

FILED
Superior Court of California
County of Los Angeles

JAN 06 2021

Sherri R. Carlyn, Clerk
Alfredo Morales deputy
ALFREDO MORALES

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

Case No.: BC687917

JAIRO EGUIZUBAL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

COMMUNITY RESTUARANTS, INC., a
corporation; and DOES 1-20, inclusive,

Defendant.

~~PRELIMINARY~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: January 6, 2020

Dept.: SSC-7

Time: 3:00 p.m

I. BACKGROUND

This is a wage and hour class action. On December 29, 2019, Plaintiff Jairo Eguizubal filed a class action complaint against Defendant Community Restaurants, Inc. alleging eight causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest

1 Periods; (5) Failure to Furnish Accurate Wage Statements; (6) Waiting Time Penalties;
2 (7) Unfair Business Practices (California Business and Professions Code §§ 17200, et
3 seq.); and (8) Civil Penalties Under the Private Attorneys General Act (California Labor
4 Code §§ 2698, et seq.)

5 On August 8, 2019, Plaintiff Jairo Eguizubal filed his First Amended Complaint
6 adding Defendants Granville Glendale, Inc., Granville Restaurant Partners, LLC, and
7 Granville Restaurant Partners 2, LLC, adding Plaintiffs Ledy Bosque and Logan Chelren,
8 and alleging the same eight causes of action.

9 After the parties attended the Initial Status Conference on June 1, 2018, the Court
10 stayed the proceedings so that the parties could attend mediation.

11 Counsel represents that prior to litigation, Defendants produced Plaintiff Jairo
12 Eguizubal's personnel files and his wage statements, and in anticipation to mediation,
13 Plaintiffs' counsel informally requested that Defendant produce its relevant policies,
14 procedures, and practices and to produce data demonstrating hours worked, workweeks,
15 hourly-rates, and total compensation of putative Class members. In response, Defendants
16 produced: (1) the written policies and practices related to meal periods, rest periods,
17 overtime, wage statements, payment of final wages, and any other wage-and hour issues;
18 (2) the average hourly rate for all non-exempt employees; (3) the number of pay periods
19 per Class member; (4) the estimated number of Class members; (5) the average number
20 of Class members per pay period; and (6) hundreds of pages of random sample time
21 records and wage statements of Class members.

22 On November 19, 2018, the parties mediated the case with Jeffrey Krivis, but were
23 unable to resolve the case. Thereafter, the parties continued to negotiate through the
24 mediator over the ensuing months. Ultimately, the mediator made a mediator's proposal
25

1 that was accepted by the parties. A fully executed Settlement Agreement is attached to
2 the Declaration of Christopher Adams (“Adams Decl.”) as Exhibit A.

3 On July 27, 2020, the Court issued a checklist of items for counsel to address. In
4 response, on November 20, 2020, counsel submitted a fully executed Amended
5 Settlement Agreement attached as Exhibit A to the Supplemental Declaration of
6 Christopher A. Adams (“Adams Supp. Decl.”).

7 Now before the Court is Plaintiff’s motion for preliminary approval of the
8 settlement. For the reasons set forth below the Court preliminarily grants approval for
9 the settlement.

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II. THE TERMS OF THE SETTLEMENT

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A. SETTLEMENT CLASS AND RELATED DEFINITIONS

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“Class Members”: Plaintiffs, and all persons who have been, or currently are,
employed by Defendants in California as hourly non-exempt employees during the Class
Period. (Settlement Agreement, ¶2.)

16

17

18

“Class Period”: the period beginning December 29, 2013 through the earlier of the
date the Court grants preliminary approval of this settlement or 90 days from the Parties’
execution of the Settlement Agreement. (¶2)

19

There are 1,400 putative Class Members. (Motion, 14:5-6.)

20

21

The Parties stipulate and agree to the conditional certification of this Action for
purposes of this Settlement only. (¶30.g)

22

B. THE MONETARY TERMS OF SETTLEMENT

23

The essential monetary terms are as follows:

24

25

1 The Gross Settlement Fund (“GSF”) is \$543,500 (¶11). This includes payment of a
2 PAGA penalty of \$15,000 to be paid 75% to the LWDA (\$11,250) and 25% to the
3 Aggrieved Employees (\$3,750) (¶18);

4 The Net Settlement Amount (“Net”) (\$ 297,333.33) is the GSF less:

- 5 ○ Up to \$181,166.67 (33 1/3%) for attorney fees (¶15);
 - 6 ■ **Fee Split:** 66.67% to KJT Law Group LLP and 33.33% to Adams
7 Employment Counsel. Plaintiffs have given written approval of this
8 fee splitting agreement. (*Ibid.*; Adams Supp. Decl., Exh. C.)
- 9 ○ Up to \$25,000 for attorney costs. (¶14);
- 10 ○ Up to \$15,000 for service awards to the proposed class representatives
11 (\$5,000 x) (¶16); and
- 12 ○ Estimated \$25,000 for settlement administration costs (¶17).
- 13 ● Gross Settlement Fund does not include Defendants’ share of the employer-side
14 payroll taxes on the amount of the settlement allocated to wages. (¶11)
- 15 ● Assuming the Court approves all maximum requested deductions, approximately
16 \$297,333.33 will be available for automatic distribution to participating class
17 members. Assuming full participation, the average settlement share will be
18 approximately \$212.38. ($\$297,333.33 \text{ Net} \div 1,400 \text{ class members} = \212.38). In
19 addition, each class member will receive a portion of the PAGA penalty, estimated
20 to be \$8.04 per class member. ($\$11,250 \text{ (25\% of } \$15,000 \text{ PAGA penalty)} \div 1,400$
21 $\text{class members} = \$8.4$)
- 22 ● There is no Claim Requirement. (¶7)
- 23 ● The settlement is not reversionary. (¶11)
- 24 ● Payments to Settlement Class Members from Net Settlement Fund: The Net
25 Settlement Fund will be paid to Settlement Class Members calculated by a pro rata

1 formula, based on the number of weeks worked by Class Members as a non-
2 exempt hourly employee for Defendants in California during the Class Period. To
3 determine a Settlement Class Member's potential claim, the Net Settlement Fund
4 will be divided by the total number of weeks worked by all Class Members as non-
5 exempt hourly employees in California during the Class Period, multiplied by the
6 number of weeks worked by that Settlement Class Member as a non-exempt
7 employee in California during the Class Period. (§13)

8 ○ Tax Withholdings: 20% as wages and 80% as interest and penalties. (§19)

- 9 ● Uncashed Checks: Settlement checks which are uncashed after 180 days of
10 issuance of the check shall be void. The Court shall set a date after the time to
11 cash the settlement checks has expired to review the amount of uncashed checks.
12 The Court will amend the Judgment to direct payment of the amount of uncashed
13 checks, plus interest, to the Legal Aid Society of Los Angeles, pursuant to Code
14 Civ. Proc. Section 384. (§27)
- 15 ● Funding of the Settlement: The Gross Settlement Fund and the employer's share
16 of payroll taxes will be paid by Defendants to the Settlement Administrator by
17 wire transfer within ten (10) calendar days after the Effective Date. (§27)

18 **C. TERMS OF RELEASES**

- 19 ● After the final approval by the Court of this Settlement Agreement and upon
20 Defendants funding of the Gross Settlement Fund, and except as to such rights or
21 claims as may be created by the Settlement Agreement, each Class Member who
22 has not timely requested exclusion from the settlement, fully releases and
23 discharges Defendants, and all of their past, present, and future parent companies,
24 subsidiaries, affiliates, divisions, joint ventures, agents, management companies,
25

1 and all of their respective employees, members, officers, directors, partners, legal
2 representatives, accountants, trustees, executors, administrators, real or alleged
3 alter egos, predecessors, successors, transferees, assigns and insurers (collectively
4 “Released Parties”), from and all claims, demands, rights, liabilities, actions,
5 grievances, demands for arbitration, and causes of action, of every nature and
6 description, that were or could have been asserted based on the facts alleged in the
7 first amended complaint, whether brought in tort, or in contract, including but not
8 limited to, any state or federal claims (including without limitation claims under
9 the Fair Labor Standards Act (“FLSA”)), relating to the failure to pay wages,
10 failure to pay minimum wages, failure to pay overtime, failure to provide meal or
11 rest breaks, failure to provide accurate and complete wage statements, unfair
12 competition, PAGA penalties, waiting time penalties, interest, attorney’s fees, or
13 any other alleged known or unknown wage and hour violations that were alleged
14 or could reasonably have been alleged based on arising out of the acts, facts,
15 transactions, occurrences, representations, or omissions that were asserted in the
16 Lawsuit (“Released Claims”). The cashing of the settlement check by a Settlement
17 Class Member will be considered a consent and opt-in to the settlement of all
18 related federal wage and hour claims under the FLSA, and each Settlement Class
19 Member who cashes a settlement check will waive his or her rights to bring related
20 claims under the FLSA during the Class Period. (¶28)

- 21 • The releases are effective upon the Final Approval by the Court of the Settlement
22 Agreement. (¶28)
- 23 • Plaintiffs are providing general releases and CC §1542 waivers as to Defendant.
24 (¶29)

1 **D. SETTLEMENT ADMINISTRATION**

- 2 • The proposed Settlement Administrator is CPT Group, Inc. which has provided
3 evidence that no counsel are affiliated with it and that it has adequate procedure in
4 place to safeguard the data and funds to be entrusted to it. (¶20)
- 5 • Settlement administration costs are estimated to be \$25,000. (¶17)
- 6 • Notice: The manner of giving notice is described below.
- 7 • Class members have 60 days from the mailing to the Notice to mail a request for
8 exclusion, objection or workweek dispute. (¶¶23-25) Class Members who
9 receive a re-mailed Notice of Class Settlement and Summary Sheet shall have 20
10 calendar days from the postmark date of the re-mailed Notice to object or opt-
11 out. (¶26)
- 12 ○ Defendants have the option of voiding this Settlement Agreement within
13 30 days of receiving notice that more than 5% of the Class Members have
14 timely completed valid requests to be excluded from the settlement. (¶32)
- 15 • Notice of the final judgment will be provided on the Settlement Administrator’s
16 website. (¶20)

17 **D. ATTORNEYS’ FEES**

18 Counsel for the proposed class seek \$181,166.67 (33 1/3 %) in attorney’s fees and
19 \$25,000 in costs. (¶¶14-15).

1 The fee split between Class Counsel is as follows: 66.67% to KJT Law Group LLP
2 and 33.33% to Adams Employment Counsel. Plaintiffs have given written approval of
3 this fee splitting agreement. (*Ibid.*; Adams Supp. Decl., Exh. C.)
4

5 **E. SERVICE AWARDS**

6 The named plaintiffs seek enhancement awards totaling \$15,000 (\$5,000 each). (¶16).
7

8 **III. SETTLEMENT STANDARDS AND PROCEDURE**

9 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
10 of an entire class action, or of a cause of action in a class action, or as to a party,
11 requires the approval of the court after hearing.” “Any party to a settlement agreement
12 may serve and file a written notice of motion for preliminary approval of the settlement.
13 The settlement agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
15 Court, rule 3.769(c).
16

17 “In a class action lawsuit, the court undertakes the responsibility to assess
18 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
19 dismissal of a class action. The purpose of the requirement [of court review] is the
20 protection of those class members, including the named plaintiffs, whose rights may not
21 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
22 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
23 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
24 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
25 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
agreement to the extent necessary to reach a reasoned judgment that the agreement is

1 not the product of fraud or overreaching by, or collusion between, the negotiating
2 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
3 concerned.”] [internal quotation marks omitted].

4 “The burden is on the proponent of the settlement to show that it is fair and
5 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
6 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
7 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
8 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
9 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

10 Notwithstanding an initial presumption of fairness, “the court should not give
11 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
12 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
13 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
14 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
15 members, the court must independently and objectively analyze the evidence and
16 circumstances before it in order to determine whether the settlement is in the best
17 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
18 In that determination, the court should consider factors such as “the strength of
19 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
20 the risk of maintaining class action status through trial, the amount offered in
21 settlement, the extent of discovery completed and stage of the proceedings, the
22 experience and views of counsel, the presence of a governmental participant, and the
23 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
24 factors is not exclusive and the court is free to engage in a balancing and weighing of
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1 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
2 245.

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

10 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

11 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

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

14 On November 19, 2018, the parties mediated the case with Jeffrey Krivis, but were
15 unable to resolve the case. (Adams Decl., ¶17.) Thereafter, the parties continued to
16 negotiate through the mediator over the ensuing months. (*Ibid.*) Ultimately, the mediator
17 made a mediator’s proposal that was accepted by the parties. (*Ibid.*)

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

19 Counsel represents that prior to litigation, Defendants produced Plaintiff Jairo
20 Eguizubal’s personnel files and his wage statements, and in anticipation to mediation,
21 Plaintiffs’ counsel informally requested that Defendant produce its relevant policies,
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23
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1 procedures, and practices and to produce data demonstrating hours worked, workweeks,
2 hourly-rates, and total compensation of putative Class members. (*Id.* at ¶15.) In response,
3 Defendants produced: (1) the written policies and practices related to meal periods, rest
4 periods, overtime, wage statements, payment of final wages, and any other wage-and
5 hour issues; (2) the average hourly rate for all non-exempt employees; (3) the number of
6 pay periods per Class member; (4) the estimated number of Class members; (5) the
7 average number of Class members per pay period; and (6) hundreds of pages of random
8 sample time records and wage statements of Class members. (*Ibid.*)

9 This is sufficient to value the case for settlement purposes.

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

11
12 Class Counsel represent that are experienced in class action litigation, including
13 wage and hour class actions. (*Id.* at ¶¶3-10.)

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

15
16 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
17 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
18 the court receive objections to the proposed settlement, it will consider and either sustain
19 or overrule them at the fairness hearing.”].

20 21 22 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 23 **FAIR, ADEQUATE, AND REASONABLE**

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

11 ///

12
 13 **1. Amount Offered in Settlement**

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

16 Class Counsel estimated Defendant’s maximum exposure at **\$3,016,493.75**
 17 and a reduced exposure of **\$934,496.88**, broken down as follows:

CLAIM	MAXIMUM EXPOSURE	REDUCED EXPOSURE
Meal Breaks	\$504,218.68	\$252,109.34
Rest Breaks	\$504,218.68	\$252,109.34
Unpaid Wages	\$478,056.39	\$239,028.20
Inaccurate Wage Statements	\$750,000	\$191,250.00
Waiting Time Penalties	\$0	\$0
PAGA	\$780,000	\$0

	\$3,016,493.75	\$934,496.88
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2 (Adams Decl., ¶16.)

3 Class Counsel obtained a gross settlement valued at \$543,500. This is 18% of
4 Defendant's maximum exposure and 58% of Defendant's reduced exposure.

5
6 **2. The Risks of Future Litigation**

7 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
8 motion practice and appeals) are also likely to prolong the litigation as well as any
9 recovery by the class members. Even if a class is certified, there is always a risk of
10 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
11 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
12 conducting class actions, which means, under suitable circumstances, entertaining
13 successive motions on certification if the court subsequently discovers that the propriety
14 of a class action is not appropriate."] Further, the settlement was negotiated and
15 endorsed by Class Counsel who, as indicated above, are experienced in class action
16 litigation. Based upon their investigation and analysis, the attorneys representing
17 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
18 adequate. (Adams Decl., ¶11.)

19 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
20 which has been served with a copy of the Settlement Agreement and has not yet objected.
21 Any objection by it will be considered at the final fairness hearing. (Exhibit B to Adams
22 Decl.)

23
24 **3. The Releases Are Limited**

1 The Court has reviewed the Releases to be given by the absent class members and
2 the named plaintiffs. The releases, described above, are tailored to the pleadings and
3 release only those claims in the pleadings. There is no general release by the absent
4 class. The named plaintiff's general releases is appropriate given that he was
5 represented by counsel in its negotiation.

6 7 **4. Conclusion**

8 Class Counsel estimated Defendant's maximum exposure at **\$3,016,493.75** and a
9 reduced exposure of **\$934,496.88**.

10 Class Counsel obtained a gross settlement valued at \$543,500. This is 18% of
11 Defendant's maximum exposure and 58% of Defendant's reduced exposure, which, given
12 the uncertain outcomes, including the potential that the class might not be certified, that
13 liability is a contested issue, and that the full amount of penalties would not necessarily
14 be assessed even if the class is certified and liability found, the settlement is within the
15 "ballpark of reasonableness."

16 17 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

18 A detailed analysis of the elements required for class certification is not required,
19 but it is advisable to review each element when a class is being conditionally certified.
20 *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620, 622-627. The party
21 advocating class treatment must demonstrate the existence of an ascertainable and
22 sufficiently numerous class, a well-defined community of interest, and substantial
23 benefits from certification that render proceeding as a class superior to the alternatives."
24 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

2 There are 1,400 putative Class Members. (Motion, 14:5-6.) Numerosity is
3 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
4 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
5 *class action is liberally construed,*” and citing examples wherein classes of as little as
6 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
7 (1972) 28 Cal.App.3d 1017, were upheld).

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

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

14 The class is defined above. Class Members are ascertainable through
15 Defendant’s employee and payroll files. (Motion, 14:7-8.)

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

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

21 Counsel contends that commonality is met because Plaintiffs allege that Class
22 members were not provided their meal and rest breaks and were not paid for time spent
23 traveling to jobsites, and suffered wage and hour violations on a classwide basis.
24 (Motion, 14:16-19.)

1 Counsel further contends that the named plaintiff has claims typical of the class
2 because Plaintiffs and all settlement Class members worked for Defendants in California
3 and suffered the same violations. (Motion, 14:19-21.) There appears to be no conflicts of
4 interest between the named Plaintiff and the Class. (Motion, 14:25-15:4.) Class Counsel
5 have experience in class action litigation. (Motion, 14:22-25.)

6
7 **4. Substantial Benefits Exist**

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

10
11 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS
12 OF DUE PROCESS**

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

21 **1. Method of class notice**

22 The Notice shall be mailed by the Settlement Administrator by First Class U.S.
23 Mail, in English and Spanish, to the last known address of each Settlement Class
24 Member. Within 14 days of the Court's Order granting Plaintiffs' Motion for Preliminary
25 Approval, Defendants shall provide to the Settlement Administrator the names, last

1 known address, last known telephone number, social security number, date of hire and
2 date of termination (if applicable) of Class Members. Within 20 days of receipt of the
3 class list and information, the Settlement Administrator will complete the mailing of the
4 Notice to all Settlement Class Members. The Settlement Administrator will perform
5 address updates and verifications as necessary prior to the first mailing. (¶22) Any Notice
6 returned to the Settlement Administrator as non-delivered within 60 calendar days
7 following the mailing of the Notice shall be re-mailed to the forwarding address affixed
8 thereto within 5 calendar days. If no forwarding address is provided, the Settlement
9 Administrator shall promptly attempt to determine a correct address by use of skip-
10 tracing, or other search using the name, address and/or Social Security number of the
11 Class Member involved, and shall then perform a re-mailing, if another mailing address
12 is identified by the Settlement Administrator. (¶26)

13 **2. Content of class notice.**

14 A copy of the proposed class notice is attached to the Settlement Agreement as
15 Exhibit 1. The notice includes information such as: a summary of the litigation; the
16 nature of the settlement; the terms of the settlement agreement; the maximum
17 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
18 the enhancement award, and claims administration costs); the procedures and deadlines
19 for participating in, opting out of, or objecting to, the settlement; the consequences of
20 participating in, opting out of, or objecting to, the settlement; and the date, time, and
21 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d).

22 **3. Settlement Administration Costs**

23 Settlement administration costs are estimated at \$25,000, including the cost of
24 notice. (¶17) Prior to the time of the final fairness hearing, the settlement administrator
25

1 must submit a declaration attesting to the total costs incurred and anticipated to be
2 incurred to finalize the settlement for approval by the Court.

3
4 **E. ATTORNEY FEES AND COSTS**

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

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

21 The question of class counsel’s entitlement to \$181,166.67 (33 1/3%) in attorney
22 fees will be addressed at the final fairness hearing when class counsel brings a noticed
23 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
24 the court with current market tested hourly rate information and billing information so
25

1 that it can properly apply the lodestar method and must indicate what multiplier (if
2 applicable) is being sought.

3 Class counsel should also be prepared to justify the costs sought (capped at
4 **\$25,000**) by detailing how they were incurred.

6 F. SERVICE AWARDS

7 The Settlement Agreement provides for service awards totaling up to **\$15,000**
8 for the class representatives (\$5,000 each). Trial courts should not sanction
9 enhancement awards of thousands of dollars with “nothing more than *pro forma* claims
10 as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly
11 more specificity, in the form of quantification of time and effort expended on the
12 litigation, and in the form of reasoned explanation of financial or other risks incurred by
13 the named plaintiffs, is required in order for the trial court to conclude that an
14 enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit . . .
15 .’” *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807,
16 italics and ellipsis in original.

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

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

23 V. CONCLUSION AND ORDER

24 The Court hereby:
25

- 1 (1) Grants preliminary approval of the settlement as fair, adequate, and
- 2 reasonable;
- 3 (2) Grants conditional class certification;
- 4 (3) Appoints Jairo Eguizubal, Ledy Bosque, and Logan Chefren as Class
- 5 Representatives;
- 6 (4) Appoints the KJT Law Group LLP and Adams Employment Counsel, as
- 7 Class Counsel;
- 8 (5) Appoints tor CPT Group, Inc. as Settlement Administrator;
- 9 (6) Approves the proposed notice plan; and
- 10 (7) Approves the proposed schedule of settlement proceedings as follows:

- 11 • Preliminary approval hearing: 1/6/2021
- 12 • Deadline for Defendant to provide class list to settlement administrator: 1/20/2021
- 13 ~~2020~~ (within 14 days of preliminary approval)
- 14 • Deadline for settlement administrator to mail notices: 2/8, ~~2020~~ (within 20
- 15 days from receiving the class list)
- 16 • Deadline for class members to opt out: 4/9, ~~2020~~ (60 calendar days
- 17 from the initial mailing of the Notice Packets)
- 18 • Deadline for class members to object: 4/9, ~~2020~~ (60 calendar days
- 19 from the initial mailing of the Notice Packets)
- 20 • Deadline for class counsel to file motion for final approval:
- 21 _____, ~~2020~~ (16 court days prior to final fairness hearing)
- 22 • Final fairness hearing: 5/20, ~~2020~~, at 11:00.

24 Dated: 1/6/2021

25 
 Hon. Amy Hogue