

CONFORMED COPY  
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Superior Court of California  
County of Los Angeles

FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT

APPROVED  
MAR 10 2022  
Sheri Carter, Executive Officer/Clerk of Court  
By: Roxanne Arraiga, Deputy

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

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

The essential terms are, among other things:

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") (\$1,259,583.33) 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);
- \$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.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **September 9, 2022**. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

**Non-Appearance Case Review is set for September 16, 2022, 8:30 a.m., Department 9.**

#### I.

#### 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") alleging 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"), a copy of which was filed with the Court.

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 attached to the Supp. Declaration of Ashkan Shakouri ("Shakouri Decl.") as Exhibit 2.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

## II. SETTLEMENT AGREEMENT

### A. Definitions

"Class" is defined as 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" means the period of time from January 16, 2016 to April 21, 2021. (§I.D)

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

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

"PAGA Members" means 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" means the period of time from January 16, 2019 to April 21, 2021. (§I.DD)

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

B. Terms of Settlement Agreement

The essential terms are as follows:

- 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. Shakouri Decl., Exhibit 3)

• Notice of Entry of Judgment will be posted on the administrator's website. (Notice pg. 6)

• Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

### III. 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. ¶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. (Declaration of Carrielee Nery.)

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? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

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 plaintiff 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 Defendant's maximum exposure at \$18,421,643. 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 reduced by the requested deductions, leaves approximately \$1,259,583.33 to be divided among approximately 1,537 putative class members. Assuming full participation, the resulting payments will average approximately \$819.50 per class member. [ $\$1,259,583.33 / 1,537 = \$819.50$ ].

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. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

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

### C. Scope of the Release

Class Release: 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)

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.)

"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)

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

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 1,537 Class Members. (Shakour Decl. §30.a.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (Shakour Decl. §30.a.)

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Plaintiff contends that common questions of law and fact are present, and specifically the common questions of whether Defendant's employment practices were lawful, whether Defendant failed to properly provide and/or pay for meal and rest periods, whether Defendant paid the correct overtime rate, whether Defendant provided accurate wage statements, whether Defendant failed to pay all wages, and whether the Class is entitled to compensation and related penalties. (Shakour Decl. ¶30.b.)

Regarding typicality, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like every other member of the Class, was employed by Defendant and is a member of the Class. Plaintiff was also subject to the same employment practices concerning overtime rate calculations and the meal and rest periods, and received similar wage statements. Thus, Plaintiff contends that the claims of the Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve the same employment policies, are based on the same legal theories, and are subject to the same defenses. (Id. at ¶30.c.)

Finally, as to adequacy, Plaintiff represents that he is aware of the risks of serving as class representative, understands his fiduciary duties to the class and has no conflicts of interest with other class members. (Declaration of Melvin George ¶¶ 8-10.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

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

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

E. Is the Notice Proper?

1. Content of class notice. A copy of the revised proposed notice to class members is attached to the Settlement Agreement as Exhibit A. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

Class Counsel represents that English-only notice will be sufficient, as the Class Members must speak and read English fluently to perform their job. (Shakouri Decl. ¶35).

2. Method of class notice. No later than ten (10) calendar days after the Court enters its order granting Preliminary Approval of the Settlement, Defendants will provide to the Settlement Administrator an Excel file with each Class Member's Class Data. The Class Data, its contents and any files containing Class Data shall remain strictly confidential for the Settlement Administrator's eyes only, and shall not to be disclosed to Plaintiff or to Class Counsel. The Settlement Administrator shall agree to keep the Class Data and its contents strictly confidential. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization from Defendants and/or an order from the Court. (¶III.F.2.a)

Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement. (¶III.F.2.b)

If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than ten (10) days from receipt of the returned

packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendants to find that more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. (§III.F.2.c) For re-mailed notices, the deadline for Class Members to submit objections or opt-outs will be extended to 45 calendar days from the date the notice is re-mailed. (§III.F.3).

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$25,000. Prior to the time of the final fairness hearing, the settlement administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

#### F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$666,666.67 (33 1/3%) in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

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

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$10,000 for the class representative, Melvin George (¶III.C.1). In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she 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.)

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

IV.  
CONCLUSION

Based upon the foregoing, the Court orders that:

- 1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.
- 2) The essential terms are, among other things:

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)

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\$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) The Parties' Motion for Final Approval of Class Action Settlement must be filed by September 9, 2022. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

4) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed]

Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Non-Appearance Case Review is set for September 16, 2022, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: March 10, 2022

**YVETTE M. PALAZUELOS**

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YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT