

11/28/2023

David W. Slayton, Executive Officer / Clerk of Court

By R. Arraiga Deputy

**FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Gutierrez, et al. v. Hakimianpour Santa Monica Group, L.L.C.,  
et al., Case No.: 21STCV25946

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable, on the **condition** that counsel provide a provide a declaration evidencing the need for a payment plan.

The Parties' supplemental paperwork must be filed by **December 12, 2023**.

**Non-Appearance Case Review is set for January 4, 2024, 8:30 a.m., Department 9.**

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$300,000.
- B. The Net Settlement Amount is the GSA minus the following:
  - Up to \$100,000 (1/3) for attorney fees (§3.2.2);
  - Up to \$15,000 for litigation costs (Ibid.);
  - Up to \$10,000 for a Service Payment to the Named Plaintiff (§3.2.1);
  - Up to \$25,000 for settlement administration costs (§3.2.3);
  - \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA. (§3.2.5)
- C. Defendants will pay their share of taxes separate from the GSA.
- D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **May 28, 2024**. Plaintiff must call the Court prior to filing and serving to obtain a hearing date.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who

opted out; and email the [Proposed] Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

**Non-Appearance Case Review is set for June 4, 2024, 8:30 a.m., Department 9.**

I.  
BACKGROUND

This is a wage and hour class action. Plaintiff Gutierrez is a former non-exempt employee of Defendant Hakimianpour Santa Monica Group, LLC. Defendant owns and operates Burger King Restuarants.

On July 14, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (i.) failure to provide required meal periods; (ii.) failure to provide required rest periods; (iii.) failure to pay overtime wages; (iv.) failure to pay minimum wage; (v.) failure to timely pay wages; (vi.) failure to pay all wages due to discharged and quitting employees; (vii.) failure to maintain required records; (viii.) failure to furnish accurate itemized statements; (ix.) failure to indemnify employees for necessary expenditures incurred in discharge of duties; and (x.) unfair and unlawful business practices.

On February 28, 2022, Plaintiff filed a First Amended Complaint adding an eleventh causes of action against Defendant for violations of PAGA. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint").

Counsel represents that prior to the mediation, Defendants provided Plaintiff with informal discovery, including: time and payroll records for a sample of 20% the class members at the time of mediation, (time and payroll records for 100 employees); Plaintiff's hiring and firing paperwork, his paystubs, and employee manuals; Defendant's disclosure that altogether with current employees, the class size for all current and former non-exempt employees of Defendant in the State of California during the class period is approximately 20,115 pay periods and approximately 600 class members; information about Defendant's policies regarding their meal periods, rest periods, and overtime payment, and policy manuals. Counsel also represents that Plaintiff's statistical experts analyzed this information, including data for thousands of shifts.

On August 11, 2022, the Parties participated in a full-day, private mediation with mediator, Jeffrey Krivis, Esq., where they reached a settlement. A fully executed copy of the Settlement Agreement was filed with the Court on June 27, 2023 attached to the Declaration Of Shoham J. Solouki ("Solouki Decl."), as Exhibit A.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

II.  
SETTLEMENT AGREEMENT

A. Definitions.

"Class": all persons employed by Defendant in California and classified as a non-exempt employee who worked for Defendant at any time during the Class Period. (§1.6)

"Class Period": July 14, 2017 to December 31, 2022. (§1.15)

"Aggrieved Employee": all persons employed by Defendant in California and classified as a non-exempt employee who worked for Defendant at any time during the PAGA Period. (§1.5)

"PAGA Period": July 9, 2020 to December 31, 2022. (§1.36)

Defendant estimates there are 600 Class Members who collectively worked a total of 20,115 Class Pay Periods, and 412 Aggrieved Employees who worked a total 10,099 PAGA Pay Periods. (§4.1) Defendant also estimates that, as of the date of this Settlement Agreement, (1) there are 600 Class Members who worked a total of 20,115 Pay Periods during the Class Period and (2) there were 412 Aggrieved Employees who worked a total of 10,099 Pay Periods during the PAGA Period. In the event the number of Class Members stated in this paragraph increases by twenty percent (20%) or more, Plaintiff shall then have the right to revoke the Stipulation and withdraw from the Settlement. (§8)

The parties stipulate to class certification for settlement purposes only. (§12.1.)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$300,000, non-reversionary. (¶3.1)
- The Net Settlement Amount ("Net") (\$142,500) is the GSA minus the following:
  - Up to \$100,000 (1/3) for attorney fees (¶3.2.2);
  - Up to \$15,000 for litigation costs (Ibid.);
  - Up to \$10,000 for a Service Payment to the Named Plaintiff (¶3.2.1);
  - Up to \$25,000 for settlement administration costs (¶3.2.3); and
  - Payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA. (¶3.2.5)
- Defendants will pay their share of taxes separate from the GSA. (¶3.1)
- Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount in two installment payments, and Defendant shall also fund the amounts necessary to fully pay the Employer's Share of Payroll Taxes so that Administrator can pay such amounts as and when required by applicable law. Defendant shall transmit the Gross Settlement Amount to the Administrator, as follows: (i.) the First Installment in the amount of \$150,000.00 payable thirty (30) days after the Effective Date; (ii.) the Second Installment in the amount of \$150,000.00 payable no later than one year after the first installment is due (¶4.3)
- There is no claim form requirement. (¶3.1)
- Individual Settlement Payment Calculation An Individual Class Payment shall be calculated by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Class Pay Periods. Individual Class Payments shall be mailed by the Administrator by regular First Class U.S. Mail to each Participating Class Member's last known mailing address in two installments: (1) within ten (10) business days after Defendant provides the Administrator with the First Installment, the Administrator will pay each Participating Class Member 50% of his or her Individual Class Payment; and (2) within ten (10) business days after Defendant provides the Administrator with the Second Installment, the Administrator will pay each Participating Class Member the remaining portion of his or her Individual Class Payment. (¶3.2.4)
  - Tax Allocation: 20% as wages and 80% as interest and penalties. (¶3.2.4.1)
- PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the

Aggrieved Employees' 25% share of PAGA Penalties in the amount of \$2,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Individual PAGA Payments shall be mailed by the Administrator by regular First Class U.S. Mail to each Participating Class Member and to each Non-Participating Class Member who is an Aggrieved Employee within ten (10) business days after Defendant provides the Administrator with the First Installment. For the avoidance of doubt, the Individual PAGA Payments owing to Participating Class Members may be combined in the same check as the payment of the first installment of the applicable Individual Class Payments. The Administrator shall pay the LWDA PAGA Payment within ten (10) business days after Defendant provides the Administrator with the Second Installment. (§3.2.5.1)

- "Response Deadline" means sixty (60) days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Class Settlement, or (b) fax, email, or mail his or her Objection to the Class Settlement. Class Members to whom the Class Notice is resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the expiration of the Response Deadline. (§1.50) The same deadline applies to challenge the number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. (§7.6)

- o If the number of valid Requests for Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. (§9)

- **Uncashed Settlement Checks:** The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. (§4.5.1) For any Class Member whose Individual Class Payment check(s) 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 Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (§4.5.2)

- The settlement administrator will be CPT Group, Inc. (§1.2)

- Notice of Final Judgment will be posted on the Settlement Administrator's website. (§7.8.1)

- The proposed settlement was submitted to the LWDA on June 19, 2023. (Solouki Decl., ¶54; Exhibit D thereto.)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

### III. DISCUSSION

#### A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On August 11, 2022, the Parties participated in a full-day, private mediation with mediator, Jeffrey Krivis, Esq., where they reached a settlement. (Solouki Decl., ¶7).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to the mediation, Defendants provided Plaintiff with informal discovery, including: time and payroll records for a sample of 20% the class members at the time of mediation, (time and payroll records for 100 employees); Plaintiff's hiring and firing paperwork, his paystubs, and employee manuals; Defendant's disclosure that altogether with current employees, the class size for all current and former non-exempt employees of Defendant in the State of California during the class period is approximately 20,115 pay periods and approximately 600 class members; information about Defendant's policies regarding their meal periods, rest periods, and overtime payment, and policy manuals. (Id. at ¶¶20-24.) Counsel also represents that Plaintiff's statistical experts analyzed this information, including data for thousands of shifts. (Id. at ¶36).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶41-52).

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the estimated exposure for each of the claims alleged:

<b>Violation</b>	<b>Maximum Exposure</b>
Unpaid Wages	\$99,870.97
Meal Break Violations	\$53,304.75
Rest Break Violations	\$133,261.87
Waiting Time Penalties	\$845,880.00
Wage Statement Violations	\$240,000.00
PAGA	\$1,009,900.00
<b>TOTAL</b>	<b>\$2,382,217.59</b>

(Solouki Decl. ¶¶ 11-34.)

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

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

4. Amount offered in settlement. Plaintiff's counsel obtained a \$300,000 non-reversionary settlement. The \$300,000 settlement amount constitutes approximately 12.59% of Defendant's maximum exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$300,000 settlement amount, if reduced by the requested deductions, will leave \$142,500 to be divided among approximately 600 class members. The resulting payments will average \$237.50 per class member. [ $\$142,500 / 600 = \$237.50$ ].

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

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

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

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed fair, adequate, and reasonable.

### C. Scope of the Release

Effective on the date when Defendant fully funds to the Administrator the entire Gross Settlement Amount, Plaintiff, Class Members, and Class Counsel shall be deemed to have released claims against all Released Parties as follows: (¶5)

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 (i) any and all federal, state, and local claims, demands, rights, liabilities, and/or causes of action, known and unknown, that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, without limitation, any and all claims involving any alleged (a) failure to pay minimum wage; (b) failure to provide required meal periods; (c) failure to provide required rest periods; (d) failure to pay overtime wages; (e) failure to pay all wages due to discharged and quitting employees; (f) failure to maintain



required records; (g) failure to furnish accurate itemized statements; (h) failure to indemnify employees for necessary expenditures incurred in discharge of duties; and (i) unfair and unlawful business practices predicated on the above claims which were alleged or could have been alleged based upon the facts pled in the Operative Complaint at any time during the Class Period; and (ii) any other claims under the Fair Labor Standards Act ("FLSA"), California Labor Code, including sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, , California Code of Regulations, Title 8, section 11040, civil penalties under Private Attorneys General Act (Labor Code §§2698, et seq.), the applicable California Wage Order, or federal law. The Individual Class Payment checks shall have language indicating that, by cashing the check, the Participating Class Member is opting in to an FLSA action and releasing all claims under the FLSA that may arise under the facts asserted in the Operative Complaint. All such Participating Class Members will opt-in to a release of the FLSA claims by endorsing or accepting their Individual Class Payment checks. Plaintiff and each and every Participating Class Member shall be deemed to have acknowledged and agreed that: (1) their claims for missed meal and rest breaks, overtime compensation, minimum wages, wages for all hours worked, statutory and civil penalties, and any other payments and/or penalties in the Action are disputed; and (2) the Individual Settlement Awards paid to each Participating Settlement Class member constitute full payment of any amounts allegedly due to them. In light of the payment by Defendant of all amounts due to them, Plaintiff and each and every Participating Settlement Class Member shall be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as follows: An employer shall not require the execution of any release of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. Each Participating Settlement Class Member shall be deemed to have made the foregoing Release as if by manually signing it. Except as set forth in Paragraphs 6.1 and 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. (§5.2)

Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees 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 for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action including, without limitation, (i) any and all claims involving any alleged (a) failure to pay minimum wage; (b) failure to provide required meal periods; (c) failure to provide required rest periods; (d) failure to pay overtime wages; (e) failure to pay all wages due to discharged and quitting employees; (f) failure to maintain required records; (g) failure to furnish accurate itemized statements; (h) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (i) unfair and unlawful business practices; and (j) violation of Private Attorneys General Act of 2004; and (ii) any other claims under the Fair Labor Standards Act ("FLSA"), California Labor Code, including sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, California Code of Regulations, Title 8, section 11040, civil penalties under Private Attorneys General Act (Labor Code §§2698, et seq.), the applicable California Wage Order, or federal law. (¶5.3)

Release by Class Counsel: Class Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for fees or expenses incurred in connection with the Operative Complaint, this Agreement and any matters affected hereby. (¶5.4)

Forbearance of Prosecution of Claims to be Released: The Plaintiff and Participating Class Members shall forebear from prosecuting claims fitting within the description of the Released Class Claims against the Released Parties from the Effective Date through and including the date on which the Second Installment is due in order to give Defendant the opportunity to pay the full Gross Settlement Amount in accordance with the terms of this Agreement. (¶5.5)

Released Parties: "Released Parties" means: Defendant and its members, subsidiaries and any affiliated or related persons or entities (collectively, the "HSMG Related Parties") and each of the HSMG Related Parties' respective officers, directors,

employees, partners, shareholders, attorneys, insurers and agents, and any other successors, assigns, or legal representatives. (§1.48)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (§5.1)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 600 class members. (MPA at 12:2-5.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (MPA at 12:6-11.)

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Plaintiff contends that Defendant failed to provide timely, uninterrupted meal and rest periods to all Class Members as a regular practice and failed to properly compensate Class Members for all hours and overtime hours worked. Plaintiff alleges that Defendant's policies and practices were uniform as to all Class Members. Plaintiff further alleges that there are common issues because the Class

Members are primarily involved in driving tasks, and therefore had similar job duties and compensation systems. Thus, for purposes of approval, class treatment is appropriate. (MPA at 12:26-13:6.)

As to typicality, Plaintiff contends that her claims are typical of the Class Members' claims because Plaintiff, like those in the proposed settlement class, worked as a non-exempt employee. All of Plaintiff's claims arise out of the same alleged facts and course of conduct giving rise to the claims of the other Class Members. Finally, Plaintiff's claims are typical of the other class members because they seek the exact same relief for alleged Labor Code violations. Because Plaintiff's claims are based upon the same alleged conduct and business practices as those of the potential Class Members, the typicality requirement has been satisfied (Id. at 13:15-20.)

As to adequacy, Plaintiff represents that she was informed of the risks of serving as class representative, participated in the litigation, and does not have conflicts of interest with the class. (Id. at 13:26-14:2; Declaration of Guillermina Silvia Martinez Gutierrez, passim.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

E. Is the Notice Proper?

1. Content of class notice. The proposed notice is attached to the Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

Notice will be provided in English and Spanish. (§1.13)

2. Method of class notice. Not later than fifteen (15) court days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (§4.2) Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, with a Spanish translation, substantially in the form attached to this Agreement as Exhibit "A". The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Class Pay Periods and PAGA Pay Periods used to calculate these amounts. Before mailing the Class Notice, the Administrator shall update Class Member addresses using the National Change of Address database. (§7.4.2) Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (§7.4.3)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$25,000. Prior to the time of the final fairness hearing, the settlement administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$100,000 (1/3) in attorney fees and up to \$15,000 in costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

#### G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$10,000 for the class representative.

In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . . .'" (Id. at 806-807, italics and ellipsis in original.)

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

IV.  
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable, on the condition that counsel provide a provide a declaration evidencing the need for a payment plan.

2) The Parties' supplemental paperwork must be filed by December 12, 2023.

3) Non-Appearance Case Review is set for January 4, 2024, 8:30 a.m., Department 9.

4) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$300,000.

B. The Net Settlement Amount is the GSA minus the following:

Up to \$100,000 (1/3) for attorney fees (¶3.2.2);  
Up to \$15,000 for litigation costs (Ibid.);  
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\$7,500 (75% of \$10,000 PAGA penalty) to the LWDA. (¶3.2.5)

C. Defendants will pay their share of taxes separate from the GSA.

D. Plaintiffs release of Defendants from claims described herein.

5) The Parties' Motion for Final Approval of Class Action Settlement must be filed by May 28, 2024. Plaintiff must call the Court prior to filing and serving to obtain a hearing date.

6) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who

opted out; and email the [Proposed] Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

7) Non-Appearance Case Review is set for June 4, 2024, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: November 28, 2023



*Yvette M. Palazuelos*

YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT  
Yvette M. Palazuelos / Judge