

03/08/2023

David W. Slayton, Executive Officer / Clerk of Court

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

By: R. Arriaga Deputy

Jucha v. Purple Communications, Inc., et al., Case No.  
19STCV06373

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

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$320,000.
- B. The Net Settlement Amount ("Net") is the GSA minus the following:

- Up to \$106,666.67 (1/3) for attorney fees;
- Up to \$40,000 for litigation costs (Ibid.);
- Up to \$10,000 (\$5,000 x2) for enhancement payments;
- Up to \$10,950 for claims administration; and
- \$15,000 (75% of \$20,000 PAGA penalty) to the LWDA.

C. Employer share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **September 8, 2023**. 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.

**Non-Appearance Case Review is set for September 15, 2023, 8:30 a.m., Department 9.**

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I.  
BACKGROUND

This is a wage and hour class action. Defendants provide video sign language interpreting services to deaf and hard of hearing individuals so that they can make calls to and receive calls from hearing individuals. On February 26, 2019, Plaintiff Lisa Jucha filed a Class Action Complaint for waiting time penalties.

On July 7, 2020, Plaintiff Jucha filed the operative First Amended Class Action Complaint adding Mary Crowder as a named plaintiff and adding causes of action for failure to pay all overtime wages; minimum wage violations; wage statement violations; unfair competition; and civil penalties under PAGA. Counsel represents that prior to mediation, the Parties served and responded to multiple sets of formal discovery and produced a significant number of responsive documents, including employee timekeeping, payroll, and policy documents. Defendants also provided contact information for approximately 350 individuals who did not opt-out of the Belaire-West notice process.

Plaintiffs' counsel interviewed a significant number of these individuals about their potential claims and the claims in the Lawsuit. Defendants took the deposition of Plaintiff Crowder. Defendants' Person Most Qualified was also deposed regarding Defendants' policies and practices during the Class Period. Defendants provided Plaintiffs with timekeeping and payroll records for all putative class members who worked during the Class Period. Plaintiffs, with the help of their retained expert, conducted an analysis of this data and created a damages model to calculate the likely exposure that Defendant faced on each claim.

On November 8, 2018, the Parties participated in a mediation with Lynn Frank, Esq. Although the matter did not resolve at mediation, the Parties maintained regular settlement communications in the time that followed. A copy of the Stipulation of Settlement ("Settlement Agreement") is attached to the Declaration of Fletcher W. Schmidt ("Schmidt Decl.") as Exhibit 1.

On September 21, 2022, the court issued a checklist of items and continued preliminary approval. In response, on February 16, 2023, counsel filed an Amended Settlement Agreement attached to the Supplemental Declaration of Andrew J. Rowbotham ("Rowbotham Supp. Decl.") as Exhibit 4.

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

II.  
SETTLEMENT AGREEMENT

A. Definitions

Settlement Class: For the purposes of this Settlement only, Plaintiffs and Defendants stipulate to the certification of the following settlement subclasses (Settlement Agreement, ¶3):

A "Former Employee Settlement Subclass," which shall include all former employees of Purple who worked as a non-exempt, non-union Video Interpreter at a California call center during, and whose employment terminated during, the period of October 11, 2013, through the date the Court enters preliminary approval of this Settlement. Any former employees who have already signed a general release of liability with Defendants will be excluded from the Former Employee Settlement Subclass and (¶3.A).

A "Current Employee Settlement Subclass": all current employees of Purple who work or have worked as a non-exempt, non-union Video Interpreter at a California call center, and earned overtime wages and earned a "Video Interpreter Bonus" during the same month, at any time during the period of October 11, 2013 through the date the Court enters preliminary approval of this Settlement. Any current employees who have already signed a general release of liability with Defendants will be excluded from the Current Employee Settlement Subclass. (¶3.B)

"Aggrieved Employees" shall include all current and former employees of Defendants who work or have worked for Defendants as a non-exempt Video Interpreter at a California call center at any time during the period of October 11, 2016, through the date the Court enters preliminary approval of this Settlement. (¶5.A)

Defendants represent that there are an estimated 542 individuals who meet the Settlement Class definition. If the actual number of Settlement Class Members reported to the Settlement Administrator following preliminary approval exceeds this figure by more than 15% (i.e., if there are 624 or more Settlement Class Members), Defendants may, at their sole option, agree to increase the Maximum Settlement Amount on a

proportional basis (e.g., if there is a 20% increase in the number of Settlement Class Members, Defendants may agree to increase the Maximum Settlement Amount by 20%). (¶6.D)

B. Terms of Settlement Agreement

The essential terms are:

- The Maximum Settlement Amount is 320,000, non-reversionary. (¶6)
- The Net Settlement Amount (\$137,383.33) is the Maximum Settlement Amount minus the following:
  - Up to \$106,666.67 (1/3) for attorney fees (¶8);
  - Up to \$40,000 for litigation costs (Ibid.);
  - Up to \$10,000 (\$5,000 x2) for enhancement payments (¶9);
  - Up to \$10,950 for claims administration (¶6.C.2); and
  - \$15,000 (75% of \$20,000 PAGA penalty) to the LWDA (¶10).
- Employer-side payroll taxes on amounts paid as wages will be paid separate and apart from, and in addition to, the Maximum Settlement Amount. (MPA, 2:7-9.)
- Settlement Class members are not required to submit a claim form to receive a payment from the Settlement. (Notice, pg. 4)
- Funding of the Settlement: Defendants will fund the Maximum Settlement Amount within 30 calendar days of the Court signing the order granting final approval of the Settlement. (¶6.B)
- Individual Settlement Payments: The "Net Settlement Amount" will be divided three ways: (1) \$5,000 will be allocated to the Aggrieved Employees (the "Aggrieved Employee Allocation"). (2) \$5,000 will be allocated to the Current Employee Settlement Subclass (the "Current Employee Allocation"). (3) The remainder of the Net Settlement Amount will be allocated to the Former Employee Settlement Subclass (the "Former Employee Allocation"). (¶7.B.) The individual payments received by each Settlement Class Member and Aggrieved Employee ("Individual Settlement Payments") will be determined and paid from the Former Employee Allocation, Current Employee Allocation, and Aggrieved Employee Allocation as follows: (4) Members of the Former Employee Settlement Subclass who do not submit a valid and timely Request for Exclusion will each receive an equal, pro-rata share of the Former Employee Allocation. (5) Members of the Current Employee Settlement Subclass who do not submit a valid and timely Request for Exclusion will each receive an equal, pro-rata share of the Current Employee Allocation. (6) Aggrieved Employees will each receive an equal, pro-rata share of the Aggrieved Employee Allocation. (¶7.C.)

o Tax Allocation: Each Individual Settlement Payment for members of the Former Employee Settlement Subclass will be allocated as 100% penalties and interest, from which no withholdings will be taken; (¶7.E.a.) Each Individual Settlement Payment for members of the Current Employee Settlement Subclass will be allocated as 50% penalties and interest, from which no withholdings will be taken, and 50% wages, from which applicable withholdings will be taken. (¶7.E.b.) Each Individual Settlement Payment for Aggrieved Employees will be allocated as 100% penalties, from which no withholdings will be taken; except that in the event an Aggrieved Employee is also a Settlement Class Member, the portion of the total Individual Settlement Payment attributable to that individual being an Aggrieved Employee will be allocated as 100% penalties, and the portion attributable to that individual being a Settlement Class Member will be allocated as described in Paragraph 7.E.a or 7.E.b, as applicable. (¶7.E.c.)

• Response Deadline. Any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline"). (¶14.D) The Response Deadline also applies to objections (¶14.E) and workweek disputes (¶14.F). Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator will have an additional 14 calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Payment. Notice Packets that are re-mailed will inform the recipient of this adjusted deadline. (¶14.C)

o If twenty (20) or more of the Settlement Class Members submit valid and timely Requests for Exclusion, Defendants shall have the absolute right, to withdraw from, and cancel the Settlement Agreement in its entirety. (¶15.)

• Uncashed Checks: Any check that is not negotiated within 180 days of mailing to a Settlement Class Member or Aggrieved Employee will be distributed by the Settlement Administrator to the cy pres, Legal Aid Foundation of Los Angeles, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Greater Los Angeles. (¶7.F) The Parties further stipulate that, pursuant to California Code of Civil Procedure § 384, Plaintiffs will file a "final accounting declaration" at least 5 court days prior to the Final Accounting Hearing, which will be set for a time and date convenient for the Court after the Maximum Settlement Amount is distributed to the Settlement Class and the Aggrieved Employees. The "final accounting declaration" will include the following information regarding the distribution of the Maximum Settlement Amount: 1)

the amount of funds that were paid to the Settlement Class, the Aggrieved Employees, the LWDA, Class Counsel, and the Settlement Administrator; and 2) the number of checks and amount of funds that remain uncashed after the check cashing deadline has passed. The Settlement Administrator will distribute the remaining uncashed funds and any interest accrued to the cy pres, Legal Aid Foundation of Los Angeles, after the Court amends the Final Judgment and Order to direct final distribution of the residual funds. (¶29)

o The Parties and their counsel represent that they have no interest in Legal Aid Foundation of Los Angeles. (Declaration of Lisa Jucha ("Jucha Decl.") ¶11; Declaration of Mary Crowder ("Crowder Decl.") ¶12; Schmidt Decl. ¶23; Declaration of Paul K. Haines ("Haines Decl.") ¶11; Declaration of Andrew J. Rowbotham ("Rowbotham Decl.") ¶9; Declaration of Gary McLaughlin, ¶2; Declaration of Caryn Bain, ¶2.)

- The claims administrator will be Phoenix Settlement Administrators. (¶6.A)
- The Settlement was submitted to the LWDA on May 25, 2022. (Schmidt Decl., Exh. 3)
- Participating class members and the named Plaintiffs 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 8, 2018, the Parties participated in a mediation with Lynn Frank, Esq. Although the matter did not resolve at mediation, the Parties maintained regular settlement communications in the time that followed and ultimately reached a settlement. (Schmidt Decl., ¶¶18-19).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to mediation: 1) the Parties served and responded to multiple sets of formal discovery and produced a number of responsive documents, including employee timekeeping, payroll, and policy documents; 2) Defendants also provided contact information for approximately 350 individuals who did not opt-out of the Belaire-West notice process; 3) Plaintiffs' counsel interviewed a significant number of these individuals about their potential claims and the claims in the Lawsuit; 4) Defendants took the deposition of Plaintiff Crowder; and 5)

Defendants' Person Most Qualified was deposed regarding Defendants' policies and practices during the Class Period. (Id. at ¶16.) It is further represented that Defendants provided Plaintiffs with timekeeping and payroll records for all putative class members who worked during the Class Period, using which Plaintiffs, with the help of their retained expert, conducted an analysis and created a damages model to calculate the likely exposure that Defendant faced on each claim. (Id. at ¶17.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶2-6; Haines Decl. ¶¶2-9; Rowbotham Decl. ¶¶2-7.)

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.

CLAIM	MAX RECOVERY	REDUCED RECOVERY
Waiting Time Penalties	\$1,629,388	\$366,612
PAGA Penalties	\$102,800	\$25,700
Unpaid Minimum Wages	\$138,190	\$0
Wage Statement Penalties	\$115,850	\$0
TOTAL	\$1,986,228	\$392,312

(Schmidt Decl. ¶¶13-15; Rowbotham Supp. Decl., ¶¶5-10.)

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. Plaintiffs' counsel obtained a \$320,000 non-reversionary settlement. This is approximately 16% to 81.6% of Plaintiffs' estimated recovery, which is within the "ballpark" of reasonableness.

The \$320,000 settlement amount, after reduced by the requested deductions, leaves approximately \$137,383.33 to be divided among approximately 542 class members. Assuming full participation, the resulting payments will average approximately \$253.47 per class member. [ $\$137,383.33 / 542 = \$253.47$ ]

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

Release by Settlement Class Members and Plaintiffs.

Plaintiffs and every member of the Settlement Class (except those who submit a valid and timely Request for Exclusion) will release and discharge Defendants, their past and present officers, directors, shareholders, managers, employees, agents, principals, spouses, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively "Defendants' Releasees") as follows (¶4):

All members of the Former Employee Settlement Subclass who do not submit a valid and timely Request for Exclusion shall, for the Release Period, fully and finally waive, release, and forever discharge Defendants and Defendants' Releasees from all claims (and for all resulting damages, restitution, penalties, interest, costs attorneys' fees, or other relief or liability) (i) asserted in the Action based on the factual allegations asserted in the Action, or (ii) which could have been asserted based on the factual allegations asserted in the Action, including those concerning the non-inclusion of bonus payments in the regular rate of pay for purposes of paying overtime wages, and off-the-clock work. (¶4.A)

All members of the Current Employee Settlement Subclass who do not submit a valid and timely Request for Exclusion shall, for the Release Period, fully and finally waive, release, and forever discharge Defendants and Defendants' Releasees from all claims (and for all resulting damages, restitution, penalties, interest, costs attorneys' fees, or other relief or liability) based on or derivative of any alleged non-inclusion of bonus payments in the regular rate of pay for purposes of paying overtime wages. (¶4.B)

All of the claims described in paragraphs 4.A and 4.B shall be included within, and referred to as, the "Released Claims." The "Release Period" shall be October 11, 2013, through the date of preliminary approval of the Settlement. (¶4.C)

PAGA Release by Aggrieved Employees. In consideration of the terms and conditions set forth herein, Plaintiffs, the Aggrieved Employees, and the State of California, shall for the period from October 11, 2016 through the date the Court enters preliminary approval of this Settlement, fully and finally waive, release, and forever discharge the Released Parties from

any and all claims, rights, or causes of action for civil penalties (and for all resulting attorneys' fees, litigation costs, interest, and any other relief) under PAGA, predicated on, arising from, or derivative of any of the factual allegations or alleged California Labor Code and/or wage order violations (including, but not limited to, under California Labor Code sections 201-203, 204, 210, 216, 226, 226.3, 510, 558, 1174, 1182.12, 1194, 1194.2, 1197, and 1198) based on the factual allegations asserted in the Action, the Crowder action, or any letter to the LWDA relating to this Action or the Crowder action. (¶5.B)

Named Plaintiffs will provide a general release and 1542 waiver. (¶4.D)

The Settlement along with all associated releases will become effective on the date that Defendant fully funds the Maximum Settlement Amount ("Effective Date"), and such releases will have every preclusive effect permitted by law. (¶4.E)

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. Windsor (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 542 Class Members. (Schmidt Decl. ¶20.) 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 records. (Schmidt Decl. ¶20.)

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.)

Plaintiffs allege that their claims are predicated on Defendant's alleged regular rate miscalculation and final pay policies, and that these types of claims are commonly held to be proper for class certification. (MPA, 15:26-28.)

Plaintiffs allege that their claims are typical of those held by the Settlement Class Members. Like other Settlement Class Members, Plaintiffs was employed by Defendant in California during the Class Period. Plaintiffs allege they received non-discretionary bonuses and worked overtime in the same pay period. Plaintiffs also contend they were not paid for all hours worked and did not receive all final wages upon their separation of employment. Plaintiffs were impacted by the same challenged policies that allegedly injured the Settlement Class as a whole. Plaintiffs were also subject to the same class-wide defenses presented by Defendant. (MPA, 16:14-21.)

Finally, Plaintiffs contend that they have no conflicts of interest with the class, and that they have been actively involved in this litigation. (Jucha Declaration ¶¶8-10; Crowder Decl. ¶¶9-10.)

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. The proposed notice is attached to the Supplemental Declaration of Andrew J. Rowbotham as Exhibit 5. 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.

2. Method of class notice. Notice will be in English and Spanish. (Notice, pg. 1.) Within 10 business days after the Court signs an order preliminarily approving this Settlement, Defendants will provide the Settlement Administrator with the names, most recent addresses, phone numbers, social security numbers, and employment status (current or former) for each Settlement Class Member and Aggrieved Employee. The Settlement Administrator is required to follow all reasonable data security protocols and best practices to safeguard this sensitive data against unauthorized access or disclosure. Class Counsel will not receive a copy of the list. The Settlement Administrator shall not use the Settlement Class Member or Aggrieved Employee information for any purpose other than to administer the Settlement in accordance with this Agreement. Upon completion of the administration of the Settlement, the Settlement Administrator shall destroy the Settlement Class Member and Aggrieved Employee information or return it and all copies to Defendants. (§14.A)

Within 10 business days from receipt of this information, the Settlement Administrator will (i) run the names of all Settlement Class Members and Aggrieved Employees through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members and Aggrieved Employees; (ii) update the address of any Settlement Class Member or Aggrieved Employee for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class Member and Aggrieved Employee; and (iv) mail a Notice Packet to each Settlement Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. Notice Packets will not be mailed to Aggrieved Employees who are not also Settlement Class Members. Individuals who are solely Aggrieved Employees under the Settlement will receive a separate cover letter accompanying their payment which will explain the Settlement and the reasons for receiving a payment. (§14.B)

Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline will be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator will resend the Notice Packet to the Settlement Class Member immediately, and in any event within 5 business days of obtaining the updated address. This same procedure will be used with respect to checks to Aggrieved Employees that are returned to the Settlement Administrator as non-delivered. The address identified by the Settlement Administrator as the current mailing address will be presumed to be the best mailing address for each Settlement Class Member and/or Aggrieved Employee. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator will have an additional 14 calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Payment. Notice Packets that are re-mailed will inform the recipient of this adjusted deadline. With regard to any Settlement Class whose Notice Packet is returned as non-deliverable, and any Aggrieved Employee whose check of his or her Individual Settlement Payment is returned as non-deliverable, and for whom the Settlement Administrator is unable to determine a reliable address using reasonable and customary methods, their Individual Settlement Payment will be distributed to the cy pres beneficiary. (§14.C) Notice of final judgment will be posted on the settlement administrator's website. (Notice, pg. 1.)

3. Cost of class notice. As indicated above, claims administration costs are estimated not to exceed \$10,950. Prior to the time of the final fairness hearing, the claims 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 \$106,666.67 (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 (\$40,000) 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 (\$5,000 x2).

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:

A. The Gross Settlement Amount ("GSA") is \$320,000.

B. The Net Settlement Amount ("Net") is the GSA minus the following:

Up to \$106,666.67 (1/3) for attorney fees;

Up to \$40,000 for litigation costs (Ibid.);

Up to \$10,000 (\$5,000 x2) for enhancement payments;

Up to \$10,950 for claims administration; and

\$15,000 (75% of \$20,000 PAGA penalty) to the LWDA.

C. Employer share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.

D. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by September 8, 2023. 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](mailto:sscdept9@lacourt.org).

5) Nonappearance case management review is set for September 15, 2023, 8:30 a.m., Dept. 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE  
NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: March 8, 2023



*Yvette M. Palazuelos*

YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT  
Yvette M. Palazuelos / Judge