanna, P.C. are not licensed attorneys in California and are appearing only *pro hac vice*, in the court's discretion after proper application to the State Bar of California and to the court. In the absence of associated California counsel, Stanger and Strong & Hanna would be ineligible to appear and represent the plaintiff in this California action. Their representation is derivative of, and must rely upon, the appearance and representation of associated California counsel.

As the motion brought by Hansen & Bridgett counsel includes a request to relieve *pro hac vice* counsel, has established good cause as described below to grant the request to be relieved, and includes within its motion and supporting declaration a sufficient statement of facts to support the motion by *pro hac vice* counsel to be relieved, this motion is also GRANTED.

IV. MOTION BY RAPPAPORT AND TURNER

Rappaport and Turner seek to be relieved as counsel of record for Plaintiff on the grounds that Plaintiff breached obligations under its engagement agreement with Hanson Bridgett LLP and is not responding to emails.

In support of the motion, Rappaport and Turner filed a motion to be relieved as counsel on the Notice of Motion and Motion to Be Relieved as Counsel-Civil (form MC-051), a declaration on the Declaration in Support of Attorney's Motion to Be Relieved as Counsel-Civil (form MC-052), and a proposed order relieving counsel on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053) in compliance with California Rules of Court, rule 3.1362. Rappaport declares that Plaintiff is making it unreasonably difficult to carry out representation effectively as Plaintiff has breached its agreement with Hanson

Bridgett LLP and has refused to respond to counsel's recent email communications about this matter. (Attachment to Sandra Rappaport Declaration in Support of Motion for Leave to Withdraw as Counsel, ¶¶ 2-8.) Rappaport states that Plaintiff was served by mail at its last known address with copies of the moving papers. (Declaration in Support of Attorney's Motion to be Relieved as Counsel-Civil, ¶ 3(a)(2).) Rappaport further states that she confirmed that the address is current within the past 30 days by conversation. (*Id.* at ¶ 3(b)(1)(c).) Additionally, Rappaport and Turner filed a Proof of Service demonstrating that the moving papers were served on Plaintiff and Defendants by mail or email in compliance with Code of Civil Procedure section 1013.

Based on the foregoing, the court finds that Rappaport and Turner have justified the request to be relieved as counsel.

Accordingly, the motion to be relieved as counsel is GRANTED.

With the court's grant of these motions to be relieved as counsel, the Case Management Conference scheduled on January 17, 2024 at 2:30 p.m. is VACATED. A further Case Management Conference is scheduled on March 20, 2024 at 2:30 p.m. for identification of counsel for plaintiff.

Counsel being relieved by these motions must included this new hearing date in the proposed order submitted to the court granting the motions.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 5

Case Name: Group One Construction, Inc. v. La Encina Development, L.L.C., et al.
Case No.: 17CV319705

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Calendar Line 6

Case Name: Laplante v. The Floor Store, Inc. (Class Action/PAGA)
Case No.: 22CV397281

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on January 17, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VII. INTRODUCTION

This is a putative class and Private Attorneys General Act ("PAGA") action arising out various alleged wage and hour violations. The operative First Amended Class and PAGA Action Complaint ("FAC"), filed on January 17, 2023, sets forth the following causes of action: (1) Failure to Pay All Minimum Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums; (4) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums; (5) Failure to Maintain Accurate Employment Records; (6) Failure to Pay Wages Timely During Employment; (7) Failure to Pay All Wages Earned and Unpaid at Separation; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17210); and (10) Civil Penalties Under the Private Attorneys General Act (Labor Code § 2699 et seq.).

The parties reached a settlement. On May 10, 2023 the court granted preliminary approval of the settlement subject to the court's approval of the amended class notice and Share Form. The court approved the amended notice and Share Form on June 12, 2023.

Subsequently, plaintiff Pamela LaPlante ("Plaintiff") moved for final approval of the settlement.

On October 25, 2023, the court continued the motion for final approval of the settlement to January 17, 2024. The court ordered Plaintiff and her counsel to file a supplemental declarations identifying a new *cy pres* recipient in compliance with Code of Civil Procedure section 384, specifically detailing how Plaintiff participated in the action and an estimate of time spent, and setting forth lodestar information (including hourly rates and hours worked) to support the request for attorney fees. The court otherwise found the settlement to

be fair for purposes of final approval, and approved the request for litigation costs and settlement administration costs.

On January 2, 2023, Plaintiff's counsel filed a supplemental declaration in support of the motion for final approval of settlement.

VIII. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

IX. DISCUSSION

> The action has been settled on behalf of the following class:
> [A]ll individuals who are or were employed by [defendant The Floor Store, Inc. ("Defendant")] as salespersons, and/or design consultants, or similar positions, in California during the Class Period.

The Class Period is defined as the period from April 25, 2018, through the date of preliminary approval of the settlement. The class includes a subset of PAGA aggrieved employees, who are defined as "all individuals who are or were employed by [Defendant] as salespersons, and/or design consultants, or similar positions, in California during the PAGA Period." The PAGA Period is defined as the period from April 25, 2021, through the date of preliminary approval of the settlement.

As discussed in connection with preliminary approval, Defendant will pay a gross, non-reversionary amount of $1,000,000. The gross settlement amount includes attorney fees not to exceed $333,333.33 (1/3 of the gross settlement amount), litigation costs up to $15,000, an incentive award not to exceed $7,500, settlement administration costs (estimated to be no more than $10,000), and a PAGA Payment of $100,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be distributed to PAGA aggrieved employees).

The net settlement amount will be distributed to class members pro rata based on the number of workweeks worked during the class period.

The settlement agreement originally provided that funds from checks that remained uncashed 180 days after issuance will be sent to the California State Controller for deposit in the Unclaimed Property Fund. The parties have now identified Bet Tzedek as the new *cy pres* recipient in compliance with Code of Civil Procedure section 384. (Supplemental Declaration of Jonathan Melmed in Support of Motion for Order Granting Final Approval of Class Action Settlement ("Supp. Melmed Dec."), ¶ 3.) The court approves the *cy pres* recipient.

The settlement agreement further provides that in exchange for the settlement, class members who do not opt out will release Defendant, and related persons and entities, from claims arising out of or related to the allegations set forth in the FAC and/or the notice sent to the LWDA, which arose during the Class Period. Plaintiff also agrees to a general release of claims.

On July 10, 2023, the settlement administrator mailed notice packets to 114 class members. (Declaration of Nicole Bench of ILYM Group, Inc. Regarding Notice and Settlement Administration ("Bench Dec."), ¶ 8.) Ultimately, three notice packets were undeliverable. (*Id.* at ¶ 11.) As of October 2, 2023, there were no objections and no requests for exclusion. (*Id*. at ¶¶ 12-13.)

The estimated average gross payment for the class is $4,755.96 and the estimated highest gross payment for the class is $15,412.62. The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

Plaintiff requests a service award in the amount of $7,500. Plaintiff has now submitted an amended declaration describing her participation in the action. (Supp. Melmed Dec., Ex. 2, ¶ 11.) Plaintiff declares that she expended approximately 40 hours in connection with the litigation, including discussing the case with class counsel, reviewing documents, and participating in mediation. (*Ibid.*)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].) Therefore, the requested service award is reasonable and approved.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co*. (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel seeks attorney fees in the amount of $333,333.33 (1/3 of the gross settlement amount). The supplemental declaration from Plaintiff's counsel now contains the lodestar information (including hourly rates and hours worked) requested by the court. Plaintiff's counsel presents evidence of a lodestar of $55,518.90 (based on five attorneys billing at hourly rates of $437-$777, and a paralegal billing at $250 per hour). (Supp. Melmed Dec., ¶¶ 7-15.) This results in a multiplier of 6, which is substantially higher than what the court typically sees, and approves, in wage and hour settlements. (See *Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 503-504 [the trial court did not abuse its discretion in approving a fee award of 1/3 of the

common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; see also *Wershba, supra*, 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

Notably, the lodestar is based on high billing rates which take full account of counsel's expertise and experience. Although high billing rates are generally justified by efficiencies including having work done by the qualified person with the lowest billing rate, in this case over half of the work was done by attorneys with an hourly billing rate of $538, and an additional one third of the hours were worked by the person with the very top billing rate of $777. With the vast majority of the hours worked by those with the highest billing rates, the efficiencies on which such high billing rates are premised were not achieved.

Even taking the lodestar at face value, an extremely large multiplier of 6 is necessary to get to the proposed fee award. The court recognizes that the settlement counsel obtained is a favorable result for the class. The court further recognizes that contingency fee agreements put counsel at risk. However, the proposed fee award is still well beyond what the court can consider reasonable. The court does not believe that the results achieved by this settlement and the other factors relevant to the analysis justify such a high multiplier here. The court will instead apply a multiplier of 4, resulting in an attorney fee award of $222,075.60. (See *Laffitte, supra,* 1 Cal.5th at pp. 488, 503–504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].) The unapproved portion of the requested attorney fee award shall be distributed to the class.

Plaintiff's counsel also requests litigation costs in the amount of $10,021.88 and submits evidence of incurred costs in that amount. (Declaration of Jonathan Melmed in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, ¶ 17 & Ex. 2.) Consequently, the court approves the litigation costs in the amount of $10,021.88. The settlement administration costs of $7,000 are also approved. (Bench Dec., ¶ 17.)

Accordingly, the motion for final approval of the class and representative action settlement is GRANTED subject to the reduction in attorney fees.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

The court will set a compliance hearing for September 11, 2024, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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