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County of Santa Clara,  
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Case #19CV355856  
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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

PORFIRIO RIVERA and ANDRES HARO, on behalf of themselves and all others similarly situated and aggrieved,

Plaintiffs,

vs.

TALAMO FOOD SERVICE, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 19CV355856

**ORDER RE: MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

The above-entitled action came on for hearing on Wednesday, December 9, 2020, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Tuesday, December 8, 2020. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, as follows:

**I. INTRODUCTION**

This is a putative class action arising out of various alleged wage and hour violations. The First Amended Class Action Complaint sets forth the following causes of action: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Wage Statement Violations; (6) Waiting Time

1 Penalties; (7) Violation of Labor Code, § 2802; (8) Unfair Competition; (9) Penalties Per Labor  
2 Code, § 226.3; (10) Penalties Per Labor Code, § 558; (11) Penalties Per Labor Code, § 1197.1;  
3 and Penalties Per Labor Code, § 2699.

4 The parties have reached a settlement. Plaintiffs Porfirio Rivera and Andres Haro  
5 (collectively, “Plaintiffs”) move for preliminary approval.

6 **II. LEGAL STANDARD**

7 Generally, “questions whether a settlement was fair and reasonable, whether notice to the  
8 class was adequate, whether certification of the class was proper, and whether the attorney fee  
9 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*  
10 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48  
11 Cal.App.4th 1794.)

12 In determining whether a class settlement is fair, adequate and reasonable, the  
13 trial court should consider relevant factors, such as “the strength of plaintiffs’  
14 case, the risk, expense, complexity and likely duration of further litigation, the  
15 risk of maintaining class action status through trial, the amount offered in  
settlement, the extent of discovery completed and the stage of the proceedings, the  
experience and views of counsel, the presence of a governmental participant, and  
the reaction of the class members to the proposed settlement.”

16 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48  
17 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688  
18 F.2d 615, 624.)

19 “The list of factors is not exclusive and the court is free to engage in a balancing and  
20 weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple*  
21 *Computer, Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed  
22 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is  
23 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and  
24 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,  
25 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n,*  
26 *etc., supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

1 sufficient to allow counsel and the court to act intelligently; (3) counsel is  
2 experienced in similar litigation; and (4) the percentage of objectors is small.”  
3

4 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48  
5 Cal.App.4th at p. 1802.)

6 **III. DISCUSSION**

7 **A. Provisions of the Settlement**

8 The case has been settled on behalf of the following class:

9 [A]ll current and former non-exempt, hourly paid employees who worked in  
10 California for Defendant at any time during the Class Period.  
11

12 (Declaration of David D. Bibiyan in Support of Plaintiffs’ Motion for Preliminary Approval of  
13 Class and Representative Action Settlement and Provisional Class Certification for Settlement  
14 Purposes Only (“Bibiyan Decl.”), Ex. 1 (“Settlement Agreement”), ¶ 1(AA).)

15 The class period is September 30, 2015 through October 23, 2020. (Settlement  
16 Agreement, ¶ 1(D).)

17 According to the terms of settlement, defendant Western Management (“Defendant”) will  
18 pay a non-reversionary sum of \$450,000. (Settlement Agreement, ¶ 1(J).) The total settlement  
19 payment includes attorney fees of \$150,000, costs up to \$25,000, a service award of \$7,500 for  
20 each class representative, settlement administration costs up to \$6,750, and a PAGA allocation of  
21 \$10,000 (\$7,500 of which will be paid to the Labor Workforce Development Agency). (*Id.* at  
22 ¶ 1.) Funds from checks not cashed for 180 days from the date of mailing will be paid to Legal  
23 Aid at Work in San Francisco, CA, as a *cy pres* recipient. (Bibiyan Decl., ¶ 10.)

24 **B. Fairness of the Settlement**

25 Plaintiffs assert that the settlement is fair and was reached through arm’s-length  
26 negotiation and mediation following extensive factual and legal investigation and research.  
27 Plaintiffs estimate a maximum recovery of \$2,367,469.26.

28 Overall, the Court finds that the settlement is fair. The settlement is in a reasonable range  
given the maximum recoverable amount. It provides for some recovery for each class member  
and eliminates the risk and expense of further litigation.

1           **C. Incentive Award, Fees, and Costs**

2         Plaintiffs request incentive awards of \$7,500 for each of the two class representatives.

3         The rationale for making enhancement or incentive awards to named plaintiffs is  
4         that they should be compensated for the expense or risk they have incurred in  
5         conferring a benefit on other members of the class. An incentive award is  
6         appropriate if it is necessary to induce an individual to participate in the suit.  
7         Criteria courts may consider in determining whether to make an incentive award  
8         include: 1) the risk to the class representative in commencing suit, both financial  
9         and otherwise; 2) the notoriety and personal difficulties encountered by the class  
10        representative; 3) the amount of time and effort spent by the class representative;  
11        4) the duration of the litigation and; 5) the personal benefit (or lack thereof)  
12        enjoyed by the class representative as a result of the litigation. These “incentive  
13        awards” to class representatives must not be disproportionate to the amount of  
14        time and energy expended in pursuit of the lawsuit.

15        (*Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394-1395, quotation marks,  
16        brackets, ellipses, and citations omitted.)

17        Prior to the final approval hearing, the class representatives shall submit declarations  
18        detailing their participation in the action. The court will make a determination at that time.

19        The court also has an independent right and responsibility to review the requested  
20        attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los  
21        Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel will  
22        seek attorney fees of \$150,000 (1/3 of the total settlement fund). Plaintiffs’ counsel shall submit  
23        lodestar information (including hourly rates and hours worked) prior to the final approval  
24        hearing in this matter so the court can compare the lodestar information with the requested fees.  
25        Plaintiffs’ counsel shall also submit evidence of actual, incurred costs.

26           **D. Conditional Certification of Class**

27        Plaintiffs request that the putative class be conditionally certified for purposes of the  
28        settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an  
29        order approving or denying certification of a provisional settlement class after [a] preliminary  
30        settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a  
31        class “when the question is one of a common or general interest, of many persons, or when the  
32        parties are numerous, and it is impracticable to bring them all before the court . . . .” As  
33        interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and

1 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*  
2 *Superior Court* (2004) 34 Cal.4th 319, 326.)

3       The “community-of-interest” requirement encompasses three factors: (1) predominant  
4 questions of law or fact; (2) class representatives with claims or defenses typical of the class;  
5 and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc.*  
6 *v. Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the  
7 probability that each class member will come forward ultimately to prove his or her separate  
8 claim to a portion of the total recovery and whether the class approach would actually serve to  
9 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)  
10 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”  
11 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d  
12 381, 385.)

13       As explained by the California Supreme Court,

14       The certification question is essentially a procedural one that does not ask whether  
15 an action is legally or factually meritorious. A trial court ruling on a certification  
16 motion determines whether the issues which may be jointly tried, when compared  
17 with those requiring separate adjudication, are so numerous or substantial that the  
18 maintenance of a class action would be advantageous to the judicial process and  
19 to the litigants.

20       (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation  
21 marks, ellipses, and citations omitted.)

22       Nearly 200 putative class members have been identified. Class members can be  
23 ascertained from Defendant’s records. There are common questions regarding whether  
24 Defendant subjected class members to common practices regarding certain wage and hour  
25 violations. No issue has been raised regarding the typicality or adequacy of Plaintiffs as class  
26 representatives. In sum, the court finds that the proposed class should be conditionally certified.

27       **E. Class Notice**

28       The content of a class notice is subject to court approval. “If the court has certified the  
action as a class action, notice of the final approval hearing must be given to the class members  
in the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

Although the notice states class members have the option to appear at the final approval hearing, it also states that objections must be in writing and filed. The notice shall be amended to make clear that any class member may appear and make an oral objection at the final approval hearing whether or not a written objection has been filed.

Additionally, the following language shall be added to the notice:

Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. Class members who wish to appear at the final fairness hearing should contact class counsel to arrange a telephonic appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member will be paid by class counsel.

The amended notice shall be provided to the court for approval prior to mailing.

## IV. CONCLUSION

The motion for preliminary approval of the class action settlement is GRANTED, subject to the modification to the notice. The final approval hearing is set for April 7, 2021, at 1:30 p.m.

Dated: December 9, 2020

Patricia M. Lucas  
Patricia M. Lucas  
Judge of the Superior Court