

FILED
Superior Court of California
County of Los Angeles
JUN 09 2022
SHERRI R. CARROLL, CLERK
BY MARIBEL MATA Deputy

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

TRICIA SUHARTONO, individually, and
on behalf of other members of the general
public similarly situated,

Plaintiff,

v.

RRG BESH, INC., a California corporation;
KJ BECK'S, INC., a California corporation;
THE BESH RESTAURANT
CORPORATION, a California corporation;
KR BESH, INC., a California corporation;
R.L. BESH, INC., a California corporation;
RRA BESH, INC., a California corporation;
RRC BESH, INC., a California corporation;
RRF BESH, INC., a California corporation;
LUCRETIA & RICHARD, INC., a
California corporation; RLB FAMILY
CORPORATION, a California corporation;
R.M. FAMILY CORPORATION, a
California corporation; RLSR BECK'S
INC., a California corporation; R@STATE,
INC., a California corporation;
R@MILPAS, INC., a California

Case No.: 19STCV22184

ORDER GRANTING
MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES,
COSTS, and INCENTIVE AWARD

1 corporation; MCDONALD'S USA LLC, a
2 Delaware limited liability company; and
DOES 1 through 10, inclusive,

3 Defendants.
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19 **I. BACKGROUND**

20 Plaintiff Tricia Suhartono sues her former employer, Defendants RRG Besh,
21 Inc., KJ Beck's, Inc., The Best Restaurant Corporation, KR Besh, Inc., R.L. Besh, Inc.,
22 RRA Besh, Inc., RRC Besh, Inc., RRF Besh, Inc., Lucretia & Richard, Inc., RLB
23 Family Corporation, R.M. Family Corporation, RLSR Beck's Inc., R@STATE, Inc.,
24 and R@MILPAS, Inc. (collectively, "Defendants") for alleged wage and hour
25 violations. Defendants own and operate approximately 14 McDonald's fast-food

1 restaurants throughout Southern California. Plaintiff seeks to represent a class of
2 Defendants' current and former non-exempt employees.

3 Plaintiff filed the initial class action complaint on June 25, 2019, alleging causes
4 of action for: (1) unpaid overtime (Labor Code §§ 510, 1198); (2) unpaid minimum
5 wages (Labor Code §§ 1182.12, 1194, 1197, 1197.1, 1198); (3) failure to provide meal
6 periods (Labor Code §§ 226.7, 1198); (4) failure to provide rest periods (Labor Code §§
7 226.7, 1198); (5) non-compliant wage statements and failure to maintain payroll records
8 (Labor Code §§ 226(a), 1174(d), 1198); (6) wages not timely paid upon termination
9 (Labor Code §§ 201, 202); (7) failure to provide reporting time pay (Labor Code §§
10 1198; California Code of Regulations Title 8, Section 11050 Subdivision 5(A); and (8)
11 unreimbursed business expenses (Labor Code § 2802). On September 3, 2019, Plaintiff
12 filed a First Amended Complaint to add a cause of action under the Labor Code Private
13 Attorneys General Act (sections 2698, et seq.) ("PAGA"). On April 21, 2020, Plaintiff
14 filed a Second Amended Complaint to add additional factual allegations and remove
15 former defendant McDonald's USA LLC.

16 On January 6, 2021, the parties mediated before the Hon. Carl J. West (Ret.) and
17 were able to negotiate a settlement of Plaintiff's claims. The terms are finalized in the
18 *Joint Stipulation of Class Action Settlement and Release* ("Settlement Agreement"), a
19 copy of which was filed with the Court. After numerous amendments the settlement
20 was preliminarily approved on November 9, 2021.

21 Notice was given to the class. However, due to error by the settlement
22 administrator, the notice inadvertently advised some 93 persons that they were
23 members of the class when they were not. A corrective notice was approved on May 9,
24 2022.

1 Now before the Court is Plaintiff's motions for final approval of the settlement,
2 including for payment of fees, costs, and service awards to the named plaintiff. For the
3 reasons set forth below, the Court grants final approval of the settlement and awards
4 fees, costs and a service award as set forth herein.

5 **THE TERMS OF THE SETTLEMENT**

6 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

7 "Class Member(s)" or "Settlement Class" means all persons who worked for
8 Defendants as non-exempt, hourly employees in California at any time from June 25,
9 2015 to January 6, 2021. (¶5)

10 "Class Period" means the period from June 25, 2015 to April 6, 2021. (¶6)

11 "PAGA Member" means all persons who worked for Defendants as non-exempt,
12 hourly employees in California at any time from June 25, 2018 to January 6, 2021.
13 (¶17)

14 "PAGA Period" means the period from June 25, 2018 to April 6, 2021. (¶18)

15 "Participating Class Members" means all Class Members who do not submit
16 timely and valid Requests for Exclusion. (¶21)

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18 **B. THE MONETARY TERMS OF SETTLEMENT**

19 The essential monetary terms are as follows:

20 The Class Settlement Amount is **\$2,450,000** (¶8). This includes payment of a
21 PAGA penalty of **\$50,000** to be paid 75% to the LWDA (\$37,500) and 25% to the
22 Aggrieved Employees (\$12,500) (¶19).

23 Total Workweeks: If the total number of Workweeks worked by all Class
24 Members during the Class Period is greater than 214,500, Defendants will have the
25 option to proportionally increase the Class Settlement Amount according to the following

1 formula: Proportionally Increased Class Settlement Amount = Total Workweeks ÷
2 214,500 × \$2,450,000. If Defendants do not agree to proportionally increase the Class
3 Settlement Amount, then Plaintiff may revoke the Agreement. (¶50) There is no
4 evidence this clause was triggered.

5 The Net Settlement Amount (“Net”) (\$1,531,333) is the Class Settlement
6 Amount less:

- 7 ○ Up to **\$816,667** (1/3) for attorney fees (¶2);
- 8 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
- 9 ○ Up to **\$10,000** for a service award to the proposed class representative
10 (¶7); and
- 11 ○ Estimated **\$22,000** for settlement administration costs (¶26).
- 12 ● Defendants will be separately responsible for any employer payroll taxes
13 required by law, including the employer FICA, FUTA, and SDI contributions,
14 which shall not be paid from the Class Settlement Amount. (¶8)
- 15 ● Each workweek has a value of \$7.83. The average estimated payment is slightly
16 in excess of \$485 per class member, taking into account the 93 persons
17 erroneously mailed a notice (See Singh Dec. ¶11)
- 18 ● There is no Claim Requirement (Notice pg. 1).
- 19 ● The settlement is not reversionary (¶38).
- 20 ● Individual Settlement Payment Calculations: Individual Settlement Payments
21 were calculated and apportioned from the Net Settlement Fund and PAGA Fund
22 based on the number of Workweeks Class Members and PAGA Members
23 worked during applicable Class Period and PAGA Period. Specific calculations
24 of Individual Settlement Payments were to be made as follows: (¶40)

1 ○ Payments from the Net Settlement Fund: Defendants will calculate the
2 total number of Workweeks worked by each Class Member during the
3 Class Period and the aggregate total number of Workweeks worked by all
4 Class Members during the Class Period. To determine each Participating
5 Class Member’s share of the Net Settlement Fund, the Settlement
6 Administrator will use the following formula: (¶40.a)

- 7 ▪ The Net Settlement Fund will be divided by the aggregate total
8 number of Workweeks, resulting in the “Workweek Value.”
9 (¶40.a.i) Each Participating Class Member’s “Individual
10 Settlement Payment” will be calculated by multiplying each
11 individual Participating Class Member’s total number of
12 Workweeks by the Workweek Value. (¶40.a.ii) The Individual
13 Settlement Payment will be reduced by any required deductions for
14 each Participating Class Member, including employee-side tax
15 withholdings or deductions. (¶40.a.iii) The entire Net Settlement
16 Fund will be disbursed to all Participating Class Members.
17 (¶40.a.iv)

18 ○ Payments from the PAGA Fund: Defendants were to calculate the total
19 number of Workweeks worked by each PAGA Member during the PAGA
20 Period and the aggregate total number of Workweeks worked by all
21 PAGA Members during the PAGA Period. To determine each PAGA
22 Member’s share of the PAGA Fund, the Settlement Administrator will
23 use the following formula: (¶40.b)

- 24 ▪ The PAGA Fund will be divided by the aggregate total number of
25 Workweeks, resulting in the “PAGA Workweek Value.” (¶40.b.i)

1 Each PAGA Member’s “Individual Settlement Payment” will be
2 calculated by multiplying each individual PAGA Member’s total
3 number of Workweeks by the PAGA Workweek Value. (¶40.b.ii)

4 The entire PAGA Fund will be disbursed to all PAGA Members.
5 (¶40.b.iii)

- 6 ○ “Workweeks” means the number of days of employment for each Class
7 Member during the Class Period, subtracting days on leave of absence (if
8 any), dividing by seven (7), and rounding up to the nearest whole number.
9 All Class Members will be credited with at least one Workweek during
10 the Class Period, and all PAGA Members will be credited with at least
11 one Workweek during the PAGA Period. (¶31)

- 12 ● Tax Withholdings: 25% as wages, 75% as non-wages. (¶59)
- 13 ● Uncashed Settlement Payment Checks: Funds represented by Individual
14 Settlement Payment checks returned as undeliverable and Individual Settlement
15 Payment checks remaining un-cashed for more than one hundred and eighty
16 (180) calendar days after issuance will be tendered to the State Controller’s
17 Office, Unclaimed Property Division. (¶57)
- 18 ● Funding and Distribution of the Class Settlement Amount: Defendants will
19 make a one-time deposit of the Class Settlement Amount of \$2,450,000 into a
20 Qualified Settlement Account to be established by the Settlement Administrator.
21 Defendants will deposit the Class Settlement Amount and the employer’s share
22 of payroll taxes within thirty (30) calendar days after the Effective Date
23 (“Funding Date”). (¶32) The Settlement Administrator will issue payments to
24 Participating Class Members and PAGA Members within twenty (20) calendar
25 days of the Funding Date. (¶56)

1 **C. TERMS OF RELEASES**

2 • Releases by Participating Class Members: Upon the Funding Date, and except
3 as to such rights or claims as may be created by this Settlement Agreement, each
4 Participating Class Member, together and individually, on their behalf and on
5 behalf of their respective spouses, heirs, executors, administrators, agents, and
6 attorneys, shall fully and forever release and discharge all of the Released
7 Parties, or any of them, from each of the Released Class Claims during the Class
8 Period. (¶52)

9 ○ Class members will release: All claims, rights, demands, liabilities, and
10 causes of action, arising from, or related to, the same set of operative facts
11 as those set forth in the operative complaint during the Class Period,
12 including: (i) all claims for unpaid overtime; (ii) all claims for meal and
13 rest break violations; (iii) all claims for unpaid minimum wages; (iv) all
14 claims for the failure to timely pay wages upon termination based on the
15 preceding claims; (v) all claims for the failure to timely pay wages during
16 employment based on the preceding claims; (vi) all claims for wage
17 statement violations and failure to maintain payroll records based on the
18 preceding claims; (vii) all claims for the failure to reimburse for necessary
19 business expenses; (viii) all claims for reporting time violations; and (ix)
20 all claims asserted through California Business & Professions Code §§
21 17200, *et seq.* (“Released Class Claims”). (¶24)

22 • Releases by PAGA Members: Upon the Funding Date, and except as to such
23 rights or claims as may be created by this Settlement Agreement, each PAGA
24 Member, together and individually, on their behalf and on behalf of their
25 respective spouses, heirs, executors, administrators, agents, and attorneys, shall

1 fully and forever release and discharge all of the Released Parties, or any of
2 them, from each of the Released PAGA Claims during the PAGA Period. (¶53)

- 3 ○ “Released PAGA Claims” means all claims, rights, demands, liabilities,
4 and causes of action for PAGA civil penalties during the PAGA Period,
5 arising from, or related to, the same set of operative facts as those set
6 forth in the operative complaint and PAGA notice, including: (i) all
7 claims for unpaid overtime; (ii) all claims for meal and rest break
8 violations; (iii) all claims for unpaid minimum wages; (iv) all claims for
9 the failure to timely pay wages upon termination based on the preceding
10 claims; (v) all claims for the failure to timely pay wages during
11 employment based on the preceding claims; (vi) all claims for wage
12 statement violations and failure to maintain payroll records based on the
13 preceding claims; (vii) all claims for the failure to reimburse for necessary
14 business expenses; and (viii) all claims for reporting time violations. (¶25)

- 15 ● “Released Parties” means Defendants, their past or present officers, directors,
16 shareholders, members, employees, agents, principals, heirs, representatives,
17 accountants, auditors, consultants, insurers and reinsurers, and their respective
18 successors and predecessors in interest, subsidiaries, assigns, affiliates, parent
19 companies and attorneys, if any. (¶26)
- 20 ● The named Plaintiff will also provide a general release and a waiver of the
21 protections of Cal. Civ. Code §1542. (¶68)
- 22 ● The releases are effective upon the Funding Date, defined as occurring within
23 thirty (30) calendar days after the Effective Date. (¶32)

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1 III. ANALYSIS OF SETTLEMENT AGREEMENT

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

9 As discussed more fully in the Order conditionally approving the settlement, “[i]n
10 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
11 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
12 action. The purpose of the requirement [of court review] is the protection of those class
13 members, including the named plaintiffs, whose rights may not have been given due
14 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
15 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
16 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
17 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
18 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
19 extent necessary to reach a reasoned judgment that the agreement is not the product of
20 fraud or overreaching by, or collusion between, the negotiating parties, and that the
21 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
22 quotation marks omitted].

23 “The burden is on the proponent of the settlement to show that it is fair and
24 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
25 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to

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

18 **A. A PRESUMPTION OF FAIRNESS EXISTS**

19 The Court preliminarily found in its Order of November 9, 2021 that the
20 presumption of fairness should be applied. No facts have come to the Court’s attention
21 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
22 presumption of fairness as set forth in the preliminary approval order.

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

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

3 Notice has now been given to the Class and the LWDA. See Singh Supp. Dec. ¶ 5-7, Ex.

4 B. The notice process resulted in the following:

5 Number of class members: 3063

6 Number of notices mailed: 3157

7 Number of undeliverable notices:113

8 Number of opt-outs: 1

9 Number of objections: 0

10 Number of participating class members:

11 (Declaration of Singh ¶¶ 6, 12, 13).

12 Following hearing Class Counsel advised the Court that 201 Notice Packets were returned by
13 the post office. For those without forwarding addresses, CPT performed skip traces to locate new
14 mailing addresses. A total of 121 Notice Packets were re-mailed because a better mailing address
15 was found. Altogether, 113 Notice Packets were unable to be delivered because a better mailing
16 address could not be found.

17 The Court finds that the notice was defective in that it erroneously extended the
18 class period. Corrective action was stipulated to and approved by the Court.

19 The Court finds notice was adequate as to the class members and complies with the
20 requirements of due process.

21 Given the reactions of the Class Members and the LWDA to the proposed settlement
22 and for the reasons set for in the Preliminary Approval order, the settlement is further
23 found to be fair, adequate, and reasonable.

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1 **C. CLASS CERTIFICATION IS PROPER**

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

4 **D. ATTORNEY FEES AND COSTS**

5 Class Counsel requests \$816,667 for attorney fees (33 1/3 %) and \$ 17,913.80 for
6 costs.

7 Courts have an independent responsibility to review an attorney fee provision and
8 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
9 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
10 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
11 503.

12 In the instant case, fees are sought pursuant to the percentage method. The fee
13 request represents a reasonable percentage of the total funds paid by Defendant. Further,
14 the notice expressly advised class members of the fee request, and no one objected.
15 Accordingly, the Court awards fees in the amount of **\$816,667**, payable to Capstone Law
16 APC.

17 Costs: Class Counsel requests **\$17,913.80** in costs. This is less than the cap
18 provided in the settlement agreement. The estimated amount (\$20,000) was disclosed to
19 Class Members in the Notice, and no objections were received.

20 The Court and Plaintiff's counsel discussed the costs at hearing. The costs appear
21 to be reasonable and necessary to the litigation, are reasonable in amount, and were not
22 objected to by the class.

23 For all of the foregoing reasons, costs of \$17,913.80 are approved.

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1 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
2 Settlement Funds for March 8, 2023, at 8:30 a.m. Final Report is to be filed by
3 March 1, 2023.
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6 Dated:

02/09/2022



7 MAREN E. NELSON

8 Judge of the Superior Court
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