

FILED
Superior Court of California
County of Los Angeles

JUL 07 2021

Sherri R. Cartwright, County Officer/Clerk
By Alfredo Morales deputy
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

PORSHA IRVING, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

CULINARY SERVICES OF AMERICA,
INC., doing business as CULINARY
STAFFING SERVICE, a California
Corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: BC722131

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

Date: July 7, 2021
Dept.: SSC-7
Time: 10:00 a.m.

I. BACKGROUND

Plaintiff Porsha Irving sues her former employer, Defendant Culinary Services of America, dba Culinary Staffing Service (“CSS” or “Defendant”) for alleged wage and hour violations. Defendant provides staffing services for the food and hospitality

1 industries. Plaintiff seeks to represent a class of Defendant's current and former non-
2 exempt employees.

3 On September 20, 2018, Plaintiff filed a Class Action Complaint, on behalf of
4 herself and others similarly situated, against CSS alleging claims for violations of: (1)
5 Labor Code §§ 510, 1194 and 1198 and IWC Wage Order 5-2001 (unpaid overtime
6 wages); (2) Labor Code §§ 1194, 1194.2, 1197, and 1197.1 and IWC Wage Order 5-
7 2001 (unpaid minimum wages); (3) Labor Code §§ 204 and 210 (unpaid straight time
8 wages); (4) Labor Code §§ 226.7 and 512(a) and IWC Wage Order 5-2001 (failure to
9 provide meal periods); (5) Labor Code § 226.7 and IWC Wage Order 5-2001 (failure to
10 provide rest periods); (6) Labor Code §§ 201 and 203 (failure to pay earned wages due
11 to discharged and quitting employees); (7) Labor Code § 226(a) (failure to provide
12 accurate itemized wage statements); and (8) California's Unfair Competition Law, Bus.
13 & Prof. Code § 17200, et seq. (unlawful and unfair business practices).

14 On February 7, 2020, counsel for the Parties participated an initial status
15 conference, and on February 11, 2020, the Court issued a Notice of Ruling Re: Initial
16 Status Conference directing the Parties to complete a mandatory settlement conference
17 within 120 days. The Parties scheduled a mandatory settlement conference for April
18 16, 2020 before the Honorable Ramona G. See. However, on March 19, 2020, the
19 conference was cancelled, without rescheduling, due to COVID issues.

20 Subsequently, Plaintiff served class discovery requests in April 2020 and the
21 Parties continued settlement negotiations. After months of settlement negotiations, the
22 Parties reached a class resolution as to claims which arise from the allegation of paying
23 straight time for hours submitted by Class Members to CSS that should have been paid
24 as overtime based upon the records of CSS. The terms of settlement are finalized in the
25

1 *Class Action Settlement Agreement* (“Settlement Agreement”), a copy of which was
2 filed with the Court.

3 On December 22, 2020, the Court reviewed Plaintiff’s motion for preliminary
4 approval and issued a “checklist” to the parties as to deficiencies in the Settlement
5 Agreement. In response, Plaintiff filed supplemental briefing, including the revised
6 Settlement Agreement. On June 14, 2021, Plaintiff filed further briefing in response to
7 additional concerns raised by the Court, including the revised Settlement Agreement
8 attached to the Second Supplemental Declaration of Jason T. Brown as Exhibit 3.

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

12
13 **II. THE TERMS OF THE SETTLEMENT**

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

15 “Settlement Class Members” means all current and former non-exempt food
16 service workers employed by Defendant in California during the Class Period. (¶24)

17 “Class Period” means the period from September 20, 2014 through the date of
18 entry of the order granting preliminary approval of this Settlement. (¶5)

19
20 **B. THE MONETARY TERMS OF SETTLEMENT**

21 The essential monetary terms are as follows:

22 The Gross Settlement Amount (“GSA”) is **\$135,000** (¶11).

23 The Net Settlement Amount (“Net”) (**\$62,000**) is the GSA less:

- 24 ○ Up to **\$45,000** (33.3%) for attorney fees (¶34.d);
- 25 ○ Up to **\$10,000** for attorney costs (*Ibid.*);

- Up to **\$3,000** for a service award to the proposed class representative (¶34.c); and
- Estimated **\$15,000** for settlement administration costs (¶34.e).
- Defendant's employer-taxes on the wage portion of any Individual Settlement Payments will be paid separate and in addition to the Gross Settlement Amount by Defendant. (¶34)
- Assuming the Court approves all maximum requested deductions, approximately \$62,000 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$68.89. ($\$62,000 \text{ Net} \div 900 \text{ class members} = \68.89).
- There is no Claim Requirement (¶33.b).
- The settlement is not reversionary (¶34.b).
- Individual Settlement Share Calculation: Defendant will calculate the Total Overtime Hours Worked by each Settlement Class Member. The Settlement Administrator will divide the respective Total Overtime Hours Worked for each Settlement Class Member by the Total Overtime Hours Worked for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member. The Settlement Administrator will multiply each Settlement Class Member's Payment Ratio by the Net Settlement Amount to determine his or her Individual Settlement Payment. (¶34.a.i)
 - Settlement Class Members who submit valid and timely requests for exclusion will not be entitled to receive Individual Settlement Payments. The estimated Individual Settlement Payments allocated to those individuals will be redistributed to other Settlement Class Members, as calculated by the Settlement Administrator to reflect proportionally

1 increases to the payments for Settlement Class Member who do not
2 request exclusion such that the aggregate of settlement payout to
3 Settlement Class Members equals 100% of the NSA. (Notice pg. 4)

- 4 • Tax Withholdings: 50% as wages, 25% as penalties, 25% as interest (§34.a).
- 5 • Uncashed Settlement Payment Checks: Any checks issued to Settlement Class
6 Members shall remain valid and negotiable for one hundred and eighty (180)
7 days from the date of their issuance. (§34.a) In accordance with California Rule
8 of Civil Procedure section 384, any unpaid cash residue or unclaimed or
9 abandoned class member funds, plus any accrued interest that has not otherwise
10 been distributed pursuant to order of this Court, shall be sent to Legal Aid at
11 Work. (§34.b)
 - 12 ○ All parties and their counsel represent that they have no interest or
13 involvement with the cy pres recipient, Legal Aid at Work. (Second Supp.
14 Brown Decl., Exhibit 6; Declaration of Randy Hopp ¶3; Declaration of
15 Howard Z. Rosen ¶4.)
- 16 • Funding of Settlement: Within seven (7) calendar days after the Effective Date,
17 Defendant shall provide the Gross Settlement Amount to the Settlement
18 Administrator. (§34)

19
20 **C. TERMS OF RELEASES**

- 21 • Release As To All Class Members. Effective upon the payment of the Gross
22 Settlement Amount by Defendant to the Settlement Administrator, Plaintiff and
23 the Settlement Class Members who are not excluded from this Settlement, on
24 behalf of themselves and each of their heirs, representatives, successors, assigns
25 and attorneys, hereby release Defendant and Released Parties from the Released

1 Claims for overtime pay during the Class Period as consideration for
2 Defendant's payment of the Gross Settlement Amount. (¶28)

- 3 • "Released Claims" means any and all known and unknown claims, losses,
4 damages, liquidated damages, penalties, interest, liabilities, causes of action,
5 civil complaints, arbitration demands or suits which arise from the allegation of
6 paying straight time for hours submitted by Class Members to Defendant during
7 the Class Period that should have been paid as overtime based upon the records
8 of Defendant as asserted in the Action under the California Labor Code and
9 California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.)
10 or for other remuneration overtime pay whether sought under statute, tort,
11 contract, as an unfair business practice, or otherwise. (¶18)
- 12 • "Released Parties" means Defendant and any parent, subsidiary, affiliate,
13 predecessor or successor, and all agents, employees (current and former),
14 officers, directors, insurers, and attorneys of Defendant, but excludes any joint
15 employers who employed the Settlement Class Members through Defendant.
16 (¶19)
- 17 • The named Plaintiff will also provide a general release and a waiver of the
18 protections of Cal. Civ. Code §1542. (¶29)
- 19 • The releases are effective upon the payment of the Gross Settlement Amount by
20 Defendant to the Settlement Administrator. (¶28) The settlement will be funded
21 within seven (7) calendar days after the Effective Date. (¶34)

22 **D. SETTLEMENT ADMINISTRATION**

- 23 • The proposed Settlement Administrator is CPT Group, Inc. (¶23).
- 24 • Settlement administration costs are estimated to be \$15,000 (¶34.e).
- 25

- 1 • Notice: The manner of giving notice is described below.
- 2 • Opt Out/Objection Dates: “Response Deadline” means the date forty (45) days
3 after the Settlement Administrator mails the Notice, or in the event of the
4 remailing of the Notice, an additional fifteen (15) days from the remailing of the
5 Notice to Settlement Class Members, and on which Settlement Class Members
6 may submit written requests for exclusion. (¶20)
 - 7 ○ If more than five percent (5%) of all Settlement Class Members submit
8 timely and valid written requests for exclusion from the Settlement,
9 Defendant shall have, in its sole discretion, the option to terminate this
10 Settlement. (¶36)
- 11 • Notice of Final Judgment will be posted on the Settlement Administrator’s
12 website. (¶35)

13 **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

22 “In a class action lawsuit, the court undertakes the responsibility to assess
23 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
24 dismissal of a class action. The purpose of the requirement [of court review] is the
25 protection of those class members, including the named plaintiffs, whose rights may not

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

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

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

1 the risk of maintaining class action status through trial, the amount offered in
2 settlement, the extent of discovery completed and stage of the proceedings, the
3 experience and views of counsel, the presence of a governmental participant, and the
4 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
5 factors is not exclusive and the court is free to engage in a balancing and weighing of
6 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
7 245.

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

15 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

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

17
18 The settlement is entitled to a presumption of fairness for the following reasons:

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

20
21 On February 7, 2020, counsel for the Parties participated an initial status
22 conference, and on February 11, 2020, the Court issued a Notice of Ruling Re: Initial
23 Status Conference directing the Parties to complete a mandatory settlement conference
24 within 120 days. The Parties scheduled a mandatory settlement conference for April
25

1 16, 2020 before the Honorable Ramona G. See. However, on March 19, 2020, the
2 conference was cancelled, without rescheduling, due to COVID issues. Subsequently,
3 Plaintiff served class discovery requests in April 2020 and the Parties continued
4 settlement negotiations. After months of settlement negotiations, the Parties reached a
5 class resolution. (Declaration of Jason T. Brown ¶¶ 11-14.)

6
7 **2. The investigation and discovery were sufficient**

8 Class Counsel represents that during their initial investigation, they conducted
9 discussions and interviews between Class Counsel and Plaintiff, as well as review and
10 analysis of Plaintiff's employment documents with CSS and preliminary research into
11 the various legal issues involved in the case. (*Id.* at ¶31.)

12 Class Counsel further represents that after filing the lawsuit, the parties
13 exchanged informal information to assess potential class-wide damages regarding the
14 allegation of paying straight time for hours submitted by Class Members to CSS that
15 should have been paid as overtime based upon the records of CSS as well financial
16 issues raised by CSS. (*Id.* at ¶9.) CSS had also produced certain financial documents
17 in connection with its limited financial resources. (*Id.* at ¶¶ 6-7.)

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

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

21 Class Counsel represent that are experienced in class action litigation, including
22 wage and hour class actions. (*Id.* at ¶28.)

23 //

24 //

25 //

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

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

6
7 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
8 **FAIR, ADEQUATE, AND REASONABLE**

9
10 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
11 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
12 does when it approves a settlement as in good faith under Code of Civil Procedure
13 section 877.6, the court must at least satisfy itself that the class settlement is within the
14 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
15 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
16 consider and weigh the nature of the claim, the possible defenses, the situation of the
17 parties, and *the exercise of business judgment* in determining whether the proposed
18 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
19 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

20
21 **1. Amount Offered in Settlement**

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

24 Class Counsel estimated Defendant’s maximum exposure at \$120,000, based on
25 the following analysis:

Violation	Maximum Exposure
Overtime Claim	\$120,000.00
Total	\$120,000.00

(Brown Decl. ¶35.)

Class Counsel obtained a gross settlement valued at \$135,000. This is 112.5% of Defendant's maximum exposure.

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].) Further, the settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and adequate. (Settlement Agreement ¶49.)

3. The Releases Are Limited

The Court has reviewed the Releases to be given by the absent class members and the named plaintiff. The releases, described above, are tailored to the pleadings and release only those claims in the pleadings. There is no general release by the absent

1 class. The named plaintiff's general release is appropriate given that she was represented
2 by counsel in its negotiation.

3 4 **4. Conclusion**

5 Class Counsel estimated Defendant's maximum exposure at \$120,000. Class
6 Counsel obtained a gross settlement valued at \$135,000. This is approximately 112.5%
7 of Defendant's maximum exposure, which, given the uncertain outcomes, including the
8 potential that the class might not be certified, that liability is a contested issue, and that
9 the full amount of penalties would not necessarily be assessed even if the class is certified
10 and liability found, the settlement is within the "ballpark of reasonableness."

11 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

12
13 A detailed analysis of the elements required for class certification is not required,
14 but it is advisable to review each element when a class is being conditionally certified.
15 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
16 advocating class treatment must demonstrate the existence of an ascertainable and
17 sufficiently numerous class, a well-defined community of interest, and substantial
18 benefits from certification that render proceeding as a class superior to the alternatives."
19 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

21 There are 900 putative Class Members. (Brown Decl. ¶10.) Numerosity is
22 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
23 Cal.App.5th 369, 393: stating that the "requirement that there be many parties to a
24 class action is liberally construed," and citing examples wherein classes of as little as
25

1 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
2 (1972) 28 Cal.App.3d 1017, were upheld).

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

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

9 The class is defined above. Class Members are ascertainable through
10 Defendant’s records. (Memo ISO Prelim at 7:23-25.)

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

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

16 As to commonality, Plaintiff contends that she has alleged a single scheme that
17 presents a common question as to all class members. The Settlement involves, inter alia,
18 a determination about CSS’s alleged failure to pay overtime wages due to allegedly
19 common and unlawful policies of paying straight time for hours submitted by Class
20 Members to CSS that should have been paid as overtime. Plaintiff contends this practice
21 affected Class Members in the same way. (Memo ISO Prelim at 8:2-15.)

22 As to typicality and adequacy, Plaintiff represents that she has actively contributed
23 to the action and has no conflicts of interest with the Class Members, and that her
24 interests are aligned with those of the Class Members as they were subject to the same
25

1 practices and suffered the same injuries. (Declaration of Porsha Irving ¶¶ 5-8.) As
2 previously stated, Class Counsel have experience in class action litigation.

3 4 **4. Substantial Benefits Exist**

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

7 8 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 9 OF DUE PROCESS**

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

18 **1. Method of class notice**

19 Within ten (10) calendar days after the Court grants preliminary approval of this
20 Agreement, Defendant shall provide the Settlement Administrator with the Class
21 Information for purposes of mailing the Notice to Settlement Class Members. (¶33)
22 Upon receipt of the Class Information, the Settlement Administrator will perform a
23 search based on the National Change of Address Database to update and correct any
24 known or identifiable address changes. Within fourteen (14) calendar days after
25 receiving the Class Information from Defendant as provided herein, the Settlement

1 Administrator shall mail copies of the Notice to all Settlement Class Members via
2 regular First Class U.S. Mail. The Settlement Administrator shall exercise its best
3 judgment to determine the current mailing address for each Settlement Class Member,
4 including, but not limited to, comparing the Class Information to the U.S. Post Office
5 change of address system. The address identified by the Settlement Administrator as the
6 current mailing address shall be presumed to be the best mailing address for each
7 Settlement Class Member. (§33.a)

8 Any Notice returned to the Settlement Administrator as non-delivered on or
9 before the Response Deadline shall be re-mailed to the forwarding address affixed
10 thereto and re-mailing shall be promptly accomplished on a rolling basis. If no
11 forwarding address is provided, the Settlement Administrator shall promptly attempt to
12 determine a correct address by use of skip-tracing, or other search using the name,
13 address and/or Social Security number of the respective Settlement Class Member, and
14 shall then perform a re-mailing, if another mailing address is identified by the
15 Settlement Administrator. In the event that Settlement Administrator re-mails the
16 Notice to any Class Members, the original Response Deadline is extended by an
17 additional fifteen (15) days from the re-mailing of Notice. Any re-mailed Notice will
18 conspicuously state dates certain when the extended periods expire. If a Settlement
19 Class Member's Notice is returned to the Settlement Administrator more than once as
20 non-deliverable on or before the extended Response Deadline, then an additional Notice
21 need not be re-mailed and the Settlement Class Member is deemed to have received
22 Notice. (§33.a.i)

23 **2. Content of class notice.**

24 A copy of the proposed class notice is attached to Supp. Brown Decl. as Exhibit

25 3. The notice includes information such as: a summary of the litigation; the nature of

1 the settlement; the terms of the settlement agreement; the maximum deductions to be
2 made from the gross settlement amount (i.e., attorney fees and costs, the enhancement
3 award, and claims administration costs); the procedures and deadlines for participating
4 in, opting out of, or objecting to, the settlement; the consequences of participating in,
5 opting out of, or objecting to, the settlement; and the date, time, and place of the final
6 approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be given in both
7 English and Spanish. (Supp. Brown Decl. ¶12.)

8 **3. Settlement Administration Costs**

9 Settlement administration costs are estimated at **\$15,000**, including the cost of
10 notice (¶34.e). Prior to the time of the final fairness hearing, the settlement
11 administrator must submit a declaration attesting to the total costs incurred and
12 anticipated to be incurred to finalize the settlement for approval by the Court.

14 **E. ATTORNEY FEES AND COSTS**

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

20 Ultimately, the award of attorney fees is made by the court at the fairness
21 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
22 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
23 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
24 1132-1136. In common fund cases, the court may use the percentage method. If
25 sufficient information is provided a cross-check against the lodestar may be conducted.

1 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
2 agreement by the parties to the contrary, “the court ha[s] an independent right and
3 responsibility to review the attorney fee provision of the settlement agreement and
4 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
5 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

6 The question of class counsel’s entitlement to **\$45,000** (33.3%) in attorney fees
7 will be addressed at the final fairness hearing when class counsel brings a noticed
8 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
9 the court with current market tested hourly rate information and billing information so
10 that it can properly apply the lodestar method and must indicate what multiplier (if
11 applicable) is being sought.

12 Fee Split: The total attorneys’ fees and costs awarded or obtained shall be
13 allocated between the law firms as follows: 45% to Brown, LLC; 45% to Sommers
14 Schwartz, P.C.; and 10% to David Yeremian & Associates, Inc. Counsel represents
15 that Plaintiff Irving consented to the agreement in writing. (Second Supp. Brown Decl.
16 ¶5.)

17 Class counsel should also be prepared to justify the costs sought (capped at
18 **\$10,000**) by detailing how they were incurred.

20 **F. SERVICE AWARD**

21 The Settlement Agreement provides for a service award of up to **\$3,000** for the
22 class representative. Trial courts should not sanction enhancement awards of thousands
23 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
24 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
25 quantification of time and effort expended on the litigation, and in the form of reasoned

1 explanation of financial or other risks incurred by the named plaintiffs, is required in
2 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
3 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
4 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

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

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

10
11 **V. CONCLUSION AND ORDER**

12 The Court hereby:

- 13 (1) Grants preliminary approval of the settlement as fair, adequate, and
14 reasonable;
- 15 (2) Grants conditional class certification;
- 16 (3) Appoints Porsha Irving as Class Representative;
- 17 (4) Appoints David Yeremian & Associates, Inc., Brown LLC, and Sommers
18 Schwartz, P.C. as Class Counsel;
- 19 (5) Appoints CPT Group, Inc. as Settlement Administrator;
- 20 (6) Approves the proposed notice plan; and
- 21 (7) Approves the proposed schedule of settlement proceedings as follows:
- 22 • Preliminary approval hearing: July 7, 2021
 - 23 • Deadline for Defendant to provide class list to settlement administrator: July 17,
24 2021 (within 10 calendar days of preliminary approval)
- 25

- Deadline for settlement administrator to mail notices: July 31, 2021 (within 24 calendar days from preliminary approval)
- Deadline for class members to opt out: September 14, 2021 (45 calendar days from the initial mailing of the Notice Packets)
- Deadline for class members to object: September 14, 2021 (45 calendar days from the initial mailing of the Notice Packets)
- Deadline for class counsel to file motion for final approval:

~~2021~~ 16 court days prior to final fairness hearing

- Final fairness hearing: November 9, 2021, at 11:00 a.m.

Any failure to fully and timely comply with the contingencies may result in the revocation of this Order in its entirety.

Dated:

7/7/2021


Hon. Amy D. Hogue

Judge of the Superior Court