

**CONFIRMATION FOR
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ONE LEGAL CONFIRMATION FOR ORDER NO.: 17976303 DATE: 06/28/2022

Customer: Frontier Law Center
Customer No.: 0106752
Address:

Attorney: Emmanuel Starr
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Contact Phone: (818)914-5160
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Law Firm File No.: Thompson

CASE INFORMATION:

Case Number: 0198322
County: Shasta
Court: Redding
Case Short Title: Joshua Thompson vs. Frozen Gourmet, Inc.

DOCUMENTS RECEIVED:

No. Docs: 6

No. Pgs: 68

Notice of Motion and MPA, Certificate of Service, Proposed Order (word), [Proposed] Order Granting MPA , Declaration of MS ISO MPA of Class Action Settlement, Declaration of JT ISO MPA of Class Action Settlement

Confirmation Report. An Invoice will be sent later.

Notes:

Services:

Court Filing Service Charge, 51 - 75 Pages
Court Filing Fee
Court Filing Area Surcharge

Services will be invoiced later.

UPON RECEIPT, PLEASE REVIEW AND CONFIRM THAT THE ATTACHED DOCUMENTS ARE TRUE AND CORRECT. IF THERE IS AN ERROR OR OMISSION PLEASE CONTACT CUSTOMER SUPPORT IMMEDIATELY.

Customer Support | Ph: 1-800-938-8815

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JUN 23 2022

CLERK OF THE SUPERIOR COURT
BY: K. MIRANDA, DEPUTY CLERK

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12 Attorneys for Plaintiff,
13 Joshua Thompson individually and on
14 behalf of all similarly situated employees

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SHASTA

17 JOSHUA THOMPSON, individually and on
18 behalf of all similarly situated employees

19 Plaintiff (s),

20 v.

21 FROZEN GOURMET, INC., a California
22 Corporation; and DOES 1 to 100, inclusive,

23 Defendants.

) CASE NO. 198322

) *Action Filed: October 6, 2021*

) *aw*
) **[PROPOSED] ORDER GRANTING**
) **MOTION FOR PRELIMINARY**
) **APPROVAL OF CLASS ACTION**
) **SETTLEMENT**

) Date: May 2, 2022

) Time: 8:30 a.m.

) Dept: 8

24
25 The hearing for Plaintiff Joshua Thompson's ("Plaintiff") application for an Order Granting
26 Preliminary Approval of Class Action Settlement was held before this Court on May 2, 2022 at 8:30
27 a.m. *and June 13, 2022 at 8:30 am. aw*

28 ///

By Fax

1 ///

2 The Court has considered the Joint Stipulation of Class Action Settlement and Release
3 (“Settlement Agreement”) and all other papers filed in this action.

4
5 NOW THEREFORE, IT IS HEREBY ORDERED:

6 1. This Court grants preliminary approval of the Settlement Agreement between
7 Plaintiff and Defendant herewith. *pursuant to the Court's Ruling*
8 *attached hereto and incorporated herein.* ~~The Settlement Agreement appears to be fair, adequate, and~~
~~reasonable to the Class;~~

9 2. The Court hereby conditionally certifies the following class for settlement purposes
10 only: all non-exempt hourly-paid route employees of Frozen Gourmet, Inc. who performed work in
11 California at any time during the period from October 6, 2017, through October 1, 2021 (“Class” or
12 “Class Members”);

13 3. The Court appoints and designates Plaintiff as the Class Representative and Manny
14 Starr of Frontier Law Center as Class Counsel. *AW*

15 4. The Court hereby approves the terms and conditions provided for in the Settlement
16 Agreement. The Court finds that on a preliminary basis the Settlement Agreement falls within the
17 range of reasonableness of a settlement, and appears to be presumptively valid, subject only to any
18 objections that may be raised at the final fairness hearing and final approval by the Court. It appears
19 to the Court on a preliminary basis that the settlement is fair, adequate, and reasonable as to all
20 potential Class Members when balanced against the probable outcome of further litigation relating
21 to liability and damages issues. It also appears that investigation, research, and court proceedings
22 have been conducted so that counsel for the settling parties are able to reasonably
23 evaluate their respective positions. It appears to the Court that settlement at this time will avoid
24 substantial additional costs by all settling parties, as well as avoid the delay and risks that would be
25 presented by the further prosecution of the Litigation. It also appears that settlement has been reached
26 as a result of intensive, serious, and non-collusive arms-length negotiations.

27 5. A final fairness hearing on the question of whether the proposed Settlement
28 Agreement, the allocation of payments to Class Members, Class Counsel Award, Settlement

1 Administration Costs, and Class Representative Enhancement Payment should be finally approved
2 as fair, reasonable and adequate as to the members of the Class is hereby set for
3 _____ at _____ a.m./ p.m, department _____ in this Court.

4 6. The Court hereby approves, as to form and content, the Notice of Proposed Class
5 Action Settlement ("Notice Packet") to be sent to Class Members, which is attached as Exhibit 1 to
6 the Settlement Agreement. The Court finds that distribution of the Notice Packet to Class Members
7 substantially in the manner and form set forth in the Settlement Agreement and this Order meets the
8 requirements of due process and shall constitute due and sufficient notice to all parties entitled
9 thereto.

10 7. The Court appoints and designates Phoenix Settlement Administrators as the
11 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
12 approved Notice Packet to Class Members using the procedures set forth in the Settlement
13 Agreement.

14 8. Any Class Member may choose to opt out of and be excluded from the settlement as
15 provided in the Settlement Agreement and Notice Packet and by following the instructions to request
16 exclusion. Any person who timely and properly opts out of the settlement will not be bound by the
17 Settlement Agreement or have any right to object, appeal, or comment thereon. Any opt out request
18 must be in writing and signed by each such Class Member opting out and must otherwise comply
19 with the requirements delineated in the Settlement Notice. Class Members who have not requested
20 exclusion by submitting a valid and timely opt out request by the opt out deadline shall be bound by
21 all determinations of the Court, the Settlement Agreement, and Judgment.

22 9. Any Class Member may object to the Settlement Agreement or express his or her
23 views regarding the Settlement Agreement, and may present evidence and file briefs or other papers
24 that may be proper and relevant to the issues to be heard and determined by the Court as provided
25 in the Notice Packet.

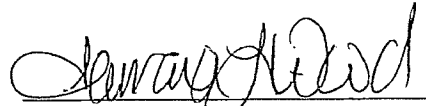
26 10. The Motion for Final Approval shall be filed by the Class Representative no later
27 than sixteen (16) court days before the Settlement Fairness Hearing.

28 11. The Court reserves the right to adjourn or continue the date of the Settlement Fairness

1 ~~Hearing and all dates provided for in the Settlement Agreement without further notice to the Class,~~
2 ~~and retains jurisdiction to consider all further applications arising out of or connected with the Class~~
3 ~~Settlement Agreement.~~

4
5 IT IS SO ORDERED.

6
7 DATED: 6/23/2022


8 Hon. Tamara L. Wood
9 Superior Court Of California

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA**

Judge: TAMARA L. WOOD
 Clerk: KIMBERLY ADAMO/lav
 Date: 6/13/2022 Time: 8:30 AM

Department 8
 Court Reporter: NONE
 Bailiff: JARRETT MCDANIEL

Case No. 198322

APPEARANCES:

JOSHUA THOMPSON, et. al.

 Plaintiffs,

ADAM ROSE, ESQ., APPEARING VIA
 COURTCALL

VS.

FROZEN GOURMET, et. al.

 Defendant.

NOT PRESENT

**NATURE OF PROCEEDINGS: MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

TENTATIVE RULING:

Tentative Ruling on Motion for Preliminary Approval of Class Action Settlement: Plaintiff Joshua Thompson, on behalf of himself and others similarly situated, brought this employment class action against Defendant Frozen Gourmet, Inc. Plaintiff has filed a motion seeking preliminary approval of the settlement pursuant to CRC 3.769. At a previous hearing, the Court noted issues to be addressed and Plaintiff has provided supplemental briefing.

The proposed class is defined "As all non-exempt hourly employees of Frozen Gourmet, Inc. who performed work in California at any time during the period of October 6, 2017 through October 1, 2021. The PAGA period is September 23, 2020, through the date of settlement approval or judgment. The proposed class members are approximately 25 former and current employees of Defendant. The proposed settlement is:

Total Settlement Amount	\$180,000.00
Proposed Attorneys' Fees (up to 35%)	-\$63,000.00
Litigation Costs and Expenses (up to)	-\$12,000.00
Settlement Administration Costs (up to)	-\$3,995.00
PAGA Claim Settlement Allocation	-\$18,000.00
Payment to Labor and Workforce Development Agency (LWDA) (75%)	(\$13,500.00)
Payment to Class Members who do not opt out (25%)	(\$4,500.00)
Proposed Class Representative Enhancement	-\$5,000.00
Settlement Monies Remaining to be Disbursed to Class Members	\$78,005.00

The distribution to class members will be pro-rata and based on the number of weeks worked during the class period. While each individual settlement check will vary based on the number of weeks worked, the average settlement check will be \$3,120.20.

The law favors the settlement of lawsuits, particularly in complex litigation, where they save time and resources. *Neary v. Regents of the University of California* (1992) 3 Cal. 4th 273, 277-281 (superseded by statute on other grounds). However, courts cannot automatically and instantly approve a proposed settlement or dismiss a class action suit, even if the representative plaintiff and defendant have agreed on the terms of such settlement or dismissal. In a class action, the trial court has a duty to adequately protect the members of the class. *Bingham v. Obledo* (1983) 147 Cal. App. 3d 401, 406. Courts have long recognized that a class action may deprive an absent class member of the opportunity to independently press their claim, preclude a defendant from defending each individual claim to its fullest, and even deprive a litigant of a constitutional right. As such, a settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing. CRC 3.769(a). This takes two steps: (1) a preliminary review by the trial court, and (2) a final review after notice has been distributed to the class members.

The fundamental question for a preliminary review is whether the settlement is fair, adequate and reasonable. The purpose of this requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801. The trial court has broad discretion to determine whether the settlement is fair. It should consider relevant factors, such as: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. The list of factors is not exhaustive, and should be tailored to each case. *Id.*

The burden is on the proponent of the settlement to show that it is fair and reasonable. However, a presumption of fairness exists where: (1) the settlement 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. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 225 (disapproved on other grounds by *Hernandez v. Restoration Hardware* (2018) 4 Cal. 5th 260).

Class Certification and Approval of Class Representative. A class action may be maintained "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." CCP § 382. "The 'community of interest' requirement embodies 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." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 575. Here, there appears to be a community of interest. There are common questions of law and fact because the proposed class members all worked for the same employer and were subject to the same employment practices and policies and same wage and hour laws. The class members have a proposed representative who is similarly situated as an employee (now former employee) of Defendant during the class period and can adequately represent the class as he has employed qualified counsel and his interests are not

antagonistic to the class. The class was readily identified through employment records and stands currently at approximately 25 individuals. The class is defined "As all non-exempt hourly employees of Frozen Gourmet, Inc. who performed work in California at any time during the period of October 6, 2017 through October 1, 2021." The PAGA period is September 23, 2020, through the date of settlement approval or judgment. Plaintiff has provided sufficient evidence for the Court to provisionally certify the class pursuant to CRC 3.769(d).

Approval of Class Counsel and Settlement Administrator. As previously addressed, the named plaintiff is a similarly situated former employee who is within the class member designation and can adequately represent the interests of the class. Plaintiff's counsel has demonstrated their experience and familiarity with class action cases, including employment and wage-and-hour disputes. Plaintiff's counsel has provided evidence that the firm is well versed in class actions, particularly of this nature, and competent. Evidence was also provided regarding Phoenix Settlement Administrators being a well-recognized class action settlement administrator and the Court is familiar with Phoenix Settlement Administrators. Plaintiff has provided sufficient evidence for the Court to approve both Class Counsel and the Settlement Administrator.

Fairness of Settlement and Plan of Allocation. Preliminary approval of a class action settlement constitutes a conditional finding that the settlement appears to be in the range of acceptable settlements. The court has broad discretion to determine whether the settlement is fair. *Dunk v. Ford Motor Company, supra*, 48 Cal. App. 4th at 1801. Factors relevant to the court's determination include, but are not limited to, the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. *Id.* There is a presumption of fairness where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802.

The settlement here was the result of arm's-length bargaining following mediation. Plaintiff's counsel declares that the parties have exchanged discovery, including taking several depositions, and engaged in extensive meet and confer efforts. An expert was hired to perform an analysis on the time and payroll records. Counsel has provided evidence of experience in class actions, specifically those based on employment and wage and hour disputes and has provided the opinion that the settlement is fair, reasonable, and adequate. The Declaration of Manny Starr provides the estimated maximum liability of \$492,393.75. The total settlement represents a 36.6% recovery of maximum liability, which is not outside of the ball park. The additional briefing and the Declaration of Joseph Gross provide an analysis of each cause of action and the manner in which the claims were evaluated. The supplemental information adequately addresses the Court's concerns regarding the overall settlement and the Court preliminarily finds that the total settlement is fair, adequate, and in the range of acceptable settlements.

Within the Settlement, various fees and costs are apportioned prior to the Net Settlement Amount, which is distributed to Class Members. Each will be addressed separately.

Attorney's Fees and Costs: Counsel seeks up to 35% in attorneys' fees. The court will not approve the amount of attorneys' fees until the final approval hearing. The court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the

law even if the parties have agreed to the fees. *Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 450-451. At the time of the final approval hearing, the Court will review the evidence provided by Plaintiff's counsel. In addition to the hourly rate and hours spent on the case, Plaintiff's counsel should also provide admissible evidence supporting the hourly fee requested including, if applicable, whether Plaintiff's counsel charges fee-paying clients the same rates. The Court will likewise not approve the costs until the final hearing as that is when Counsel can provide evidence of the specific costs incurred as part of this litigation.

Enhancement Award: The settlement provides for an Enhancement Award of \$5,000.00 to the named Plaintiff Joshua Thompson as the Class Representative. The Court will not approve the amount of the Plaintiff's Enhancement Award until the final approval hearing. With the final approval motion, Plaintiff should provide admissible evidence to support his request, e.g. the number of hours of service provided, the nature of the work performed, the risks Plaintiff faced in prosecuting this lawsuit, including any actual retaliation, and/or other evidence demonstrating the need for an incentive payment. See *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804-807. Plaintiff should also provide information regarding how the proposed service award relates to his anticipated individual settlement award and the average expected individual settlement awards for class members. The Court notes that the Declaration of Joshua Thompson provides evidence in a very general sense and more specificity will be necessary at the final approval hearing.

Settlement Administration Costs: Settlement Administration costs are estimated to be \$3,995.00. The Court will not approve the amount of the costs award to the Settlement Administrator until the final approval hearing. This will need to be addressed at the final approval hearing and evidence will need to be provided to support settlement administration costs.

PAGA: Under the Private Attorney General Act, private parties can assert claims for penalties that otherwise can be recovered only by the Labor and Workforce Development Agency ("LWDA"). Labor Code 2699(a). See also *Dunlap v. Superior Court* (2006) 142 Cal. App. 4th 330, 336. An employee who, through the PAGA, asserts a claim for civil penalties on behalf of the LWDA is acting as an agent of the LWDA. This is evident from the requirement that before initiating a PAGA claim, an employee must provide notice to the LWDA, Labor Code 2699.3(a), and the requirement that that 75% of any recovered civil penalties must be distributed to the LWDA, Labor Code 2699(i). In settling the LWDA's claims, class counsel are settling and releasing claims for penalties that belong to the People of the State of California acting through the LWDA. A settlement of LWDA claims should, therefore, provide a reasonable benefit to the state for the settlement of the released claims. The reasonable benefit may be based on the potential value of the recoverable civil penalties discounted by the risk and expense of litigation. In *Nordstrom Com' Cases* (2010) 186 Cal. App. 4th 576, 589, the Court of Appeal held that the Court can approve a settlement even when no money is allocated to the PAGA claims. However, the circumstances of the settlement, not the PAGA amount, determine whether the settlement is appropriate. The additional briefing and the Declaration of Joseph Gross provided a more detailed examination of the PAGA portion of the settlement. Although the PAGA settlement is on the lower side, the overall settlement is on the higher end and the Court finds that the settlement, including the \$18,000 PAGA portion of the settlement, serves the purpose behind the PAGA, which is to protect workers from substandard and unlawful conditions. *O'Conner v. Uber Techs, Inc.* (N.D. Cal 2016) 201 F. Supp. 3d 1110, 1132-1133. Accordingly, the PAGA portion of the settlement is approved.

Cy Pres Beneficiary. This is a non-reversionary settlement and Legal Aid at Work has been designated as the *cy pres* beneficiary of any funds left over as a result of settlement checks not cashed within 180 days of mailing. *Cy pres* beneficiaries should be "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." CCP § 384(b). Based on the supplemental information provided by Plaintiff, Legal Aid at Work appears to meet the requirements of CCP § 384(b) and is approved.

Notice and Notice Procedure. Plaintiff requests approval of the form of Notice Packet attached as Exhibit 1 to Exhibit A to the Declaration of Manny Starr. If a class notice is to be effective, "members of the class must receive the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Home Sav. & Loan Ass'n v. Sup. Ct.* (1975) 42 Cal.App.3d 1006, 1012, citing Fed. R. Civ. P. 23(b)(2). The standard in California is whether the notice "has a reasonable chance of reaching a substantial percentage of class members." *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 251. The notice procedure of notice by first class mail, conducting follow up searches for persons whose notices are returned as undeliverable, and re-sending any returned mail is adequate. Both the Notice and the notice procedure appear to be the most effective way of notifying class members, explaining their options, and providing clear guidance for steps a class member should take if they disagree with the Settlement. The Notice Packet contains straightforward language and provides class members with an effective way of correcting any errors in workweeks being calculated on their behalf. The forty-five day time limit in which a class member can opt out, object, or challenge the information is on the lower end and a sixty day time limit should be imposed.

The Notice Packet has been reviewed and following revisions should be made:

- Page 2, ¶ 1 of "What Is This Case About?" PAGA should be spelled out
- Page 2, ¶ 1 of "Summary of the Settlement Terms," there is an extra \$ before \$4,500.00
- Page 3, ¶ 2 of "Option 1," it should say "pursuant to Option 2 below" not "Section 2 below"
- Page 3, ¶ 1 of "Option 2," a full social security number should not be required in order to opt out of the settlement.
- Class members should be given the option of objecting and opting out if their objection is overruled.
- Page 4, ¶ 2 of "Final Fairness Hearing," hearings can be conducted via CourtCall, however, remote appearances are not required. The language used could easily mislead a class member to believe that they are only permitted to appear via CourtCall, which is not the case. The language should be changed to reflect that CourtCall appearances are permitted, but class members should check the court website for any orders related to COVID-19.

Requested Orders. Plaintiff moves for nine specific Orders and the Court rules as follows:

1. Preliminary approval of the Stipulation of Class Action Settlement. **Granted.**
2. Conditional certification of the class. **Granted.**
3. Appointment of Joshua Thompson as Class Representative and Manny Starr as Class Counsel. **Granted.**
4. Preliminary approval of the Settlement. **Granted.**

5. A preliminary finding on the range of reasonableness of the settlement, including PAGA penalties and settlement allocation. **Granted, however, the underlying allocations regarding attorneys' fees, costs, settlement administrations costs, and the class representative enhancement award will not be approved until the final approval hearing.**
6. Approval of the Notice Packet. **Granted with above modifications.**
7. Approval to distribute the Notice Packet. **Granted with the modification of a sixty day response period instead of the proposed forty-five day response period.**
8. Appointment of Phoenix Settlement Administrators as the Settlement Administrator. **Granted.**
9. Setting of the Final Approval Hearing. **Granted.**

In summary, the Motion for Preliminary Approval of Class Action Settlement is **GRANTED**. Plaintiff submitted a proposed Order that will be modified to reflect the Court's ruling. The parties are ordered to meet and confer prior to the hearing regarding a date for the final approval hearing. The Court intends to vacate the currently set Mandatory Settlement Conference and Trial.

IN SESSION:

With no objection, the Court *adopts* the tentative ruling as the formal order of the Court.

The Court *vacates* the settlement conference, currently set for July 11, 2022, and the Court Trial, currently set for August 30, 2022.

The Court sets this matter for Final Approval of the Class Action Settlement on **Monday, October 3, 2022 at 8:30 a.m. in Department 8.**