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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**  
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12 TINA TALMOUD, individually, and on behalf of  
13 other members of the general public similarly  
14 situated and on behalf of other aggrieved  
employees pursuant to the California Private  
Attorneys General Act,

15 Plaintiff,

16 vs.

17 RETAIL GROUP OF AMERICA LLC, an  
18 unknown business entity; and DOES 1 through  
100, inclusive,

19 Defendants.  
20

Case No. 20CV362101

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

21 The above-entitled matter came on for hearing on Wednesday, September 29, 2021, at  
22 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and  
23 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,  
24 September 28, 2021. No party contested the tentative ruling; therefore, the court orders that the  
25 tentative ruling be adopted as the order of the court, as follows:

26 **I. INTRODUCTION**

27 This is a putative class and representative action arising out various alleged wage and  
28 hour violations. The First Amended Class Action Complaint, filed on May 22, 2020, sets forth

1 the following causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid  
2 Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period  
3 Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);  
4 (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);  
5 (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);  
6 (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);  
7 (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);  
8 (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);  
9 (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);  
10 (10) Violation of California Business & Professions Code §§ 17200, et seq.); and (11) Violation  
11 of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act  
12 of 2004).

13 The parties have reached a settlement. Plaintiff Tina Talmoud (“Plaintiff”) moves for an  
14 order preliminarily approving the settlement, provisionally certifying the putative class for  
15 settlement purposes, appointing Plaintiff as the class representative, and appointing Plaintiff’s  
16 counsel as class counsel.

## 17 **II. LEGAL STANDARD**

18 Generally, “questions whether a settlement was fair and reasonable, whether notice to the  
19 class was adequate, whether certification of the class was proper, and whether the attorney fee  
20 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*  
21 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*  
22 (1996) 48 Cal.App.4th 1794 (*Dunk*).

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

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

4 “The list of factors is not exclusive and the court is free to engage in a balancing and  
5 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91  
6 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the  
7 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
8 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
9 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48  
10 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

11 The burden is on the proponent of the settlement to show that it is fair and  
12 reasonable. However “a presumption of fairness exists where: (1) the settlement  
13 is reached through arm’s-length bargaining; (2) investigation and discovery are  
sufficient to allow counsel and the court to act intelligently; (3) counsel is  
experienced in similar litigation; and (4) the percentage of objectors is small.”

14 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

### 15 **III. DISCUSSION**

#### 16 **A. Provisions of the Settlement**

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

18 [A]ll current and former hourly-paid or non-exempt individuals employed by  
19 Defendant within the State of California at any time during the Class Period.

20 (Declaration of Heather Davis in Support of Motion for Preliminary Approval of Class Action  
21 Settlement (“Davis Dec.”), ¶ 22 & Ex. 1 (“Settlement Agreement”), ¶ 6.) The term “Class  
22 Period” means the period from January 22, 2016 to June 8, 2021. (*Id.* at ¶ 7.)

23 According to the terms of settlement, defendant Retail Group of America LLC  
24 (“Defendant”) will pay a total non-reversionary amount of \$350,000 in settlement of all claims in  
25 the action. (Davis Dec., ¶¶ 24 & 34, & Settlement Agreement, ¶¶ 14, 27, & 35.) The total  
26 settlement payment includes attorney fees of \$122,500, costs up to \$20,000, an incentive award  
27 of \$6,500 for Plaintiff, settlement administration costs up to \$10,000, and a PAGA allocation of  
28 \$50,000 (\$37,500 of which will be paid to the Labor and Workforce Development Agency).  
(Davis Dec., ¶ 25 & Settlement Agreement, ¶¶ 35 & 40-44.) The net settlement of

1 approximately \$141,000 will be distributed to class members pro rata based on their weeks  
2 worked during the applicable class period. (Davis Dec., ¶ 26 & Settlement Agreement, ¶¶ 44-  
3 45.) Additionally, class members who were employed by Defendant during the PAGA period,  
4 February 25, 2019 to June 8, 2021, shall receive a pro-rata share of the funds from the PAGA  
5 payment allocated for distribution to aggrieved employees. (Davis Dec., ¶ 27 & Settlement  
6 Agreement, ¶¶ 19-20, 43, & 45.)

7 Defendant will fund the total settlement amount in 13 separate payments as follows:  
8 within three business days after preliminary approval of the settlement or December 10, 2021  
9 (whichever occurs later), Defendant will deposit an initial payment of \$200,000 into a Qualified  
10 Settlement Fund to be established by the settlement administrator; Defendant will deposit the  
11 remaining \$150,000 in 12 monthly installments with the first payment being made within one  
12 month after the initial funding date. (Settlement Agreement, ¶ 38.) Within 14 days of the  
13 complete funding of the settlement, the settlement administrator will issue the payments  
14 provided for under the terms of the settlement. (Settlement Agreement, ¶ 39.) Checks not  
15 cashed for 180 days from the date of mailing will be sent to Legal Aid At Work as a *cy pres*  
16 recipient. (Davis Dec., ¶ 32 & Settlement Agreement, ¶ 59.)

17 **B. Fairness of the Settlement**

18 Plaintiff asserts that the settlement is fair, reasonable, and adequate, given the strength of  
19 her claims, the inherent risks of litigation, including substantial risks relative to class certification  
20 and the merits of the claims, and the costs of pursuing litigation. Plaintiff contends that  
21 Defendant's maximum potential exposure is approximately \$1,500,841, and Defendant's  
22 adjusted estimated liability, in light of the various risks, is \$325,979.38. Plaintiff states that she  
23 conducted significant discovery and investigation. Plaintiff also presents evidence that her  
24 counsel is experienced in similar litigation. Lastly, Plaintiff states that the settlement is the result  
25 of extensive arm's-length negotiations between the parties and their counsel and was facilitated  
26 by an experienced mediator, attorney Jeffrey A. Ross.

27 Here, the settlement is entitled to a presumption of fairness. It was reached through  
28 arm's-length bargaining after mediation and extensive discovery. Additionally, the experience

1 of Plaintiff's counsel in wage and hour and class action litigation is supported by declaration.  
2 Overall, the court finds that the settlement is fair as it provides for some recovery for each class  
3 member and eliminates the risk and expense of further litigation.

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

5 Plaintiff requests an incentive award of \$6,500.

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

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

20 The class representative provides a declaration detailing her participation in the lawsuit.  
21 She states that she searched for and provided documents to class counsel, discussed Defendant's  
22 policies, practices, and procedures with class counsel, answered class counsel's questions, and  
23 frequently discussed the case with class counsel. (Declaration of Tina Talmoud in Support of  
24 Motion for Preliminary Approval of Class Action Settlement, ¶¶ 5-10.)

25 The class representative's efforts in the case resulted in a benefit to the class. Moreover,  
26 Plaintiff undertook risk by putting her name on the case because she may have been responsible  
27 for costs if she lost the case and because it might impact her future employment. (See *Covillo v.*  
28 *Specialty's Cafe* (N.D. Cal. 2014) 2014 WL 954516, at \*8 [incentive awards are particularly  
appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action  
against an employer].) Accordingly, the court finds the service award is warranted and it is  
approved.

The court also has an independent right and responsibility to review the requested  
attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*

1 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel will  
2 seek attorney fees of \$122,500 (35 percent of the total settlement fund). The court notes that a  
3 fee award of 35 percent of the total settlement fund is somewhat higher than it typically  
4 approves. Plaintiff’s counsel shall submit lodestar information (including hourly rates and hours  
5 worked) prior to the final approval hearing in this matter so the court can compare the lodestar  
6 information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th  
7 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee  
8 through a lodestar calculation].) Plaintiff’s counsel shall also submit evidence of actual costs  
9 incurred.

10 **D. Conditional Certification of Class**

11 Plaintiff requests that the putative class be conditionally certified for purposes of the  
12 settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an  
13 order approving or denying certification of a provisional settlement class after [a] preliminary  
14 settlement hearing.” Code of Civil Procedure Section 382 authorizes certification of a class  
15 “when the question is one of a common or general interest, of many persons, or when the parties  
16 are numerous, and it is impracticable to bring them all before the court . . . .” As interpreted by  
17 the California Supreme Court, that statute requires: (1) an ascertainable class; and (2) a well-  
18 defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior*  
19 *Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).

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

1 As explained by the California Supreme Court,

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

8 (*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

9 Plaintiff states that there are approximately 399 class members. Class members can be  
10 ascertained from Defendant’s records. (See *Rose v. City of Hayward* (1981) 126 Cal. App. 3d  
11 926, 932, disapproved of on another ground by *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955  
12 [holding that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by  
13 reference to official records”]; see also *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966,  
14 975-976 [“The defined class of all HD Package subscribers is precise, with objective  
15 characteristics and transactional parameters, and can be determined by DIRECTV’s own account  
16 records. No more is needed.”].) It would be inefficient for the court to hear and decide the same  
17 issues separately and repeatedly for each class member. Additionally, it would be cost  
18 prohibitive for each class member to file suit individually, as each member would have the  
19 potential for little to no monetary recovery. Furthermore, there are common questions regarding  
20 whether class members were subjected to uniform practices that violated wage and hour laws.  
21 No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative.  
22 In sum, the court finds that a class action provides substantial benefits to both the litigants and  
23 the court, and the proposed class should be conditionally certified. The court further appoints  
24 Plaintiff as settlement class representative and Plaintiff’s counsel as class counsel.

25 **E. Class Notice**

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

1 The notice generally complies with the requirements for class notice. (See Settlement  
2 Agreement, Ex. A.) It provides basic information about the settlement, including the settlement  
3 terms, and procedures to object or request exclusion.

4 The form of notice is generally adequate, but it must be modified to instruct class  
5 members that they may object or request to be excluded from the class by simply providing their  
6 name, without the need to provide their address or other identifying information.

7 In addition, although the notice states that class members can attend the final approval  
8 hearing, the notice must be amended to make clear that any class member may appear and make  
9 an oral objection at the final approval hearing without submitting a written objection or  
10 providing any advance notice.

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

12 Class members may appear at the final approval hearing either in person in the  
13 courtroom or by telephone via CourtCall. Class members who wish to appear by  
14 CourtCall should contact class counsel at least three days before the hearing if  
15 possible, to arrange a telephonic appearance. Any CourtCall fees for an  
16 appearance by an objecting class member will be paid by class counsel.

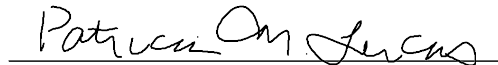
17 The amended notice shall be provided to the court for approval prior to mailing.

18 **IV. CONCLUSION**

19 The motion for preliminary approval of the class action settlement is GRANTED, subject  
20 to the modifications to the notice. The final approval hearing is set for January 5, 2022, at 1:30  
21 p.m.

22 The Case Management Conference set for September 29, 2021, is vacated.

23 Dated: September 29, 2021



24 Patricia M. Lucas  
25 Judge of the Superior Court  
26  
27  
28