

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 7

19STCV01581

JOSE ROSALES, et al. vs IDT AMERICA, CORP., et al.

September 21, 2021

11:00 AM

Judge: Honorable Amy D. Hogue

Judicial Assistant: A. Morales

Courtroom Assistant: T. Bivins

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement

The parties having submitted on the Court's tentative ruling, the Court now rules as follows:

The Motion for Preliminary Approval of Settlement filed by Jose Rosales, Gloria Romero on 01/29/2021 is Granted.

The Order Granting Motion for Preliminary Approval of Class Action Settlement is signed and filed this date.

Fairness Hearing (Final) is scheduled for 02/02/2022 at 11:00 AM in Department 7 at Spring Street Courthouse.

The deadline to file motion for final approval of settlement is 16 court days prior to the Final Fairness Hearing.

The clerk is to give notice.

Clerk's Certificate of Service By Electronic Service is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 09/21/2021 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>A. Morales</u> Deputy
PLAINTIFF: Jose Rosales et al		
DEFENDANT: IDT America, Corp. et al		
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6		CASE NUMBER: 19STCV01581

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Minute Order entered herein, on 09/21/2021, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on Case Anywhere at secure.caseanywhere.com on 09/21/2021 from my place of business, Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012 in accordance with standard court practices.

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 09/21/2021

By: A. Morales

Deputy Clerk

FILED
Superior Court of California
County of Los Angeles

SEP 21 2021

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JOSE ROSALES and GLORIA ROMERO
as individuals and on behalf of all similarly
situated employees,

Plaintiff,

vs.

IDT AMERICA, CORP., a New Jersey
Corporation; IDT DOMESTIC TELECOM
INC. a Delaware Corporation; IDT
INTERNATIONAL CORP. a New Jersey
Corporation and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 19STCV01581

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

Date: September 21, 2021

Dept.: SSC-7

Time: 11:00 a.m.

I. BACKGROUND

This is a wage and hour class action. On January 22, 2019, Plaintiffs Rosales and Romero filed a class action complaint against Defendants alleging: (1) failure to provide required meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to timely pay wages

1 during employment; (6) failure to pay all wages due to discharged and quitting
2 employees; (7) failure to maintain required records; (8) failure to furnish accurate
3 itemized wage statements; (9) failure to indemnify employees for necessary business
4 expenditures incurred in the discharge of duties; (10) unfair and unlawful business
5 practices (violation of Business And Professions Code Section 17200 et seq. (unfair
6 competition law); and (11) penalties under the labor code Private Attorneys General
7 Act ("PAGA").

8 On or about December 23, 2019, Plaintiff Jose Rosales filed a request to be
9 withdrawn as the class representative, without prejudice, and filed an individual action,
10 alleging some of the same causes of action against Defendant. Plaintiff Romero chose
11 to move forward with the case as the class representative.

12 Counsel represents that, the parties engaged in formal written discovery,
13 including Special Interrogatories, Form Interrogatories-General, Form Interrogatories-
14 Employment, Request for Admissions, and Request for Production of Documents. After
15 engaging in formal discovery, the Parties agreed to participate in mediation with the
16 hope of reaching a resolution. Defendants produced the entire personnel files for
17 Plaintiff, information regarding the class size, Defendants' policies including, but not
18 limited to, meal, rest, and timekeeping policies, a random sampling of class members'
19 time records and corresponding payroll records, and average rate of pay.

20 On July 23, 2020, the Parties attended an unsuccessful mediation with Steven
21 Rottman, Esq. Thereafter, the Parties continued to negotiate with the help of Mr.
22 Rottman and were able to reach an agreement in principle on August 3, 2020.

23 A copy of the fully executed Settlement Agreement was attached to the
24 Declaration of Berkeh Alemzadeh ("Alemzadeh Decl.") as Exhibit A.
25

1 On February 26, 2021, the Court issued a checklist of items for the parties to
2 address and continued preliminary approval. In response, on April 27, 2021, counsel
3 filed an Addendum to the Settlement Agreement (“Addendum”) attached to the
4 Supplemental Declaration of Berkeh Alemzadeh (“Alemzadeh Supp. Decl.”) as Exhibit
5 A.

6 On May 19, 2021, the Court issued a checklist of items for the parties to address
7 and continued preliminary approval. In response, on August 27, 2021, counsel filed an
8 Amended Settlement Agreement attached to the Second Supplemental Declaration of
9 Berkeh Alemzadeh (“Alemzadeh 2nd Supp. Decl.”) as Exhibit E.

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

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

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

16 Class: All persons who are or were retained by Defendants as Retail Account
17 Managers who performed services in the State of California during the Class Period.
18 (Settlement Agreement, ¶I.E.)

19 Class Period: The time period from January 22, 2015, through the date the Court
20 grants preliminary approval of the Settlement. (¶I.I)

21 Eligible Aggrieved Employees: The aggrieved employees eligible to recover the
22 PAGA payment shall consist of all persons who are or were retained by Defendants to
23 be Retail Account Managers and who performed services in the State of California
24 during the PAGA Period. (¶I.Q)

1 PAGA Period: The time period from January 22, 2018, through the date the
2 Court grants preliminary approval of the Settlement. (¶I.Z)

3 Defendants estimate the class size is approximately 103 class members with
4 4,921 pay periods as of June 1, 2020. This estimate serves as the basis for Plaintiffs
5 accepting the settlement. Should the class size (as of June 1, 2020) be shown to have
6 increased by over fifteen percent, the Settlement will increase proportionately by the
7 amount of change. (i.e., meaning that if the class size increases by 16% as of June 1,
8 2020, then settlement will increase by 16%). No additional payment shall be required
9 unless the class size as of June 1, 2020 is shown to have increased by more than 15%.
10 (¶III.K.2.b)

11 The Parties stipulate and agree to the conditional certification of this Action for
12 purposes of this Settlement only. (¶III.E)

13 **B. THE MONETARY TERMS OF SETTLEMENT**

14 The essential monetary terms are as follows:

15 The Gross Fund Value (“GFV”) is \$500,000. (¶I.T). This includes payment of a
16 PAGA penalty of \$10,000 to be paid 75% to the LWDA (\$7,500) and 25% to the
17 Aggrieved Employees (\$2,500) (¶III.Y);

18 The Net Settlement Amount (“Net”) (\$280,833.34) is the GFV less:

- 19 • Up to **\$166,666.66** (1/3) for attorney’s fees (¶III.I.2);
 - 20 ○ **Fee Split:** 65% to Mahoney Law Group and 35% to Work Lawyers,
21 PC. (Exhibit C to Alemzadeh 2nd Supp. Decl.)
- 22 • Up to **\$20,000** for attorney’s costs (¶III.I.2);
- 23 • Up to **\$7,500** for a service award to the class representative Gloria Romero
24 (¶III.I.1); and
- 25 • Estimated **\$15,000** for class administration costs (¶III.I.4); and

1 • **\$10,000** allocated as PAGA Penalties. (§III.Y)

2 • Defendants shall be solely responsible for Defendants' share of payroll taxes. No
3 payment of Defendants' share of payroll taxes shall be made from the NFV or
4 GFV. (§III.B)

5 • Assuming the Court approves all maximum requested deductions, approximately
6 \$280,833.34 will be available for automatic distribution to participating class
7 members. Assuming full participation, the average settlement share will be
8 approximately \$2,726.54. ($\$280,833.34 \text{ Net} \div 103 \text{ class members} = \$2,726.54$).
9 In addition, each class member will receive a portion of the PAGA penalty,
10 estimated to be \$24 per class member. ($\$2,500 \text{ (25\% of \$10,000 PAGA penalty)}$
11 $\div 103 \text{ class members} = \24)

12 • There is no Claim Requirement (§I.U).

13 • The settlement is not reversionary (§I.T).

14 • Individual Settlement Share Calculation. Each Participating Class Member will
15 receive a proportionate share of the Net Fund Value that is equal to (i) the
16 number of pay periods worked based on the Class data provided by Defendant,
17 divided by the Net Fund Value. Therefore, the value of each Class Member's
18 Individual Settlement Share ties directly to the amount of pay periods that he or
19 she worked. (§III.H.1.a)

20 ○ Tax Allocation: 33% as wages; 67% as interest and penalties. (§III.H.2)

21 • PAGA Payments: The Settlement Administrator shall pay each Eligible
22 Aggrieved Employee according to their proportional share, which will be based
23 upon the total number of pay periods during the PAGA Timeframe. From the
24 settlement, the individual share will be calculated by determining the total
25 number of pay periods worked by the Eligible Aggrieved Employees during the

1 PAGA Period (i.e., the sum of all pay periods worked by each Eligible
2 Aggrieved Employee) and dividing that number into the \$2,500 amount
3 allocated to Eligible Aggrieved Employees to determine the monetary value
4 assigned to each pay period worked. That number will then be multiplied by the
5 individual Eligible Aggrieved Employee's total number of pay periods worked
6 during the PAGA Period to determine that individual's proportional share. Each
7 Eligible Aggrieved Employee shall receive his/her individual proportional share
8 regardless of whether he/she opts out of the Class Settlement. (§III.I.6)

9 ○ Tax Allocation: 100% penalties. (*Ibid.*)

- 10 ● **Uncashed Checks to Class Members:** Participating Class Members must cash or
11 deposit their Individual Settlement Share checks within 180 calendar days after
12 the checks are mailed to them. If any checks are not redeemed or deposited
13 within 90 days after mailing, the Settlement Administrator will send a reminder
14 postcard indicating that unless the check is redeemed or deposited in the next 90
15 days, it will expire and become non-negotiable, and offer to replace the check if
16 it was lost or misplaced. If any checks remain uncashed or not deposited by the
17 expiration of the 90-day period after mailing the reminder notice, the Settlement
18 Administrator will, within 200 calendar days after the checks are mailed, pay the
19 amount of the Individual Settlement Share to the shall be transferred to the
20 California's Secretary of State - Unclaimed Property Fund under the unclaimed
21 property laws in the name of the Class Member/Eligible Aggrieved Employee.
22 (§III.K.10)

- 23 ● **Uncashed Checks to Aggrieved Employees:** Settlement checks issued to the
24 Eligible Aggrieved Employees pursuant to this Joint Stipulation and Settlement
25 Agreement shall expire 180 days from the date they are issued by Defendants.

1 Any unclaimed funds after the 180 days shall be turned over by the Settlement
2 Administrator, with information for each Eligible Aggrieved Employee who
3 failed to timely cash his/her settlement check, to the California State Controller's
4 in the name of the Eligible Aggrieved Employee. (¶III.I.6)

- 5 • Funding of Settlement Account: Provided there is an Effective Settlement
6 Agreement, no later than 14 calendar days after the Effective Final Settlement
7 Date Defendants shall pay the Gross Fund Value of \$500,000 and any
8 apportioned employer's share of payroll taxes into the Qualified Settlement
9 Fund. (¶III.K.9.a)

10 **C. TERMS OF RELEASES**

11
12 Upon Defendants' fulfillment of their payment obligations, Class Members who do
13 not submit a timely and valid request for exclusion hereby waive, release, promise
14 never to assert in any forum, remise and forever discharge the Released Parties from the
15 Released Claims for the time frame of the Class Period. (¶III.L)

- 16 • Released Claims: The claims that Plaintiffs, the other Participating Class
17 Members, and all persons purporting to act on their behalf or purporting to assert
18 a claim under or through them, including but not limited to, their dependents,
19 attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors,
20 administrators, trustees, conservators, guardians, personal representatives, and
21 successors-in-interest, whether individual, class, representative, legal, equitable,
22 direct or indirect, or any other type or in any other capacity (collectively, the
23 "Releasing Parties") are fully and forever irrevocably releasing, in exchange for
24 the consideration provided for by this Agreement, any and all causes of action,
25 claims, rights, damages, punitive or statutory damages, penalties, liabilities,

1 expenses, and losses arising from or related to the acts, facts, transactions,
2 theories, occurrences, representations, or omissions set forth, or which were
3 alleged or could have been alleged against any of the Released Parties arising
4 out of, in connection with, or based on the facts alleged in the operative
5 complaints in this Action through the date of Preliminary Approval, including
6 but not limited to (a) any and all alleged failure by Defendants to pay wages,
7 minimum wages, and overtime; (b) any and all alleged failure by Defendants to
8 timely pay wages at termination (c) any and all alleged failure by Defendants to
9 provide meal or rest periods premiums; (d) any and all alleged failure by
10 Defendants to deposit wages at a place of business located in the state of
11 California; (e) any and all alleged failure by Defendants to provide compliant
12 wage statements; (f) any and all alleged failure by Defendants to reimburse
13 business expenses; (g) any and all right or claim for civil penalties pursuant to
14 the Labor Code Private Attorneys General Act of 2004, California Labor Code §
15 2698 et seq., or any other penalties arising under the Labor Code or Wage Order
16 arising from or related to the conduct alleged; (h) any and all right or claim for
17 unfair business practices in violation of California Business & Professions Code
18 § 17200 et seq. arising from or related to the conduct alleged; and (i) any and all
19 violations or breaches of the California Labor Code arising from or related to the
20 conduct alleged, including without limitation, Labor Code section 201, 202, 203,
21 212, 226, 226.7, 510, 512, 558, 1194, 1199, 2800, 2802, or any other state
22 statute, rule and/or regulation, or similar causes of action arising from or relating
23 to the conduct alleged or that could have been alleged. Notwithstanding the
24 above, the Parties understand and agree that the release in this Settlement does
25 not apply to (i) those rights that as a matter of law cannot be released and/or

1 waived, including, but not limited to, workers' compensation claims; (ii) rights
2 or claims that may arise after the close of the Class Period; and (iii) rights or
3 claims arising out of this Settlement. (¶I.EE)

- 4 • Released Parties: Defendants, their subsidiaries, acquired companies, parents,
5 predecessors or successors in interest, and each of their respective past or present
6 officers, directors, shareholders, employees, attorneys, agents, assigns, members,
7 investors, principals, heirs, representatives, accountants, auditors, consultants,
8 insurers and reinsurers, and their respective successors and predecessors in
9 interest, subsidiaries, parents, attorneys, and any individual or entity that could
10 be jointly liable with any of the foregoing. (¶I.FF)
- 11 • As of the Effective Final Settlement Date, this settlement forever bars Plaintiffs,
12 the LWDA, and any other representative, proxy, or agent thereof, including, but
13 not limited to, any and all Eligible Aggrieved Employees during the PAGA
14 Period, from pursuing any action for civil penalties under the California Labor
15 Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, et
16 seq., against, the Released Parties based on or arising out of alleged violations of
17 Labor Code sections alleged in the operative complaint and Plaintiff Rosales'
18 notice to the LWDA dated September 11, 2018. Eligible Aggrieved Employees
19 will be deemed to have released any claims under PAGA whether or not they
20 opt-out of the Settlement.. (¶III.M)
- 21 • Comprehensive Release. Upon Defendants' fulfillment of their payment
22 obligations, Plaintiff is releasing in exchange for the consideration provided for
23 by this Agreement a comprehensive release of all known and unknown claims by
24 Plaintiffs, including a California Civil Code section 1542 waiver arising out of
25 the operative allegations in the Action. (¶I.EE) Plaintiff Romero is providing a

1 general release and CC §1542 waiver as of the Effective Final Settlement Date
2 and in exchange for her Incentive Payments. (¶III.N.)

- 3 • The Releases herein will be effective upon Defendants' fulfillment of their
4 payment obligations. (¶III.L)

5 ///

6 **D. SETTLEMENT ADMINISTRATION**

- 7 • The proposed Settlement Administrator is Phoenix Settlement Administrators.
8 (¶I.II)
- 9 • Settlement administration costs are estimated to be \$15,000. (¶III.I. 4.)
- 10 • Notice: The manner of giving notice is described below.
- 11 • Response Deadline: 60 calendar days from the initial mailing of the Class
12 Notice. (¶I.GG.) Class Members may submit dispute, objections, or requests for
13 exclusion, so long as they are postmarked by the Response Deadline.
14 (¶¶III.K.2.e, III.K.3, III.K.4) Settlement Class Members to whom Notice Packets
15 are resent after having been returned undeliverable to the Settlement
16 Administrator, during the entire Response Deadline, shall have an additional 14
17 calendar days from the date of re-mailing, or until the 60 day Response Deadline
18 has expired, whichever is later, to mail the Request for Exclusion or a Notice of
19 Objection. (¶I.HH)
 - 20 ○ If more than 10% of the Class Members submit requests for exclusion,
21 Defendant, at its sole option, may nullify the settlement. (¶III.K.4.c)

- 1 • Upon Final Approval of the Settlement, the Settlement Administrator will post
2 notice of the Final Approval of the Settlement on its website. (§III.K.6.c)

3 **D. ATTORNEYS' FEES**
4

5 Counsel for the proposed class seek \$166,666.66 (33 1/3 %) in attorney's fees and
6 \$205,000 in costs. (§III.I.2)

7 Plaintiffs have agreed to the following Fee Split: 65% to Mahoney Law Group and
8 35% to Work Lawyers, PC. (Exhibit C to Alemzadeh 2nd Supp. Decl.)

9 **E. SERVICE AWARD**

10 The named plaintiff seeks an enhancement awards of \$7,500. (§III.I.1).

11 **III. SETTLEMENT STANDARDS AND PROCEDURE**
12

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

20 "In a class action lawsuit, the court undertakes the responsibility to assess
21 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
22 dismissal of a class action. The purpose of the requirement [of court review] is the
23 protection of those class members, including the named plaintiffs, whose rights may not
24 have been given due regard by the negotiating parties." *Consumer Advocacy Group,*
25 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal

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

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

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

1 experience and views of counsel, the presence of a governmental participant, and the
2 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
3 factors is not exclusive and the court is free to engage in a balancing and weighing of
4 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
5 245.

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

13 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

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

15
16
17 The settlement is entitled to a presumption of fairness for the following reasons:

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

19
20 On July 23, 2020, the Parties attended an unsuccessful mediation with Steven
21 Rottman, Esq. Thereafter, the Parties continued to negotiate with the help of Mr.
22 Rottman and were able to reach an agreement in principle on August 3, 2020.
23 (Alemzadeh Decl., ¶36.)

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

25

1 Counsel represents that, the parties engaged in formal written discovery,
2 including Special Interrogatories, Form Interrogatories-General, Form Interrogatories-
3 Employment, Request for Admissions, and Request for Production of Documents. After
4 engaging in formal discovery, the Parties agreed to participate in mediation with the
5 hope of reaching a resolution. Defendants produced the entire personnel files for
6 Plaintiff, information regarding the class size, Defendants' policies including, but not
7 limited to, meal, rest, and timekeeping policies, a random sampling of class members'
8 time records and corresponding payroll records, and average rate of pay. (*Id.* at ¶¶28-
9 29, 35.) 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 ¶¶4-6.)

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

22
23 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
24 entirety. The evaluation of any settlement requires factoring unknowns. "As the court
25 does when it approves a settlement as in good faith under Code of Civil Procedure

1 Section 877.6, the court must at least satisfy itself that the class settlement is within the
2 'ballpark' of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
3 38 Cal.3d 488, 499–500. While the court is not to try the case, it is 'called upon to
4 consider and weigh the nature of the claim, the possible defenses, the situation of the
5 parties, and *the exercise of business judgment* in determining whether the proposed
6 settlement is reasonable.' (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
7 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

8 9 **1. Amount Offered in Settlement**

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

12 Class Counsel estimated Defendant’s maximum exposure at **\$3,566,136.00**, and an
13 estimated reduced exposure at **\$792,667.00** based on the following analysis:

14 Violation	Maximum	Discounted
15 Unpaid Wages	\$1,600,000.00	\$80,000.00
16 Meal and Rest Periods	\$333,336.00	\$66,667.00
17 Unreimbursed Expenses	\$1,250,000.00	\$375,000.00
18 Labor Code §226	\$158,000.00	\$158,000.00
19 Labor Code §203	\$206,000.00	\$103,000.00
20 PAGA	\$18,800.00	\$10,000.00
21 Totals	\$3,566,136.00	\$792,667.00

22 (Alemzadeh Decl., ¶¶40-61.)

23
24 Class Counsel obtained a gross settlement valued at \$500,000. This is 14% of
25 Defendant’s maximum exposure and 63% of Defendant’s reduced exposure valuation.

1
2 **2. The Risks of Future Litigation**

3 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
4 motion practice and appeals) are also likely to prolong the litigation as well as any
5 recovery by the class members. Even if a class is certified, there is always a risk of
6 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
7 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
8 conducting class actions, which means, under suitable circumstances, entertaining
9 successive motions on certification if the court subsequently discovers that the propriety
10 of a class action is not appropriate.”].) Further, the settlement was negotiated and
11 endorsed by Class Counsel who, as indicated above, are experienced in class action
12 litigation. Based upon their investigation and analysis, the attorneys representing
13 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
14 adequate. (Mahoney Decl. ¶¶18-19, Alemzadeh Decl. ¶¶36, 38.)

15 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
16 which has been served with a copy of the Settlement Agreement and has not yet objected.
17 Any objection by it will be considered at the final fairness hearing. (Alemzadeh Decl.
18 ¶71.)

19 **3. The Releases Are Limited**

20 The Court has reviewed the Releases to be given by the absent class members and
21 the named plaintiffs. The releases, described above, are tailored to the pleadings and
22 release only those claims in the pleadings. There is no general release by the absent
23 class. The named plaintiff’s general releases is appropriate given that he was
24 represented by counsel in its negotiation.

25 **4. Conclusion**

1 Class Counsel estimated Defendant's maximum exposure at **\$3,566,136.00**, and an
2 estimated reduced exposure at **\$792,667.00**. Class Counsel obtained a gross settlement
3 valued at \$500,000. This is 14% of Defendant's maximum exposure and 63% of
4 Defendant's reduced exposure valuation, which, given the uncertain outcomes, including
5 the potential that the class might not be certified, that liability is a contested issue, and
6 that the full amount of penalties would not necessarily be assessed even if the class is
7 certified and liability found, the settlement is within the "ballpark of reasonableness."

8 9 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

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

12 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
13 advocating class treatment must demonstrate the existence of an ascertainable and
14 sufficiently numerous class, a well-defined community of interest, and substantial
15 benefits from certification that render proceeding as a class superior to the alternatives."

16 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

18 There are 103 putative Class Members. (Motion, 14:12-13.) Numerosity is
19 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
20 Cal.App.5th 369, 393: stating that the "requirement that there be many parties to a
21 class action is liberally construed," and citing examples wherein classes of as little as
22 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
23 (1972) 28 Cal.App.3d 1017, were upheld).

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

25

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

6 The class is defined above. Class Members are ascertainable through
7 Defendant’s employee and payroll files. (Motion, 14:4-5.)

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

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

13 Counsel contends that here, the common factual and legal issues include, among
14 other things: (1) whether Defendants engaged in a common course of failing to provide
15 and/or compensate employees based on the Labor Code and applicable Wage Order
16 requirements for meal periods; (2) whether Defendants engaged in a common course of
17 failing to authorize and permit and/or compensate employees based on the Labor Code
18 and applicable Wage Order requirements for rest periods; (3) whether Defendants failed
19 to pay wages, specifically overtime wages; (4) whether these alleged violations resulted
20 in ancillary violations of Labor Code section 203; and (5) whether these alleged
21 violations are cause for civil penalties under Labor Code sections 2699, et seq. (Motion,
22 14:21-28.)

23 Counsel further contend that the named plaintiffs have claims typical of the class
24 because Plaintiffs worked for Defendants and suffered similar injuries due to Defendant’s
25 policies. (Motion, 15:6-13.)

1 Finally, there appear to be no conflicts of interest between the class and named
2 plaintiff. (Motion, 15:18-28; Declaration of Jose Rosales, *passim*; Declaration of Gloria
3 Romero, *passim*.) Class Counsel have experience in class action litigation. (Moon Decl.,
4 ¶¶39-48.)

5 6 **4. Substantial Benefits Exist**

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

9 10 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 11 OF DUE PROCESS**

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

20 21 **1. Method of class notice**

22 Within 3 business days after entry of the Preliminary Approval Order, Defendants
23 shall deliver to the Settlement Administrator an electronic database, which will list for
24 each Class Member: (1) first and last name; (2) last known mailing address; (3) social
25 security number; and (4) the total number of work weeks performed by the Class Member

1 during the Class Period as a member of the Class (“Database”). If any or all of this
2 information is unavailable to Defendants, Defendants will so inform Class Counsel and
3 the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal
4 with the unavailable information. The Settlement Administrator will conduct a skip trace
5 for the address of all Class Members who no longer have an independent contractor
6 relationship with Defendants. (§III.K.2.)

7 Within 5 business days after receipt of this information from Defendant, the
8 Settlement Administrator will mail the Class Notice to all identified Class Members via
9 first-class regular U.S. Mail, using the mailing address information provided by
10 Defendants and the results of the skip trace performed on all Class Members. (§III.K.2.c.)

11 If a Class Notice is returned because of an incorrect address, within 10 days from receipt
12 of the returned Notice, the Settlement Administrator will conduct a search for a more
13 current address for the Class Member and re-mail the Class Notice to the Class Member.
14 The Settlement Administrator will use the National Change of Address Database and skip
15 traces to attempt to find the current address. The Settlement Administrator will be
16 responsible for taking reasonable steps to trace the mailing address of any Class Member
17 for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These
18 reasonable steps shall include, at a minimum, the tracking of all undelivered mail;
19 performing address searches for all mail returned without a forwarding address; and
20 promptly re-mailing to Class Members for whom new addresses are found. If the
21 Settlement Administrator is unable to locate a better address, the Class Notice shall be re-
22 mailed to the original address. If the Class Notice is re-mailed, the Settlement
23 Administrator will note for its own records the date and address of each re-mailing.

24 (§III.K.2.d)

1 The Settlement Administrator will conduct a skip trace for the address of all
2 former employee Class Members. The Settlement Administrator will translate into
3 Spanish and mail the Class Notice in English and Spanish by first class U.S. mail to all
4 Class Members at the address Defendants have on file for those Class Members or at the
5 address resulting from the skip trace. The Class Notice will inform Class Members that
6 they have until the Response Deadline to either object to the Settlement or to opt-out
7 (exclude themselves) from the Settlement. It will be conclusively presumed that if an
8 envelope so mailed has not been returned within 20 calendar days of the mailing, that the
9 Class Member received the Notice Packet. If a Class member's Notice Packet is returned
10 to the Settlement Administrator more than once as undeliverable, then an additional
11 Notice Packet shall be re-mailed. Nothing further shall be required of, nor done by, the
12 Parties, Class counsel, or Defendant's counsel to provide notice of the Settlement
13 Agreement. Any Class Member who does not receive the Class Notice after the steps
14 outlined above have been taken will still be bound by the Settlement and/or judgment.

15 (¶I.HH)

16 **2. Content of class notice.**

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

1 **3. Settlement Administration Costs**

2 The Settlement Agreement provides for a maximum of **\$15,000** for Settlement
3 administration costs including the cost of notice. Prior to the time of the final fairness
4 hearing, the settlement administrator must submit a declaration attesting to the total
5 costs incurred and anticipated to be incurred to finalize the settlement for approval by
6 the Court.

7
8 **E. ATTORNEY FEES AND COSTS**

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

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

1 The question of class counsel's entitlement to **\$166,666.66** (33 1/3%) in attorney
2 fees will be addressed at the final fairness hearing when class counsel brings a noticed
3 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
4 the court with current market tested hourly rate information and billing information so
5 that it can properly apply the lodestar method and must indicate what multiplier (if
6 applicable) is being sought.

7 Class counsel should also be prepared to justify the costs sought (capped at
8 **\$20,000**) by detailing how they were incurred.

9
10 **F. SERVICE AWARD**

11 The Settlement Agreement provides for a service award of up to **\$7,500**. Trial
12 courts should not sanction enhancement awards of thousands of dollars with "nothing
13 more than *pro forma* claims as to 'countless' hours expended, 'potential stigma' and
14 'potential risk.' Significantly more specificity, in the form of quantification of time and
15 effort expended on the litigation, and in the form of reasoned explanation of financial or
16 other risks incurred by the named plaintiffs, is required in order for the trial court to
17 conclude that an enhancement was 'necessary to induce [the named plaintiff] to
18 participate in the suit'" *Clark v. American Residential Services LLC* (2009) 175
19 Cal.App.4th 785, 806-807, italics and ellipsis in original.

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

23 The Court will decide the issue of the enhancement award at the time of final
24 approval.

1 **V. CONCLUSION AND ORDER**

2 The Court hereby:

3 (1) Grants preliminary approval of the settlement as fair, adequate, and
4 reasonable;

5 (2) Grants conditional class certification;

6 (3) Appoints Gloria Romero as Class Representative and Jose Rosales PAGA
7 representative;

8 (4) Appoints Mahoney Law Group, APC and Work Layers, PC, as Class
9 Counsel;

10 (5) Appoints tor Phoenix Class Action Administration Solutions as Settlement
11 Administrator;

12 (6) Approves the proposed notice plan; and

13 (7) Approves the proposed schedule of settlement proceedings as follows:

- 14 • Preliminary approval hearing: September 21, 2021;
- 15 • Deadline for Defendant to provide class list to settlement administrator: October
16 12, 2021;
- 17 • Deadline for settlement administrator to mail notices: October 19, 2021;
- 18 • Deadline for class members to opt out: December 20, 2021;
19 Deadline for class members to object: December 20, 2021;
- 20 • Deadline for class counsel to file motion for final approval (16 court days prior
21 to final fairness hearing); final fairness hearing: February 2, 2022 at 11:00 a.m..

22
23
24 Dated: Sept. 21, 2021



AMY D. HOGUE

Judge of the Superior Court