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DEC 13 2023

David W. Slayton, Executive Officer/Clerk of Count By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES

GERARDO SANCHEZ, as an individual and on behalf of all others similarly situated,

Plaintiff,

v.

DUTTON HOME SERVICES, LLC, a California corporation; and DOES 1 through 100,

Defendants.

Case No.: 22STCV01834

ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I. BACKGROUND

Plaintiff Gerardo Sanchez sues his former employer, Defendant Dutton Home Services, LLC, for alleged wage and hour violations. Defendant operates a plumbing repair service in Los Angeles. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On January 14, 2022, Plaintiff filed a complaint against Defendant alleging causes of action for: (1) failure to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (2) minimum wage violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (3) meal period violations (Labor Code §§ 226.7, 512, 558); (4) rest period violations (Labor Code §§ 226.7, 516, 558); (5) failure to reimburse necessary business expenses (Labor Code §§ 2802, 2804); (6) wage statement violations (Labor Code § 226 et seq.); (7) waiting time penalties (Labor Code §§ 201-203); and (8) unfair competition (Bus. & Prof. Code § 17200 et seq.). On March 21, 2022, Plaintiff filed the operative First Amended Complaint adding a cause of action for civil penalties under the Private Attorneys General Act (Labor Code §§ 2698, et seq).

On August 24, 2022, the parties participated in a mediation with Louis Marlin, Esq., which resulted in a settlement. The terms were finalized in a Class Action and PAGA Settlement Agreement filed with the Court on January 25, 2023.

On May 22, 2023, the Court issued a "checklist" to the parties pertaining to deficiencies with the proposed settlement and called the matter of Plaintiff's Motion for Preliminary Approval for hearing, discussing issues with respect to preliminary approval with counsel. In response, counsel filed further briefing and a revised Class Action and PAGA Settlement Agreement. All references below are to the agreement attached as Exhibit E to the Supplemental Declaration of Andrew J. Rowbotham filed June 20, 2023.

The settlement was preliminarily approved on July 14, 2023. Notice was given to the Class Members as ordered (see Declaration of William Argueta ("Argueta Decl.")).

Before the Court is Plaintiff's motion for final approval of the Settlement Agreement, including for payment of fees, costs, and a service award to the named plaintiff.

II. THE TERMS OF THE SETTLEMENT

A. SETTLEMENT CLASS DEFINITION

"Class" means "all current and former non-exempt employees of Defendant and/or its predecessor, Dutton Plumbing, Inc., in California who worked at any time between January 14, 2018, and the date of preliminary approval or November 22, 2022, whichever is sooner." (¶1.5)

"Class Period" means the period from January 14, 2018, and the date of preliminary approval or November 22, 2022, whichever is sooner. (¶1.12)

"PAGA Group Members" means "all current and former non-exempt employees of Defendant in California who worked at any time between January 14, 2021, and the date of preliminary approval or November 22, 2022, whichever is sooner." (¶1.4)

"PAGA Period" means the period from January 14, 2021, and the date of preliminary approval, or November 22, 2022, whichever is sooner. (¶1.31)

"Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion. (¶1.35)

B. THE MONETARY TERMS OF SETTLEMENT

The essential monetary terms are as follows:

- The Gross Settlement Amount ("GSA") is \$450,000 (¶3.1). This includes payment of a PAGA penalty of \$50,000 to be paid 75% to the LWDA (\$37,500) and 25% to the Aggrieved Employees (\$12,500) (¶3.2.5).
 - o Escalator Clause: Based on its records, Defendant estimates Class Members collectively worked a total of 15,205 Workweeks as of August 24, 2022. If the actual number of Workweeks worked as of August 24, 2022, is greater than 10% of this figure (i.e., if there are 16,726 or more Workweeks worked as of August 24, 2022), Defendant agrees to increase the Gross Settlement Amount on a proportional basis over the 10% threshold (i.e., if there was 15% increase in the number Workweeks worked, Defendant would increase the Gross Settlement Amount by 5%). (¶9) At preliminary approval, Plaintiff's counsel represented that there were an estimated 275 putative Class Members. (Decl. of Schmidt ISO Prelim ¶24.) At final approval, the settlement administrator represents that there are 306 Class Members. (Argueta Decl. ¶13.) This is an 11.3% increase in the class size from the initial estimate of 275. By Supplemental declaration filed December 11, 2023 the Administrator represents that the escalator cluse was not triggered, as the total work weeks did not exceed 16,726. (Argueta Supp. Dec. ¶5).
- The Net Settlement Amount ("Net") (\$206,250) is the GSA less:
 - Up to \$150,000 (33 1/3%) for attorney fees (¶3.2.2);
 - Up to \$30,000 for attorney costs (Ibid.);
 - Up to \$5,000 for a service award to the proposed class representative (¶3.2.1); and
 - Up to \$8,750 for settlement administration costs (¶3.2.3).

- Defendant will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments (¶3.1).
- Assuming the Court approves the maximum requested deductions, approximately \$213,409.29 will be available for automatic distribution to participating class members. The average settlement share will be approximately \$697.41. (\$213,409.29 Net ÷ 306 class members = \$697.41). In addition, each PAGA Group Member will receive a portion of the PAGA penalty, estimated to be \$66.49 per PAGA Group Member (\$12,500 or 25% of \$50,000 PAGA penalty). (Argueta Decl. ¶17.)
- There is no Claim Requirement (¶3.1).
- The settlement is not reversionary (¶3.1).
 - Individual Settlement Share Calculation: Each Participating Class Member's Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (¶3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (¶3.2.4.2)
- PAGA Payment Calculation: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Group Members' 25% share of Gross PAGA Payment (\$12,500.00) by the total number of PAGA Period Pay Periods worked by all PAGA Group Members during the PAGA

- Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (¶3.2.5.1)
- Tax Withholdings: Each Participating Class Member's Individual Class Payment will be allocated as 1/3 to wages; 2/3 to interest and penalties (¶3.2.4.1). The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (¶3.2.5.2)
- Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date. (¶4.3)
- Distribution: Within ten (10) business days after Defendants funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (¶4.4)
- Uncashed Settlement Payment Checks: The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. (¶4.4.1) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class

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Member thereby leaving no unpaid residue subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (¶4.4.3)

C. TERMS OF RELEASES

- Releases of Claims: Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows: (¶6)
 - Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all federal and California state law wage-and-hour claims, rights, demands, liabilities, and/or causes of action, whether known or unknown, arising from or related to any and all claims that were asserted or could have been asserted based on the facts alleged in the Action or Plaintiff's letter to the LWDA dated January 14, 2022, including, without limitation, statutory, constitutional, contractual, and/or common law claims for unpaid wages, reimbursements, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys fees, litigation costs, restitution, or equitable relief that arose during the Class Period. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, Social Security, Workers Compensation, or claims based on facts occurring outside the

Class Period. The time period covered by this release will mirror the Class Period. (¶6.2)

- Release by PAGA Group Members: All PAGA Group Members are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff's letter to the LWDA dated January 14, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period. (¶6.3)
- "Released Parties" means: Defendant, its past and present officers, directors, shareholders, managers, exempt employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, including, without limitation Dutton Plumbing, Inc. (¶1.41)
- The named Plaintiff will also provide a general release and a waiver of the protections of Cal. Civ. Code §1542. (¶6.1)
- The releases are effective on the date when Defendant fully funds the entire Gross Settlement Amount, which will occur no later than thirty (30) days after the Effective Date. (¶4.3)

III. ANALYSIS OF SETTLEMENT AGREEMENT

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." Cal. Rules of Court, rule 3.769(g). "If the court approves the

settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." Cal. Rules of Court, rule 3.769(h).

As discussed more fully in the Order conditionally approving the settlement, "[i]n a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App.4th 224, 245 ("*Wershba*"), disapproved on another ground in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260 [Court needs to "scrutinize 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."] [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." See *Wershba*, *supra*, 91 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,

1802. Notwithstanding an initial presumption of fairness, "the court should not give rubber-stamp approval." See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. "Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished." *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In that determination, the court should consider 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 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." *Id.* at 128. This "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 pg. 245.)

A. A PRESUMPTION OF FAIRNESS EXISTS

The Court preliminarily found in its Order of July 14, 2023 that the presumption of fairness should be applied. No facts have come to the Court's attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The settlement was preliminarily found to be fair, adequate and reasonable.

Notice has now been given to the Class and the LWDA. The notice process resulted in the following:

Number of class members: 306

Number of notices mailed: 306

Number of undeliverable notices: 9

Number of opt-outs: 0

Number of objections: 0

Number of participating class members: 306

(Argueta Decl. ¶¶5-13.)

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

C. CLASS CERTIFICATION IS PROPER

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

D. ATTORNEY FEES AND COSTS

Class Counsel requests \$150,000 (33 1/3%) for attorney fees and \$22,840.71 for costs. (MFA at 11:23-25, 14:3-5.)

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

In the instant case, fees are sought pursuant to the percentage method, as cross-checked by lodestar. (MFA at pp. 10-14.) The \$150,000 fee request is one-third of the Gross Settlement Amount.

A lodestar is calculated by multiplying the number of hours reasonably expended by the reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,

1095-1096 (*PLCM*). "Generally, '[t]he lodestar is calculated using the reasonable rate for comparable legal services in *the local community* for noncontingent litigation of the same type, multiplied by the reasonable number of hours spent on the case.' "

Environmental Protection Information Center v. Dept. of Forestry & Fire Protection (2010) 190 Cal.App.4th 217, 248, quoting Nichols v. City of Taft (2007) 155 Cal.App.4th 1233, 1242-1243.

As to the reasonableness of the rate and hours charged, trial courts consider factors such as "the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances." *PLCM*, *supra*, 22 Cal.4th at p. 1096. "The evidence should allow the court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended." *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

Attorney Schmidt represents that four attorneys at his firm, and its paralegals, spent a total of 264 hours on this action. (Declaration of Fletcher W. Schmidt ISO Final ¶20.) At hourly rates ranging from \$475 to \$750 for the attorneys and \$175 for the paralegals, Class Counsel incurred a total lodestar of \$151,502.50. (*Ibid.*) The lodestar implies a multiplier of 0.99 to reach the requested fees. Each attorney who worked on this case represents that their hourly rate was approved by other courts. (*Id.* at ¶4; Decl. of Paul K. Haines ISO Final ¶6; Decl. of Susan J. Perez ISO Final ¶6; Decl. of Andrew J. Rowbotham ISO Final ¶4.) Schmidt attaches a copy of his firm's billing summary, with the tasks performed on the case summarized by each attorney's time spent on them. (Schmidt Decl. ISO Final, Exhibit 4.)

Schmidt also attaches a copy of the Laffey Matrix. (*Id.* at Exhibit 5.) The Laffey Matrix reference relied upon is of limited usefulness as it does not break down for area of

practice or geography. *Cf. Stratton v. Beck*, 9 Cal. App. 5th 483, 496, (2017) (hourly rate of \$450 was proper where lawyer had decades of experience in labor matters and presented evidence of rates of \$500 to \$800 per hour—charged by similarly experienced labor lawyers in the Los Angeles area); *Davis v. Brown Shoe Co.* (E.D. Cal.) 2015 U.S. Dist. LEXIS 149010 (rates for experienced wage and hour lawyers in Los Angeles \$695-\$395 per hour); *Ruiz v. JCP Logistics, Inc.* (C.D. Cal. Aug. 12, 2016, No. SACV 13-1908-JLS (ANx)) 2016 U.S. Dist. LEXIS 189280, at *28-30.) (rejecting Laffey matrix and setting \$600 per hour for experienced wage and hour class action counsel).

Here, the \$150,000 fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request, and no one objected. (Argueta Decl. ¶11, Exhibit A thereto.) Accordingly, the Court awards fees in the amount of \$150,000.

Class Counsel requests \$22,840.71 in costs. (MFA at 14:3-5.) This is less than the \$30,000 cap provided in the settlement agreement (¶3.2.2). The amount was disclosed to Class Members in the Notice, and no objections were received. (Argueta Decl. ¶11, Exhibit A thereto.) Costs include: Mediation (\$7,000), Expert (\$2,990), and Case Anywhere (\$924.45). (Schmidt Decl. ISO Final ¶22, Exhibit 3 thereto.)

The costs, except for \$132.25 incurred by counsel for legal research (Westlaw) which should be considered attorney overhead not payable by the class, appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

For all of the foregoing reasons, costs of \$22,708.46 are approved.

E. SERVICE AWARD TO CLASS REPRESENTATIVE

A service (or incentive) fee award to a named class representative must be supported by evidence that quantifies the time and effort expended by the individual and

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

Here, the Class Representative Gerardo Sanchez requests an enhancement award of \$5,000. (MFA at 15:15-18.) He represents that his contributions to this action include: gathering documents for use in the lawsuit, providing information regarding the claims and Defendant's practices to his attorneys, helping identify other employees, and being available on the date of mediation. He estimates spending at least 20 hours on the case. (Declaration of Gerardo Sanchez ISO Final ¶4.) He asserts that he took on a greater burden than other employees of Defendant because his name is attached to the lawsuit which is public record, though he has not shown whether this has affected him. (*Id.* at ¶3.)

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

F. SETTLEMENT ADMINISTRATION COSTS

The Settlement Administrator, CPT Group, Inc. requests \$8,750 in compensation for its work in administrating this case. (Argueta Decl. ¶18.) At the time of preliminary approval, costs of settlement administration were estimated at \$8,750 (¶3.2.3). Class

1	Members were provided with notice of this amount and did not object. (Argueta Decl.
2	¶11, Exhibit A thereto.)
3	Accordingly, settlement administration costs are approved in the amount of
4	\$8,750.
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6	IV. CONCLUSION AND ORDER
7	The Court hereby:
8	(1) Grants class certification for purposes of settlement;
9	(2) Grants final approval of the settlement as fair, adequate, and reasonable;
10	(3) Awards \$150,000 in attorney fees to Class Counsel, Haines Law Group, APC;
11	(4) Awards \$22,708.46 in litigation costs to Class Counsel;
12	(5) Approves payment of \$37,500 (75% of \$50,000 PAGA penalty) to the LWDA;
13	(6) Awards \$5,000 as a Class Representative Service Award to Gerardo Sanchez;
14	(7) Awards \$8,750 in settlement administration costs to CPT Group, Inc.;
15	(8) Orders class counsel to provide notice to the class members pursuant to
16	California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
17	Code §2699 (1)(3); and
18	(9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
19	Settlement Funds for August 5, 2024 at 8:30 a.m. Final Report is to be filed by
20	July 29, 2024.
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23	Dated: 12/13/23 have 5 2016
24	MAREN E. NELSON
25	Judge of the Superior Court
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