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Superior Court of California
County of Los Angeles

JUL 13 2022

Sheri R. Carter, Esq. Clerk of Court
Noxanne Arraiga, Deputy

FINAL RULINGS/ORDER RE; MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

George v. Total Professional Network, Inc., et al., Case No.:
20STCV01913

The Parties' Motion for Final Approval of Class action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$2,000,000. (¶III.B) [Class Size Modification: Defendants represented that there are approximately 110,664 workweeks worked by approximately 1,537 Class Members in California during the Class Period. If the actual number of workweeks increases by more than ten percent (10%) (i.e., increase by more than 11,067 workweeks) by the time Plaintiff seeks Final Approval, the Gross Settlement Amount shall increase on a pro-rata basis equal to the percentage increase in the number of workweeks worked by Class Members above 10%.] (¶III.D.5)

B. The Net Settlement Amount ("Net") (\$1,278,583.33) is the GSA minus the following:

- \$666,666.67 (33 1/3%) for attorney fees to Class Counsel, Shakouri Law Firm (¶III.C.2);
- \$11,000 for litigation costs to Class Counsel (Ibid.);
- \$5,000 for a service payment to the named Plaintiff Melvin George;
- \$20,000 for settlement administration costs to Phoenix Class Action Settlement Administration Solutions (¶III.C.4);
- \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA (¶III.C.3).

C. The employer's share of payroll taxes shall not be paid from the Gross Settlement Amount and shall remain the sole responsibility of the Defendants. (¶I.R);

D. Plaintiff agrees to file a request for dismissal of Defendant Nery, without prejudice, within 14 calendar days of executing the Settlement Agreement, provided that the parties enter into a tolling agreement, which will toll all of Plaintiff's class claims against Defendant Nery during the time it will take to obtain court approval of the settlement, and

will allow Plaintiff to re-assert all class claims against Defendant Nery should Defendants fail to pay the Gross Settlement Amount in full, as set forth herein. Defendants will draft said tolling agreement and request for dismissal with a supporting declaration, subject to Plaintiff's review and approval. (¶III.A); and

E. Plaintiffs release of Defendants from claims described herein.

By July 27, 2022, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor Code §2699 (1)(3).

By April 13, 2023, Class Counsel must file a Final Report re: Distribution of the settlement funds.

Court sets a **Non-Appearance Case Review for April 20, 2023, 8:30 AM, Department 9.**

I. INTRODUCTION

A. Background

Plaintiff Melvin George sues his former employer, Defendant Total Professional Network, Inc., for alleged wage and hour violations. Defendant is an employment staffing agency that assigns health care professionals to work at health care facilities throughout California. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On January 16, 2020, Plaintiff filed the initial class action complaint. On July 15, 2020, Plaintiff filed a First Amended Complaint ("FAC"). The operative FAC alleges causes of action for: (1) failure to reimburse for business expenses; (2) failure to pay for all hours worked; (3) failure to pay overtime; (4) failure to pay minimum wage; (5) failure to authorize and/or permit meal breaks; (6) failure to authorize and/or permit rest breaks; (7) failure to furnish accurate wage statements; (8) waiting time penalties; (9) unfair business practices; and (10) Private Attorneys General Act ("PAGA") violations.

On November 23, 2020, the Parties participated in an all-day mediation presided over by Hon. Carl J. West (Ret.), which

did not result in settlement. The Parties continued settlement negotiations and eventually accepted the mediator's settlement proposal and documented their agreement in the form of a Memorandum of Understanding. The settlement terms are finalized in the Class Action Settlement Agreement ("Settlement Agreement").

On November 10, 2021, the Court issued a "checklist" to the parties pertaining to deficiencies in Plaintiff's motion for preliminary approval. In response, the parties filed further briefing, including the Revised Settlement Agreement, a copy of which was filed with the Court.

The Court granted preliminary approval on March 10, 2022.

The Parties now move for final approval of the proposed class action settlement.

B. Definitions

"Class": all non-exempt employees working for Defendant TPN who were assigned to work at any healthcare facility inside California during the Class Period. (§I.B)

"Class Period": January 16, 2016 to April 21, 2021. (§I.D)

"Class Member": member of the Class. (§I.C)

"Participating Class Member": a Class Member who does not submit a valid and timely Election Not to Participate in Settlement. (§I.W)

"PAGA Members": all non-exempt employees working for Defendant TPN who were assigned to work at any healthcare facility inside California during the PAGA Period. The PAGA Members are a subset of the Class Members. (§I.CC)

"PAGA Period": January 16, 2019 to April 21, 2021. (§I.DD)

The parties stipulate to class certification for settlement purposes only. (§II.F)

C. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$2,000,000, non-reversionary. (§III.B)
- Class Size Modification: Defendants has represented that there are approximately 110,664 workweeks worked by approximately 1,537 Class Members in California during the Class Period. In the event the actual number of workweeks increases by more than ten percent (10%) (i.e., increase by more than 11,067 workweeks) by the time Plaintiff seeks Final Approval, the Gross Settlement Amount shall increase on a pro-rata basis equal to the percentage increase in the number of workweeks worked by Class Members above 10%. (§III.D.5)
- The Net Settlement Amount ("Net") (\$1,259,583.33) is the GSA minus the following:
 - Up to \$666,666.67 (33 1/3%) for attorney fees (§III.C.2);
 - Up to \$20,000 for litigation costs (Ibid.);
 - Up to \$10,000 for a service payment to the named Plaintiff (§III.C.1);
 - Up to \$25,000 for settlement administration costs (§III.C.4); and
 - Payment of \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA (§III.C.3).
- The employer's share of payroll taxes shall not be paid from the Gross Settlement Amount and shall remain the sole responsibility of the Defendants. (§I.R)
- Dismissal of Defendant Nery. Plaintiff agrees to file a request for dismissal of Defendant Nery from the lawsuit without prejudice within 14 calendar days of executing the Settlement Agreement, provided that the parties enter into a tolling agreement, which will toll all of Plaintiff's class claims against Defendant Nery during the time it will take to obtain court approval of the settlement, and will allow Plaintiff to re-assert all class claims against Defendant Nery should Defendants fail to pay the Gross Settlement Amount in full, as set forth herein. Defendants will draft said tolling agreement and request for dismissal with a supporting declaration, subject to Plaintiff's review and approval. (§III.A)
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (§I.R)
- Response Deadline. Class members will have 45 calendar days after the Settlement Administrator mails the Class Notice Packets, or 45 calendar days after the Settlement Administrator re-mails the Class Notice Packets to Class Members whose first mailing came back because of an incorrect address, to submit written objections (§III.F.3.a), requests for exclusion (§III.F.3.c), or workweek disputes (§III.F.3.d) to the Settlement Administrator.

- o PAGA Members may not opt of the settlement and will receive the Net PAGA Amount regardless of whether or not they are Non-Participating Class Members. (§III.D.4)
- o Defendants reserve the right to cancel the Settlement in the event the number of Non-Participating Class Members exceeds ten percent (10%) of the Class. (§III.D.4, §III.E.4)
- Individual Settlement Payment Calculation. From the Net Settlement Amount less \$6,250 which is allocated to PAGA Members as provided to in subsection 2 below, the Settlement Share for each Participating Class Member in the Class will be calculated by (a) dividing this amount by the total number of workweeks worked by all Participating Class Members in the Class during the Class Period to determine a dollar amount per workweek ("Workweek Payment"), and (b) multiplying the total number of workweeks worked by each Participating Class Member in the Class during the Class Period by the Workweek Payment. (§III.D.1)
- o PAGA Payments. The value of each PAGA Member's PAGA Share will be based on the number of each PAGA Member's workweeks during the PAGA Period. Specifically, 25% of the approved PAGA Payment allocated to the Net PAGA Amount will be divided by the total number of workweeks worked by all PAGA Members during the PAGA Period, and then taking that number and multiplying it by the number of workweeks worked by each respective PAGA Member. PAGA Members will receive payment from the Net PAGA Amount regardless of their decision to participate in the Action if the PAGA Payment is approved by the Court. (§III.D.2)
- o Tax Allocation. Each individual settlement payment will be allocated as 20% to wages, 80% to penalties and interest. (§III.D.1) The Net PAGA Amount shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. (§III.D.2)
- Funding of Settlement. Within ten (10) calendar days of the Effective Date, Defendant shall begin to pay the Gross Settlement Amount pursuant to the installment plan set forth: (§III.F.10)
 - o Defendant shall pay one million dollars (\$1,000,000) within 10 calendar days of the Effective Date; (§III.F.10.i)
 - o Defendant shall pay five hundred thousand dollars (\$500,000) within 180 days of the Effective Date; and (§III.F.10.ii)
 - o Defendant shall pay five hundred thousand dollars (\$500,000) within 365 days of the Effective Date. (§III.F.10.iii)
- o Distribution of Settlement. Within ten (10) calendar days after receipt of the second installment payment from Defendant, as set forth above, the Settlement Administrator shall make the following distributions: to each Participating Class Member a check for their full Settlement Share, including any Net PAGA

Amount if they qualify for such payment, at their last known home address; the LWDA payment to the LWDA; the awarded settlement administration costs to the Settlement Administrator; the awarded litigation expenses to Class Counsel; and the remaining portion of the second installment to Class Counsel as part of their awarded attorneys' fees. (§III.F.10)

- Within ten (10) calendar days after receipt of the third and last installment payment from Defendant, as set forth above, the Settlement Administrator shall pay Class Counsel the remaining portion of their awarded attorneys' fees. (Ibid.)
- Uncashed Checks. A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If the Settlement Share check of a Participating Class Member remains uncashed by the expiration of the 180-day period, the uncashed funds shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq. for the benefit of those Participating Class Members who did not cash their Settlement Share checks until such time that they claim their property and who will remain bound by the Settlement. (§III.F.12)
- Phoenix Class Action Settlement Administration Solutions will perform notice and settlement administration. (§I.AA)
- The Revised Settlement Agreement was submitted to the LWDA on February 23, 2022. (Supp. Declaration of Ashkan Shakouri ("Shakouri Decl.") ISO Prelim, Exhibit 3)
- Notice of Entry of Judgment will be posted on the administrator's website. (Notice pg. 6)
- Release of Claims - Participating Class Members. Upon funding in full of the Gross Settlement Amount by Defendants, all Participating Class Members who do not timely and validly opt out of the Settlement shall be deemed to have fully and finally released all claims against all Released Parties that were alleged or that could have been alleged based on the facts asserted in in the operative Complaint that occurred during the Class Period. The release expressly excludes all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Class Period and, and the Released PAGA Claims. This release shall be referred to here is the "Released Class Claims." (§III.G.14)
 - o PAGA Release: Upon funding in full of the Gross Settlement Amount by Defendants, all PAGA Members shall also release all Released Parties from all Released PAGA Claims, irrespective of whether they opted out of the Settlement, and will be bound by this PAGA Release. The Released PAGA Claims are defined as the

claims asserted by PAGA Members for alleged violations of the California Labor Code and IWC Wage Order provisions identified in the PAGA Notice sent to the LWDA by Plaintiff and further identified in the operative Complaint that are alleged to have occurred during the PAGA Period ("Released PAGA Claims"). (Ibid.)

o "Released Parties" means Defendant TPN and its former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives and Defendant Carrie Nery. Any of the Released Parties individually shall be referred to as a "Released Party." (¶I.Y)

o Named Plaintiff will additionally provide a general release and §1542 waiver. (¶¶ III.G.15-16.)

II. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On November 23, 2020, the Parties participated in an all-day mediation presided over by Hon. Carl J. West (Ret.), which did not result in settlement. The Parties continued settlement negotiations and eventually accepted the mediator's settlement proposal and documented their agreement in the form of a Memorandum of Understanding. The Parties subsequently finalized the Settlement Agreement. (Shakouri Decl. ISO Prelim ¶5.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that following the filing of the First Amended Complaint, Plaintiff propounded formal discovery including form interrogatories, special interrogatories, and requests for production. Plaintiff also noticed the deposition of Defendant's person most qualified. After Defendant responded to this discovery, Plaintiff reviewed Defendant's discovery responses and document production. After the parties agreed to mediate, the Parties engaged in investigation and the exchange of documents and information in connection with the Action. As part of this process, Defendant provided a sample of time records and payroll records, as well as other documents and information, to Class Counsel. (Id. at ¶10.) Defendant also produced its relevant employment policies, including compensation policies

and timekeeping policies. Plaintiff analyzed the data with the help of expert Berger Consulting Group. (Id. at ¶5.)

In addition, Defendant's COO represents that Defendant operates on slim margins and cannot afford a higher settlement amount or pay the current settlement in a single payment while remaining operational. She represents that the installment payments provided for in the settlement agreement are the maximum that TPN can pay at each juncture and still remain operational. (See Declaration of Carrielee Nery ISO Prelim.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶32.)

4. What percentage of the class has objected? No objectors. (Declaration of Jarrod Salinas ("Salinas Decl." ¶9.)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.) Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

| Violation | Maximum Exposure |
|---------------------------------|------------------|
| Unpaid Wages Including Overtime | \$3,075,860.00 |
| Unreimbursed Expenses | \$230,550.00 |
| Meal and Rest Break Violations | \$2,417,326.00 |
| Wage Statement Penalties | \$1,740,450.00 |
| Waiting Time Penalties | \$9,178,357.00 |
| PAGA Penalties | \$1,779,100.00 |
| Total | \$18,421,643.00 |

(Memo ISO Prelim at 12:24-25:11.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, 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.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *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."].)

4. Amount offered in settlement. Plaintiff's counsel estimated \$18,421,643 maximum exposure. The \$2,000,000 settlement amount represents approximately 10.8% of Defendant's maximum potential damages which, given the uncertain outcomes and Defendant's financial condition, is within the "ballpark of reasonableness."

The \$2,000,000 settlement amount, after the requested deductions, leaves approximately \$1,278,583.33 to be divided among approximately 1,387 participating class members. The resulting payments will average approximately \$921.83 per class member.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement.

Number of class members: 1,387 (Salinas Decl. ¶3.)
Number of notice packets mailed: 1,387 (Id. at ¶5.)
Number of undeliverable notices: 13 (Id. at ¶7.)
Number of opt-outs: 0 (Id. at ¶8.)

Number of objections: 0 (Id. at ¶9.)
 Number of Participating Class Members: 1,387
 Average individual payment: \$921.83 [\$1,278,583.33 Net ÷
 1,387]
 Highest estimated payment: \$3,540.98 (Id. at ¶11.)

The Court concludes that the settlement can be deemed fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of \$666,666.67 in fees and \$11,000 in costs. (Memo ISO Attorneys' Fees at 16:5-11.) The Settlement Agreement provides for fees up to \$666,666.67 (33 1/3%) and costs up to \$20,000 (¶III.C.2).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, class counsel request attorney fees using the percentage method. (Memo ISO Attorneys' Fees at pp. 4-7.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) The fee request represents approximately one-third of the gross settlement amount, which is the average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

Class Counsel provided information, summarized below, from which the lodestar may be calculated.

| Attorneys | Hours | Rates | Totals |
|-----------------|--------|-------|-----------|
| Ashkan Shakouri | 259.60 | \$650 | \$168,740 |
| Sharon Lin | 161.40 | \$650 | \$104,910 |
| Totals | | | \$273,650 |

Counsel's percentage-based fee request is higher than the unadjusted lodestar, which would require the application of an approximate 2.43x multiplier to reach the requested fees. Here,

the \$666,666.67 fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet and no one objected. (Salinas Decl. ¶9, Exhibit A thereto.)

As for costs, Class Counsel is requesting \$11,000. (Shakouri Decl. ISO Final ¶50.) This is lower than the \$20,000 cap provided in the Settlement Agreement, for which Class Members were given notice and did not object. (Salinas Decl. ¶9, Exhibit A thereto.) The costs listed include: Mediation (\$6,450), Complaint Filing Fee (\$1,663.24), and Expert (\$1,215). (Shakouri Decl. ISO Final, Exhibit 4.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the court awards \$666,666.67 for attorneys' fees and \$11,000 for attorneys' costs.

D. Claims Administration Costs

The settlement administrator, Phoenix Settlement Administrators, is asking for \$25,000 for costs of administering the settlement. (Salinas Decl. ¶12.) This is equal to the estimated cost of \$25,000 provided for in the Settlement Agreement (¶III.C.4). However, without explanation, the amount of \$20,000 was disclosed to Class Members in the Notice (Salinas Decl., Exhibit A).

The court awards costs in the amount of \$20,000.

E. Incentive Award to Class Representative

Plaintiff Melvin George seeks an enhancement award of \$10,000 for his contributions to the action. (Declaration of Melvin George ISO Final ¶16.)

In connection with the final fairness hearing, the named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and

effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit' (Id. at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this action include: discussing Defendant's policies and practices with his attorneys and providing documents and information; asking his coworkers to talk to his attorneys about their work experience; being available on the date of mediation; and reviewing the settlement. He estimates spending more than 50 hours on the case. (George Decl. ISO Final ¶¶ 6-11.)

Based on the above, the court grants the enhancement award in the amount of \$5,000 to Plaintiff Melvin George.

III. CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$2,000,000. (¶III.B) [Class Size Modification: Defendants represented that there are approximately 110,664 workweeks worked by approximately 1,537 Class Members in California during the Class Period. If the actual number of workweeks increases by more than ten percent (10%) (i.e., increase by more than 11,067 workweeks) by the time Plaintiff seeks Final Approval, the Gross Settlement Amount shall increase on a pro-rata basis equal to the percentage increase in the number of workweeks worked by Class Members above 10%.] (¶III.D.5)

B. The Net Settlement Amount ("Net") (\$1,278,583.33) is the GSA minus the following:

\$666,666.67 (33 1/3%) for attorney fees to Class Counsel, Shakouri Law Firm (¶III.C.2);
\$11,000 for litigation costs to Class Counsel (Ibid.);
\$5,000 for a service payment to the named Plaintiff Melvin George;

\$20,000 for settlement administration costs to Phoenix Class Action Settlement Administration Solutions (¶III.C.4); \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA (¶III.C.3).

C. The employer's share of payroll taxes shall not be paid from the Gross Settlement Amount and shall remain the sole responsibility of the Defendants. (¶I.R);

D. Plaintiff agrees to file a request for dismissal of Defendant Nery, without prejudice, within 14 calendar days of executing the Settlement Agreement, provided that the parties enter into a tolling agreement, which will toll all of Plaintiff's class claims against Defendant Nery during the time it will take to obtain court approval of the settlement, and will allow Plaintiff to re-assert all class claims against Defendant Nery should Defendants fail to pay the Gross Settlement Amount in full, as set forth herein. Defendants will draft said tolling agreement and request for dismissal with a supporting declaration, subject to Plaintiff's review and approval. (¶III.A); and

E. Plaintiffs release of Defendants from claims described herein.

3) By July 27, 2022, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor Code §2699 (1)(3).

4) By April 13, 2023, Class Counsel must file a Final Report re: Distribution of the settlement funds.

5) Court sets a Non-Appearance Case Review for April 20, 2023, 8:30 AM, Department 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: July 13, 2022

YVETTE M. PALAZUELOS

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JUDGE OF THE SUPERIOR COURT