

FILED
Superior Court of California
County of Los Angeles

AUG 17 2023

David W. Slayton, Executive Officer/Clerk of Court

By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

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7 JAIME GARCIA, individually, and on
8 behalf of other members of the general
9 public similarly situated,

10
11 Plaintiff,

12 v.

13 SHASTA BEVERAGES, INC., an unknown
14 business entity; BEVPAK, an unknown
15 business entity; NATIONAL BEVERAGE
16 CORPORATION, an unknown business
17 entity; and DOES 1 through 100, inclusive,

18 Defendants.

19
20 SULEYDA FARIAS, individually and on
21 behalf of all others similarly situated,

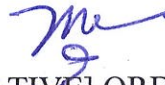
22 Plaintiff,

23 v.

24 SHASTA BEVERAGES, INC.;
25 NATIONAL BEVERAGE CORP.; and
DOES 1 through 20, inclusive,

Defendants.

Case No.: 19STCV37651
Related to: 19STCV38350


[TENTATIVE] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: August 17, 2023
Time: 8:30 a.m.
Dept.: SSC-17

1
2 **I. BACKGROUND**

3 Plaintiff Suleyda Farias and Jaime Garcia sue their former employer, Defendants
4 Shasta Beverages, Inc., National Bevpak, and National Beverage Corporation
5 (collectively, “Defendants”), for alleged wage and hour violations. Plaintiffs seek to
6 represent a class of Defendants’ current and former non-exempt employees.

7 On October 22, 2019, Plaintiff Garcia filed his complaint (Case No.
8 19STCV37651) (“Garcia Action”) alleging causes of action for: (1) unpaid overtime
9 (Labor Code §§ 510 and 1198); (2) unpaid meal period premiums (Labor Code §§
10 226.7 and 512(a)); (3) unpaid rest period premiums (Labor Code § 226.7); (4) unpaid
11 minimum wages (Labor Code §§ 1194, 1197, and 1197.1); (5) final wages not timely
12 paid (Labor Code §§ 201 and 202); (6) final wages not timely paid (Labor Code § 204);
13 (7) non-compliant wage statements (Labor Code § 226(a)); (8) failure to keep requisite
14 payroll records (Labor Code § 1174(d)); (9) unreimbursed business expenses (Labor
15 Code §§ 2800 and 2802); and (10) violation of California Business and Professions
16 Code §§ 17200, et seq., based on the preceding claims.

17 On October 25, 2019, Plaintiff Farias filed her complaint (Case No.
18 19STCV38350) (“Farias Action”) alleging causes of action for: (1) failure to pay
19 minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods,
20 (4) failure to permit rest breaks, (5) failure to provide accurate itemized wage
21 statements, (6) failure to pay all wages due upon separation of employment, and (7)
22 violations of California Business and Professions Code §§ 17200 et. seq. On February
23 10, 2020, Plaintiff Farias filed her First Amended Class Action Complaint adding a
24 claim to allege violations of the Private Attorneys’ General Act of 2004 (Labor Code §
25 2698, et seq. (“PAGA”).

1 On March 11, 2021, the Court issued an order consolidating the Farias Action
2 and Garcia Action for limited purposes of discovery.

3 On March 7, 2022, the parties attended a mediation session with David A.
4 Rotman, Esq., which did not result in settlement. On September 21, 2022, the parties
5 attended a second mediation with Mr. Rotman. At the conclusion of the mediation, Mr.
6 Rotman extended a mediator's proposal to the parties which was accepted on October
7 4, 2022. The terms of settlement were later finalized in the Class Action and PAGA
8 Settlement Agreement, a copy of which is attached to the Declaration of Alexander
9 G.L. Davies filed April 21, 2023 ("Davies Decl.") as Exhibit 1.

10 On July 10, 2023, the Court issued a "checklist" to the parties pertaining to
11 deficiencies with the proposed settlement. On July 12, 2023, the Court called the
12 matter of Plaintiffs' motion for preliminary approval of the settlement for hearing and
13 discussed the issues set forth in the checklist with counsel. In response, the parties filed
14 further briefing and the revised Class Action and PAGA Settlement Agreement attached
15 to the Supplemental Declaration of Alexander G.L. Davies filed August 7, 2023
16 ("Supp. Davies Decl.") as Exhibit 2. All references below are to that agreement.

17 For the reasons set forth below, the Court preliminarily grants approval for the
18 settlement.

19
20 **II. THE TERMS OF THE SETTLEMENT**

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

22 "Class" means all non-unionized, non-exempt employees employed by
23 Defendants in California at any time during the Class Period. (§1.5)

24 "Class Period" means the period from October 22, 2015 through the date of
25 Preliminary Approval. (§1.13)

1 “Aggrieved Employees” means all non-unionized, non-exempt employees
2 employed by Defendants in California at any time during the PAGA Period. (§1.4)

3 “PAGA Period” means the period from October 22, 2018 through the date of
4 Preliminary Approval. (§1.33)

5 "Participating Class Member" means a Class Member who does not submit a
6 valid and timely Request for Exclusion. (§1.38)

7
8 **B. THE MONETARY TERMS OF SETTLEMENT**

9 The essential monetary terms are as follows:

- 10 • The Gross Settlement Amount (“GSA”) is **\$2,500,000** (§3.1). This includes
11 payment of a PAGA penalty of **\$150,000** to be paid 75% to the LWDA
12 (\$112,500) and 25% to the Aggrieved Employees (\$37,500) (§3.2.5).
- 13 ○ Escalator Clause: Based on its records, Defendants represent that there are
14 approximately 30,000 Workweeks during the period from October 22,
15 2015 through February 11, 2022. If the number of Workweeks during the
16 Class Period exceeds 30,000 by more than 7.5% (i.e., exceeds 32,250
17 Workweeks), Defendants shall have the option to increase the Gross
18 Settlement Amount pro rata per additional Workweek for each Workweek
19 over 32,250 Workweeks or to cap the Class Period at the last point in time
20 in which the number of Workweeks does not exceed 32,250. (§9)
- 21 • The Net Settlement Amount (“Net”) (**\$1,404,500**) is the GSA less:
- 22 ○ Up to **\$875,000** (35%) for attorney fees (§3.2.2);
23 ○ Up to **\$40,000** for attorney costs (*Ibid.*);
24 ○ Up to **\$20,000 total [\$10,000 each]** for service awards to the proposed
25 class representatives (§3.2.1); and

○ Up to **\$10,500** for settlement administration costs (§3.2.3).

● *PAGA Penalty of \$150,000.*

- Defendants 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 all maximum requested deductions, approximately \$1,404,500 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$3,093.61. ($\$1,404,500 \text{ Net} \div 454 \text{ class members} = \$3,093.61$).
In addition, each Aggrieved Employee will receive a portion of the PAGA penalty, estimated to be \$97.91 per Aggrieved Employee. ($\$37,500 \text{ or } 25\% \text{ of } \$150,000 \text{ PAGA penalty} \div 383 \text{ Aggrieved Employees} = \97.91).
- There is no Claim Requirement (§3.1).
- The settlement is not reversionary (§3.1).
- Individual Settlement Share Calculation: The Administrator will calculate each Individual Class Payment 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 individual number of Workweeks worked during the Class Period.
(§3.2.4) Non-Participating Class Members will not receive an Individual Settlement Payment. 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 Aggrieved Employees' 25% share of PAGA Penalties (\$37,500.00) by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b)

1 multiplying the result by each Aggrieved Employee's individual number of Pay
2 Periods worked during the PAGA Period. (§3.2.5.1)

- 3 • Tax Withholdings: Each Participating Class Member's Individual Class Payment
4 will be allocated as 60% to wages; 40% to non-wages, expense reimbursement,
5 interest and penalties (§3.2.4.1). The Administrator will report the Individual
6 PAGA Payments on IRS 1099 Forms. (§3.2.5.2)
- 7 • Funding of Settlement: Defendants shall fully fund the Gross Settlement Amount
8 and Defendants' share of payroll taxes by transmitting the funds to the
9 Administrator no later than sixty (60) days after entry of the Court's Final
10 Approval Order. (§4.3)
- 11 • Distribution: Within fourteen (14) days after Defendants fund the Gross
12 Settlement Amount and Defendants' share of payroll taxes, the Administrator
13 will mail checks for Individual Settlement Payments, Individual PAGA
14 Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
15 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
16 Payment, and the Class Representatives Service Payments. Disbursement of the
17 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment,
18 the Administration Expenses, and the Class Representatives Service Payments
19 shall not precede disbursement of Individual Settlement Payments and Individual
20 PAGA Payments. (§4.4)
- 21 • Uncashed Settlement Payment Checks: The face of each check shall prominently
22 state the date (not less than 180 days after the date of mailing) when the check
23 will be voided. (§4.4.1) For any leftover funds represented by canceled
24 Individual Settlement Payment and Individual PAGA Payment checks, the
25 Administrator shall transmit the funds to the California Controller's Unclaimed

1 Property Fund in the name of the Participating Class Member and/or Aggrieved
2 Employee thereby leaving no “unpaid residue” subject to the requirements of
3 California Code of Civil Procedure Section 384, subd. (b). (§4.4.3)
4

5 **C. TERMS OF RELEASES**

- 6 • Participating Class Members’ Release: Effective on the date when Defendants
7 fully fund the entire Gross Settlement Amount and all employer payroll taxes
8 owed on the Wage Portion of the Individual Class Payments, all Participating
9 Class Members, on behalf of themselves and their respective former and present
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns,
11 are deemed to release the Released Parties from all claims, arising during the
12 Class Period, under state, federal, or local law, whether statutory, common law,
13 or administrative law, that were alleged, or reasonably could have been alleged,
14 based on the facts stated in the Operative Complaints, including: failure to pay
15 minimum wage; failure to pay overtime wages; failure to provide compliant rest
16 periods and associated premium pay; failure to provide meal periods and
17 associated premium pay; failure to pay bonuses or other remuneration; failure to
18 timely pay wages during employment, failure to timely pay wages upon
19 termination; failure to reimburse necessary business-related expenses; failure to
20 maintain requisite payroll records; failure to provide compliant wage statements;
21 conversion; breach of contract; waiting time penalties; unfair or unlawful
22 business practices in violation of California Business and Professions Code
23 section 17200, et seq. based on the aforementioned; declaratory relief; and all
24 other claims and allegations made or which could have been made in the
25 Operative Complaints arising during the Class Period. (“Released Class

1 Claims”) As part of the release of the Released Class Claims, Participating Class
2 Members do not release any other claims, including claims for vested benefits,
3 wrongful termination, violation of the Fair Employment and Housing Act,
4 unemployment insurance, disability, social security, workers’ compensation, or
5 claims based on facts occurring outside the Class Period. (¶5.2)

- 6 • State of California and Aggrieved Employees’ Release: Effective on the date
7 when Defendants fully fund the entire Gross Settlement Amount and all
8 employer payroll taxes owed on the Wage Portion of the Individual Class
9 Payments, the State of California with respect to the Aggrieved Employees and
10 all Aggrieved Employees, on behalf of themselves and their respective former
11 and present representatives, agents, attorneys, heirs, administrators, successors,
12 and assigns, are deemed to release the Released Parties from all claims for civil
13 penalties, arising during the PAGA Period, that were alleged, or reasonably
14 could have been alleged, based on the facts stated in the PAGA Notices, to the
15 extent alleged in the Operative Complaints, including: failure to pay minimum
16 wages; failure to pay overtime wages; failure to provide compliant rest periods
17 and associated premium pay; failure to provide meal periods and associated
18 premium pay; failure to pay bonuses or other remuneration; failure to timely pay
19 wages during employment; failure to pay timely wages upon termination; failure
20 to reimburse necessary business-related expenses; failure to maintain requisite
21 payroll records; and failure to provide compliant wage statements (“Released
22 PAGA Claims”). (¶6.3)
- 23 • Operative Complaints: On October 22, 2019, Plaintiff Garcia commenced the
24 Garcia Action by filing a Class Action Complaint for Damages (“Garcia
25 Operative Complaint”). On February 10, 2020, Plaintiff Farias filed a First

1 Amended Class Action Complaint (“Farias Operative Complaint”). The Garcia
2 Operative Complaint and the Farias Operative Complaint collectively are
3 referred to as the “Operative Complaints.” (¶2.1)

- 4 • “PAGA Notices” mean Plaintiff Farias’s October 25, 2019 letter to Defendants
5 and the LWDA, and Plaintiff Garcia’s September 29, 2021 letter to Defendants
6 and the LWDA, providing notice pursuant to Labor Code section 2699.3,
7 subd.(a). (¶1.35)
- 8 • “Released Parties” means: Defendants and all their present and former parent
9 companies, subsidiaries, divisions, related or affiliated companies, shareholders,
10 officers, directors, corporate-level employees, agents, attorneys, insurers,
11 successors and assigns, and any individual or entity which could be liable for
12 any of the Released Class Claims and Released PAGA Claims, and Defendants’
13 counsel of record in the Actions. (¶1.45)
- 14 • The named Plaintiffs will also provide a general release and a waiver of the
15 protections of Cal. Civ. Code §1542. (¶5.1)
- 16 • The releases are effective on the date when Defendant fully funds the entire
17 Gross Settlement Amount, which will occur no later than sixty (60) days after
18 entry of the Court’s Final Approval Order. (¶4.3)

19
20 **D. SETTLEMENT ADMINISTRATION**

- 21 • The proposed Settlement Administrator is CPT Group, Inc. (¶1.2), which has
22 provided evidence that no counsel are affiliated with it and that it has adequate
23 procedures in place to safeguard the data and funds to be entrusted to it. (See
24 Declaration of Julie Green.)
- 25 • Settlement administration costs are estimated to be \$10,500 (¶3.2.3).

- 1 • Notice: The manner of giving notice is described below.
- 2 • Opt Out/Objection Dates: "Response Deadline" means sixty (60) days after the
3 Administrator mails Class Notice to Class Members and Aggrieved Employees,
4 and shall be the last date on which Class Members may: (a) email or mail
5 Requests for Exclusion, (b) email or mail Objections, or (c) email or mail
6 challenges to Workweeks and/or Pay Periods. Class Members to whom Class
7 Notice Packets are resent after having been returned undeliverable on or before the
8 Response Deadline, shall have the Response Deadline extended an additional
9 fourteen (14) days. (§1.47)
 - 10 ○ All Aggrieved Employees are bound to the PAGA Settlement and will still
11 be issued an Individual PAGA Payment, regardless of whether they seek
12 exclusion from the Class Settlement. (§7.5.4)
- 13 • Notice of Final Judgment will be posted on the Settlement Administrator's website
14 (§7.8.1).

16 **III. SETTLEMENT STANDARDS AND PROCEDURE**

17 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
18 of an entire class action, or of a cause of action in a class action, or as to a party,
19 requires the approval of the court after hearing." "Any party to a settlement agreement
20 may serve and file a written notice of motion for preliminary approval of the settlement.
21 The settlement agreement and proposed notice to class members must be filed with the
22 motion, and the proposed order must be lodged with the motion." See Cal. Rules of
23 Court, rule 3.769(c).

24 "In a class action lawsuit, the court undertakes the responsibility to assess
25 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or

1 dismissal of a class action. The purpose of the requirement [of court review] is the
2 protection of those class members, including the named plaintiffs, whose rights may not
3 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
4 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
5 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
6 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
7 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
8 agreement to the extent necessary to reach a reasoned judgment that the agreement is
9 not the product of fraud or overreaching by, or collusion between, the negotiating
10 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
11 concerned.”] [internal quotation marks omitted].

12 “The burden is on the proponent of the settlement to show that it is fair and
13 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
14 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
15 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
16 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
17 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

18 Notwithstanding an initial presumption of fairness, “the court should not give
19 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
20 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
21 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
22 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
23 members, the court must independently and objectively analyze the evidence and
24 circumstances before it in order to determine whether the settlement is in the best
25 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.

1 In that determination, the court should consider factors such as “the strength of
2 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
3 the risk of maintaining class action status through trial, the amount offered in
4 settlement, the extent of discovery completed and stage of the proceedings, the
5 experience and views of counsel, the presence of a governmental participant, and the
6 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
7 factors is not exclusive and the court is free to engage in a balancing and weighing of
8 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
9 245.

10 At the same time, “[a] settlement need not obtain 100 percent of the damages
11 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
12 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
13 substantially narrower than it would be if the suits were to be successfully litigated,’
14 this is no bar to a class settlement because ‘the public interest may indeed be served by
15 a voluntary settlement in which each side gives ground in the interest of avoiding
16 litigation.’” *Id.* at 250.

17 18 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

19 20 **A. THERE IS A PRESUMPTION OF FAIRNESS**

21 The settlement is entitled to a presumption of fairness for the following reasons:

22 23 **1. The settlement was reached through arm’s-length bargaining**

24 On March 7, 2022, the parties attended a mediation session with David A.
25 Rotman, Esq., which did not result in settlement. (Davies Decl. ¶¶15-17.) On

1 September 21, 2022, the parties attended a second mediation session with Mr. Rotman.
2 (*Id.* at ¶18.) At the conclusion of the second mediation, the mediator extended a
3 mediator's proposal to the parties, which was accepted on October 4, 2022. (*Id.* at ¶21.)
4 Thereafter, Plaintiffs drafted a Memorandum of Understanding memorializing the terms
5 of their proposed agreement, which Defendants executed on March 28, 2023. (*Id.* at
6 ¶¶22-23.) The terms were subsequently finalized in the Class Action and PAGA
7 Settlement Agreement on April 21, 2023. (*Id.* at ¶25.)

8 **2. The investigation and discovery were sufficient**

9
10 Plaintiffs' counsel represents that after the Court issued its March 11, 2021 order
11 consolidating the cases for purposes of discovery, Plaintiffs worked together to obtain
12 compliant formal discovery responses from Defendants. (*Id.* at ¶¶9-10.) The parties
13 sent Belaire-West notices to the class members in order to obtain class contact
14 information (completed on June 7, 2021), served additional formal discovery requests
15 concerning additional theories of liability, and served several PMK deposition notices.
16 (*Id.* at ¶11.)

17 Before the first mediation session, Defendants produced formal discovery,
18 including policy documents, its employee handbooks, data for calculating damages, a
19 50% sampling of timekeeping data (including daily time logs) and payroll records for
20 its non-exempt employees, and a sampling of wages statements (including all versions
21 of wage statements issued during the Class Period). (*Id.* at ¶14.) Counsel clarifies that
22 the 50% sampling of class member's timekeeping and payroll data were selected using
23 the Class Contact list which Defendants produced following the Parties' Belaire-West
24 opt-out notice process. As 25 employees had opted out during the notice process, the
25 50% sample was selected from the list of 406 employees who did not opt-out. (Supp.

1 Davies Decl. ¶6.) Plaintiff Farias’ expert informed her that a 20% sample would be
2 sufficient to form a reliable and statistically significant analysis of the putative class,
3 and the 50% sampling which Plaintiffs obtained from Defendants exceeded this
4 suggested amount. (*Ibid.*) Counsel asserts that by using an online calculator, they
5 determined that a sample of 203 employees out of the 454 is a 5% margin of error and
6 95% confidence level in the data. (*Ibid.*)

7 Counsel further represents that prior to the second mediation session, that
8 Plaintiffs prepared a supplemental damage valuations and a supplemental mediation
9 brief concerning claims which they had presented at the previous mediation (including
10 further evidence of Defendants’ alleged failure to institute a valid Alternative
11 Workweek Schedule (“AWS”), and failure to pay class members correct overtime and
12 minimum wages when working less hours than their regularly scheduled AWS),
13 additional potential violations discovered in the intervening months since the first
14 mediation session (including additional evidence of Defendant’s alleged improper
15 rounding practices), and updated damages and penalty valuations concerning these
16 claims. (Davies Decl. ¶19.)

17 In total this is sufficient discovery to value the case for settlement purposes.
18

19 **3. Counsel is experienced in similar litigation**

20 Class Counsel represent that they are experienced in class action litigation,
21 including wage and hour class actions. (*Id.* at ¶75; Declaration of Joanna Ghosh ¶¶2-6.)
22

23 **4. Percentage of the class objecting**

24 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
25 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should

1 the court receive objections to the proposed settlement, it will consider and either sustain
2 or overrule them at the fairness hearing.”].

3
4 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
5 **FAIR, ADEQUATE, AND REASONABLE**

6 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
7 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
8 does when it approves a settlement as in good faith under Code of Civil Procedure
9 section 877.6, the court must at least satisfy itself that the class settlement is within the
10 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
11 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
12 consider and weigh the nature of the claim, the possible defenses, the situation of the
13 parties, and *the exercise of business judgment* in determining whether the proposed
14 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
15 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

16
17 **1. Amount Offered in Settlement**

18 The most important factor is the strength of the case for plaintiffs on the merits,
19 balanced against the amount offered in settlement.” (*Id.* at 130.)

20 Class Counsel estimated Defendants’ maximum exposure at \$17,810,531, based
21 on the following analysis:

Violation	Maximum Exposure
Overtime Wage Claims	\$1,997,019.00
Minimum Wage Claims	\$495,662.00
Meal Period Claims	\$3,000,000.00

1	Rest Break Claims	\$3,500,000.00
2	Expense Reimbursements	\$2,932,900.00
3	Wage Statement Penalties	\$1,466,450.00
4	Waiting Time Penalties	\$2,932,900.00
5	PAGA Penalties	\$1,485,600.00
6	Total	\$17,810,531.00

7 (Davies Decl. ¶¶37-68; Supp. Davies Decl. ¶¶15-47.)

8 Class Counsel obtained a gross settlement valued at \$2,500,000.

9 Plaintiff's overtime wage claims were premised on the theories that: (i)

10 Defendants failed to pay proper overtime as a result of its failure to institute a valid
 11 Alternative Workweek Schedule; (ii) failed to pay proper overtime to Class Members
 12 who worked less hours than their regularly scheduled AWS; (iii) failed to include non-
 13 discretionary bonuses in the regular rate of pay; and (iv) failed to pay overtime wages by
 14 shift as opposed to by day. Defendant contended that it implemented a 4/10 AWS
 15 according to the procedures outlined by IWC Order 1-2001(3)(C) and that 10-20% of its
 16 workforce worked under an AWS. However, there was no record of same with the
 17 Department of Industrial Relations. Plaintiffs contended the records produced showed
 18 closer to 50% of the sampled workforce worked an AWS. (Supp. Dec. of Davies ¶¶ 16-
 19 19).

20 As to other claims, there is a dispute as to whether certain bonuses paid were (or
 21 were not) discretionary. (Id. ¶¶ 20-21). Based on discovery it appears this claim was not
 22 strong.

23 The minimum wage claims turned on the viability of the AWS arguments. (Id.
 24 ¶¶22-24.)

1 The claims for minimum age violations were related to a claimed rounding policy
2 that was not neutral and alleged off the clock work for COVID temperature checks that
3 the employer indicated were not mandatory. (Id. ¶¶ 25-29.

4 As to claims for reimbursements, the evidence was that few were needed for the
5 work in question, that reimbursements were offered, and that the employer paid for PPE.
6 (id. ¶36-39).

7 The meal and rest period claims were a subject of debate as the employer
8 maintained a facially compliant meal and rest break policy. .Id. ¶¶ 33-35.

9 Summarized, some of the claims were stronger than others and liability on each of
10 these claims was not a foregone conclusion.

11 **2. The Risks of Future Litigation**

12
13 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
14 motion practice and appeals) are also likely to prolong the litigation as well as any
15 recovery by the class members. Even if a class is certified, there is always a risk of
16 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
17 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
18 conducting class actions, which means, under suitable circumstances, entertaining
19 successive motions on certification if the court subsequently discovers that the propriety
20 of a class action is not appropriate.”].) Further, the settlement was negotiated and
21 endorsed by Class Counsel who, as indicated above, are experienced in class action
22 litigation. Based upon their investigation and analysis, the attorneys representing
23 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
24 adequate. (Davies Decl. ¶29; Ghosh Decl. ¶17.)
25

1 The Court also notes that Plaintiffs bring a PAGA claim on behalf of the LWDA,
2 which was sent a copy of the Settlement Agreement on August 7, 2023 and has not yet
3 objected. (Supp. Davies Decl., Exhibit 5.) Any objection by it will be considered at the
4 final fairness hearing.

5 6 **3. The Releases Are Limited**

7 The Court has reviewed the Releases to be given by the absent class members and
8 the named plaintiffs. The releases, described above, are tailored to the pleadings and
9 release only those claims in the pleadings. There is no general release by the absent
10 class. The named plaintiffs' general releases are appropriate given that each was
11 represented by counsel in its negotiation.

12 13 **4. Conclusion**

14 Class Counsel estimated Defendant's maximum exposure at \$17,810,531. Class
15 Counsel obtained a gross settlement valued at \$2,500,000. This is approximately 14% of
16 Defendants' maximum exposure, which, given the uncertain outcomes, including the
17 potential that the class might not be certified, that liability is a contested issue, and that
18 the full amount of penalties would not necessarily be assessed even if the class is certified
19 and liability found, the settlement is within the "ballpark of reasonableness."

20 21 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

22 A detailed analysis of the elements required for class certification is not required,
23 but it is advisable to review each element when a class is being conditionally certified.

24 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
25 advocating class treatment must demonstrate the existence of an ascertainable and

1 sufficiently numerous class, a well-defined community of interest, and substantial
2 benefits from certification that render proceeding as a class superior to the alternatives.”
3 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

4 **1. The Proposed Class is Numerous**

5 There are approximately 454 putative Class Members. (Supp. Davies Decl. ¶7.)
6 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
7 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
8 *parties to a class action is liberally construed,*” and citing examples wherein classes of
9 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
10 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

11 **2. The Proposed Class Is Ascertainable**

12 “A class is ascertainable, as would support certification under statute
13 governing class actions generally, when it is defined in terms of objective
14 characteristics and common transactional facts that make the ultimate identification
15 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
16 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

17 The class is defined above. Class Members are ascertainable through
18 Defendants’ records. (Davies Decl. ¶27.)

19 **3. There Is A Community of Interest**

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

24 As to predominant questions of law or fact, Plaintiffs contend that their allegations
25 present common legal and factual questions of, inter alia, whether Defendants applied the

1 same Alternative Workweek Schedule, rounding, scheduling, timekeeping, minimum and
2 overtime pay, meal period, rest break policies, and policies for reimbursement of business
3 expenses to all Class Members; whether these policies and practices resulted in Labor
4 Code violations; whether Defendants' conduct was intentional; and whether Class
5 Members are entitled to penalties. Plaintiffs' counsel asserts that these common
6 questions could be resolved using Class Members' schedules, time punches, and payroll
7 records, Defendants' corporate representative's testimony, written communications
8 between Defendants and Class Members, and Class Member declarations. (Davies Decl.
9 ¶29.)

10 As to typicality, Plaintiffs allege that they and other Class Members were
11 employed by Defendants and injured by Defendants' common wage and hour policies
12 and practices, including for Defendants' scheduling, timekeeping, minimum wage pay,
13 overtime pay, reimbursement pay, meal periods, and rest breaks, in addition to its general
14 payment practices. (*Id.* at ¶30.)

15 As to adequacy, each Plaintiff represents that he or she has participated in the
16 litigation and is aware of the duties of serving as class representative. (Declaration of
17 Jaime Garcia ¶¶2-8; Declaration of Suleyda Farias ¶¶4-9.) As previously stated, Class
18 Counsel have experience in class action litigation.

19 20 **4. Substantial Benefits Exist**

21 Given the relatively small size of the individual claims, a class action is superior to
22 separate actions by the class members.

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1 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS**
2 **OF DUE PROCESS**

3 The purpose of notice is to provide due process to absent class members. A practical
4 approach is required, in which the circumstances of the case determine what forms of
5 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
6 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
7 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
8 stake of the individual class members; (4) the cost of notifying class members; (5) the
9 resources of the parties; (6) the possible prejudice to class members who do not receive
10 notice; and (7) the res judicata effect on class members.

11 **1. Method of class notice**

12 Not later than fifteen (15) days after the Court grants Preliminary Approval of
13 the Settlement, Defendants will deliver the Class Data to the Administrator, in the form
14 of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as
15 possible, and in no event later than fourteen (14) days receiving the Class Data, the
16 Administrator will send to all Class Members identified in the Class Data, via first-class
17 United States Postal Service ("USPS") mail, the Class Notice, with Spanish translation.
18 Before mailing Class Notices, the Administrator shall update Class Member addresses
19 using the National Change of Address database. (¶7.4.2)

20 Not later than three (3) business days after the Administrator's receipt of any
21 Class Notice returned, on or before the Response Deadline, by the USPS as
22 undelivered, the Administrator shall re-mail the Class Notice using any forwarding
23 address provided by the USPS. If the USPS does not provide a forwarding address, the
24 Administrator shall conduct a Class Member Address Search, and re-mail the Class
25 Notice to the most current address obtained. The Administrator has no obligation to

1 make further attempts to locate or send Class Notice to Class Members whose Class
2 Notice is returned by the USPS a second time. (§7.4.3)

3 The deadline for Objections, challenges to Workweeks and/or Pay Periods, and
4 Requests for Exclusion will be extended an additional fourteen (14) days beyond the
5 Response Deadline otherwise provided in the Class Notice for all Class Members
6 whose Class Notice is re-mailed. The Administrator will inform the Class Member of
7 the extended deadline with the re-mailed Class Notice. (§7.4.4)

8 **2. Content of class notice.**

9 A copy of the proposed class notice is attached to the Settlement Agreement as
10 Exhibit A. The notice includes information such as: a summary of the litigation; the
11 nature of the settlement; the terms of the settlement agreement; the maximum
12 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
13 the enhancement award, and claims administration costs); the procedures and deadlines
14 for participating in, opting out of, or objecting to, the settlement; the consequences of
15 participating in, opting out of, or objecting to, the settlement; and the date, time, and
16 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
17 given in both English and Spanish (§1.12).

18 **3. Settlement Administration Costs**

19 Settlement administration costs are capped at **\$10,500**, including the cost of
20 notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement
21 administrator must submit a declaration attesting to the total costs incurred and
22 anticipated to be incurred to finalize the settlement for approval by the Court.

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1 **E. ATTORNEY FEES AND COSTS**

2 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
3 implied, that has been entered into with respect to the payment of attorney fees or the
4 submission of an application for the approval of attorney fees must be set forth in full in
5 any application for approval of the dismissal or settlement of an action that has been
6 certified as a class action.”

7 Ultimately, the award of attorney fees is made by the court at the fairness
8 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
9 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
10 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
11 1132-1136. In common fund cases, the court may use the percentage method. If
12 sufficient information is provided a cross-check against the lodestar may be conducted.
13 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
14 agreement by the parties to the contrary, “the court ha[s] an independent right and
15 responsibility to review the attorney fee provision of the settlement agreement and
16 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
17 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

18 The question of class counsel’s entitlement to **\$875,000** (35%) in attorney fees
19 will be addressed at the final fairness hearing when class counsel brings a noticed
20 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
21 the court with current market tested hourly rate information and billing information so
22 that it can properly apply the lodestar method and must indicate what multiplier (if
23 applicable) is being sought.

24 Fee Split: Plaintiff Jaime Garcia’s counsel, Lawyers for Justice, PC, represents
25 that they have not entered into a fee splitting agreement with other Plaintiffs’ counsel

1 regarding this matter. (Ghosh Decl. ¶16.) Attorney Davies of Aegis Law Firm, PC,
2 counsel for Plaintiff Farias, represents that the firms met and conferred on the issue of a
3 fee split, but did not reach any consensus. (Supp. Davies Decl. ¶14.) Plaintiffs intend
4 to submit declarations to the Court and ask the Court to decide the appropriate attorney
5 fees split, given each parties' respective contributions to the case. At the July 12, 2023
6 hearing, the Court explained that this would need to be explained in the parties' notice
7 to the Class Members, and to explain that fees will be decided by the Court. (*Ibid.*)
8 The notice form to the Class Members was updated accordingly.

9 Class counsel should also be prepared to justify the costs sought (capped at
10 **\$40,000**) by detailing how they were incurred and why each was necessary to the
11 litigation.

12

13 **F. SERVICE AWARDS**

14 The Settlement Agreement provides for a service award of up to **\$10,000 each**
15 for the class representatives (¶3.2.1). Trial courts should not sanction enhancement
16 awards of thousands of dollars with “nothing more than *pro forma* claims as to
17 ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more
18 specificity, in the form of quantification of time and effort expended on the litigation,
19 and in the form of reasoned explanation of financial or other risks incurred by the
20 named plaintiffs, is required in order for the trial court to conclude that an enhancement
21 was ‘necessary to induce [the named plaintiff] to participate in the suit’” *Clark v.*
22 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and
23 ellipsis in original.

1 In connection with the final fairness hearing, named Plaintiffs must submit a
2 declaration attesting to why they should be compensated for the expense or risk they
3 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

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

6
7 **V. CONCLUSION AND ORDER**

8 The Court hereby:

- 9 (1) Grants preliminary approval of the settlement as fair, adequate, and
10 reasonable;
- 11 (2) Grants conditional class certification;
- 12 (3) Appoints Suleyda Farias and Jaime Garcia as Class Representatives;
- 13 (4) Appoints Aegis Law Firm, PC and Lawyers for Justice, PC as Class Counsel;
- 14 (5) Appoints CPT Group, Inc. as Settlement Administrator;
- 15 (6) Approves the proposed notice plan; and
- 16 (7) Approves the proposed schedule of settlement proceedings as follows:
- 17 • Preliminary approval hearing: August 17, 2023
 - 18 • Deadline for Defendant to provide class list to settlement administrator:
19 September 1, 2023 (within 15 days from preliminary approval)
 - 20 • Deadline for settlement administrator to mail notices: September 15, 2023
21 (within 14 days after receiving the Class Data)
 - 22 • Deadline for class members to opt out: November 14, 2023 (60 calendar days
23 from the initial mailing of the Notice Packets)
 - 24 • Deadline for class members to object: November 14, 2023 (60 calendar days
25 from the initial mailing of the Notice Packets)

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- Deadline for class counsel to file motion for final approval:
12/20, 2023/2024 (16 court days prior to final fairness hearing)
- Final fairness hearing: 1/10, 2023/2024, at 9:00 am

Dated: 8/17/23

Maren E. Nelson
MAREN E. NELSON
Judge of the Superior Court