

08/15/2023

David W. Slayton, Executive Officer / Clerk of Court

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

R. Araiga Deputy

Jose L. Sandoval Villafana v. Satco, Inc., Case No.: 21STCV17085

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 \$1,200,000. [Escalator Clause: Defendant estimates that (1) there are 342 Class Members and approximately 47,608 Total Workweeks (between the start of the Class Period on November 10, 2018 and the date of mediation on May 4, 2022), and (2) there are 303 Aggrieved Employees who worked approximately 32,486 Pay Periods (between November 1, 2019 and the date of mediation on May 4, 2022. If the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 4,761 Workweeks, then the GSA shall be increased proportionally by the Workweeks in excess of 52,369 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon GSA (\$1,200,000) by 47,608, which amounts to a Workweek Value of \$25.21. Thus, should there be 53,000 Workweeks in the Class Period, then the GSA shall be increased by \$15,907.51. (53,000 Workweeks - 52,369 Workweeks) x \$25.21 per Workweek.)]

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

- Up to \$420,000 (35%) for attorney fees (§3.2.2);
- Up to \$25,000 for litigation costs (Ibid.);
- Up to \$7,500 for a Service Payment to the Named Plaintiff (§3.2.1);
- Up to \$10,000 for settlement administration costs (§3.2.3);
- \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA. (§3.2.5)

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 **February 16, 2024**. 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 February 23, 2024, 8:30 a.m., Department 9.**

I.  
BACKGROUND

Plaintiff Jose L. Sandoval Villafana sues his former employer, Satco, Inc., for alleged wage and hour violations. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On May 5, 2021, Plaintiff filed a class action complaint alleging that Defendant: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods, or compensation in lieu thereof; (4) failed to provide rest periods, or compensation in lieu thereof; (5) failed to pay all wages due at the time of separation of employment; (6) failed to provide compliant wage statements; (7) failed to timely pay wages; (8) violated Labor Code section 227.3; and (9) engaged in unfair competition. On July 9, 2021, Plaintiff filed a First Amended Complaint adding claims for penalties under the Private Attorneys General Act ("PAGA").

On May 4, 2022, the parties attended a full day mediation before the Hon. Carl J. West (Ret.), which resulted in settlement with the aid of the mediator's evaluation. The terms of settlement are finalized in the long-form Class Action and PAGA Settlement Agreement ("Settlement Agreement"), a copy of which is attached to the Declaration of Vedang J. Patel ("Patel Decl.") as Exhibit 1.

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

II.  
SETTLEMENT AGREEMENT

A. Definitions

"Class": all individuals who worked for Defendant as non-exempt, hourly-paid employees in California at any time during the Class Period. (¶1.5)

"Class Period": November 10, 2018 through July 3, 2022. (¶1.12)

"Aggrieved Employee": an individual who worked for Defendant as a non-exempt, hourly-paid employee in California at any time during the PAGA Period. (¶1.4)

"PAGA Period": May 5, 2020 through July 3, 2022. (¶1.31)

"Participating Class Member": a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (¶1.35)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$1,200,000, non-reversionary. (¶3.1)
  - o Escalator Clause: Based on its records, Defendant estimates that (1) there are 342 Class Members and approximately 47,608 Total Workweeks (between the start of the Class Period on November 10, 2018 and the date of mediation on May 4, 2022), and (2) there are 303 Aggrieved Employees who worked approximately 32,486 Pay Periods (between November 1, 2019 and the date of mediation on May 4, 2022). (¶8) In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 4,761 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 52,369 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$1,200,000.00) by 47,608, which amounts to a Workweek Value of \$25.21. Thus, for example, should there be 53,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be

increased by \$15,907.51. ((53,000 Workweeks 52,369 Workweeks) x \$25.21 per Workweek.). (¶8.1)

- The Net Settlement Amount ("Net") (\$715,000) is the GSA minus the following:
  - o Up to \$420,000 (35%) for attorney fees (¶3.2.2);
  - o Up to \$25,000 for litigation costs (Ibid.);
  - o Up to \$7,500 for a Service Payment to the Named Plaintiff (¶3.2.1);
  - o Up to \$10,000 for settlement administration costs (¶3.2.3);and
  - o Payment of \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA. (¶3.2.5)
- Defendant will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (¶3.1)
- There is no claim form requirement. (¶3.1)
- Individual Settlement Payment Calculation: Each Participating Class Member will receive an Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (¶3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (¶3.2.4.2)
  - o PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$7,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (¶3.2.5.1)
  - o Tax Allocation: Participating Class Member's Individual Class Payments will be allocated as follows: 20% as wages, 80% as interest and penalties. (¶3.2.4.1) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (¶3.2.5.2)
- Response Deadline: "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 days beyond the Response Deadline

has expired. (¶1.43) The same deadlines apply to the submission of challenges to estimated payment amounts. (¶7.6)

o Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual PAGA Payment. (¶7.5.4)

o If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. (¶9)

- Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (¶4.3)

- Disbursement: Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (¶4.4)

- Uncashed Settlement Checks: The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. (¶4.4.1) For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).]. (¶4.4.3)

- The settlement administrator will be Phoenix Settlement Administrators. (¶1.2)

- Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶7.8.1)

- The proposed Settlement Agreement was submitted to the LWDA on October 3, 2022. (Patel Decl., Exhibit 3.)

- Participating class members and the named Plaintiff will release certain claims against Defendant. (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 May 4, 2022, the parties attended a full day mediation before the Hon. Carl J. West (Ret.), which resulted in settlement with the aid of the mediator's evaluation. (Patel Decl. ¶6.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that in advance of mediation, Plaintiff was provided with, among other things: (1) a randomized sampling of time and payroll records for 10% of the estimated 342 putative class members; (2) data points, including, for both current and formerly-employed putative class members from November 10, 2018 through mediation, total numbers of putative class members, average hourly rates of pay, and approximate total numbers of workweeks worked, pay periods, and wage statements issued; (3) PAGA (and wage statement penalty) group data points, including, for current and formerly-employed putative class members between November 1, 2019 through mediation, total numbers of putative class members eligible for PAGA penalties, average hourly rates of pay, and approximate numbers of workweeks worked, pay periods, and wage statements issued; (4) all wage and hour policy documents and employee handbooks in effect during relevant time periods; (5) a description and explanation of the various compensation structures, shift schedules, and bell schedule systems for meal and rest periods in effect during the Class Period; (6) Plaintiff's personnel records and employment files; (7) contact information for putative class members, including names and last known mailing addresses and phone numbers; and (8) employment dates for putative class members, including hire dates and, where applicable, re-hire date(s), last date(s) worked, separation date(s), and date(s) of any transition between non-exempt and exempt status. (Id. at ¶5).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Decl. of David D. Bibiyan ¶8).

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	\$2,115,898
Meal Period Violations	\$1,449,082
Rest Period Violations	\$2,105,899
Wage Statement Violations	\$3,248,600
Waiting Time Penalties	\$659,789
PAGA Penalties	\$11,466,500
Total	\$12,126,289

(Patel Decl. ¶¶20-56.)

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 damages at \$12,126,289. Plaintiff’s counsel obtained a \$1,200,000 non-reversionary settlement. This is approximately 9.9% of Plaintiff’s estimated maximum recovery which, given the uncertain outcomes, is within the “ballpark” of reasonableness.

The \$1,200,000 settlement amount, after reduced by the requested deductions, leaves approximately \$715,000 to be divided among approximately 342 class members. Assuming full participation, the resulting payments will average approximately \$2,090.64 per class member. [ $\$715,000 \text{ Net} / 342 = \$2,090.64$ ].

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

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows: (¶5)



Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint including, e.g., any and all claims involving: (1) any alleged failure to pay overtime wages; (2) any alleged failure to pay minimum wages; (3) any alleged failure to provide compliant meal periods, or compensation in lieu thereof; (4) any alleged failure to provide compliant rest periods, or compensation in lieu thereof (5) any alleged failure to pay wages due upon termination or resignation; (6) any alleged failure to provide compliant wage statements; (7) any alleged failure to timely pay wages; (8) any alleged failure to pay wages for vested paid vacation time or other vested paid time off; (9) any alleged failure to maintain accurate and/or complete pay records; and (10) any alleged unlawful, unfair, or fraudulent business acts or practices under California Business & Professions Code section 17200, et seq. arising out of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order violations referenced in the Operative Complaint. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, worker compensation, or claims based on facts occurring outside the Class Period. (§5.2)

Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including, e.g., any and all claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 204b, 210, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, et seq., 404, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 1199, 2699, 2802, and 2810.5, as well as related IWC Wage Order provisions. (§5.3)

"PAGA Notice" means Plaintiff's May 5, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a). (§1.33)

"Released Parties" means: Defendant and each of its former, present and future owners, parents, and subsidiaries, and all of their current former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives. (§1.41)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (§5.1)

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 342 class members. (Patel Decl. §75.) 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. (Patel Decl. §74.)

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.)

As to commonality, common issues include, without limitation: (1) whether Defendant failed to pay overtime wages; (2) whether Defendant failed to pay minimum wages; (3) whether Class Members are entitled to pay for tasks performed off-the-clock; (4) whether Defendant provided full, un-interrupted meal periods; (5) whether Class Members are entitled to premium pay interrupted meal periods; (6) whether Defendant provided full, un-interrupted meal periods; (7) whether Class Members are entitled to premium pay for interrupted rest periods; (8) whether the failure to pay for time worked off-the-clock entitles Class Members to waiting time penalties or wage statement violations; (9) whether the failure to pay due premium wages entitles Class Members to waiting time penalties or wage statement violations; (10) whether the failure to pay for all time worked was willful to justify waiting time penalties or wage statement violations; and (11) whether the failure to pay for all time worked constitutes an injury sufficient to justify wage statement violations. (Patel Decl. ¶76.)

As to typicality, Plaintiff alleges that his claims are typical of those of other Class Members as Plaintiff: (1) is a non-exempt, hourly-paid employee like other Class Members; (2) complains of not being paid for all time under Defendant's control or suffered and/or permitted to work for Defendant; (3) never received premium pay for rest periods that were not provided to Class Members, among others. (Id. at ¶77.)

As to adequacy, Plaintiff represents that he is aware of the risks of serving as class representative and has participated in the litigation. (See Declaration of Jose L. Sandoval Villafana.)

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 Settlement Agreement. 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 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.

Notice will be given in English and Spanish. (§1.11).

2. Method of class notice. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, WCI will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (§4.2) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (§7.4.2)

Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (§7.4.3)

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice. (§7.4.4).

3. Cost of class notice. As indicated above, settlement administration costs are estimated not to exceed \$10,000. 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 \$420,000 (35%) 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 \$25,000) by detailing how they were incurred.

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$7,500 to the named Plaintiff.

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 \$1,200,000. [Escalator Clause: Defendant estimates that (1) there are 342 Class Members and approximately 47,608 Total Workweeks (between the start of the Class Period on November 10, 2018 and the date of mediation on May 4, 2022), and (2) there are 303 Aggrieved Employees who worked approximately 32,486 Pay Periods (between November 1, 2019 and the date of mediation on May 4, 2022. If the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 4,761 Workweeks, then the GSA shall be increased proportionally by the Workweeks in excess of 52,369 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon GSA (\$1,200,000) by 47,608, which amounts to a Workweek Value of \$25.21. Thus, should there be 53,000 Workweeks in the Class Period, then the GSA shall be increased by \$15,907.51. (53,000 Workweeks - 52,369 Workweeks) x \$25.21 per Workweek.)]

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

Up to \$420,000 (35%) for attorney fees (¶3.2.2);  
Up to \$25,000 for litigation costs (Ibid.);  
Up to \$7,500 for a Service Payment to the Named  
Plaintiff (¶3.2.1);  
Up to \$10,000 for settlement administration costs  
(¶3.2.3);  
\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA.  
(¶3.2.5)

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 February 16, 2024. 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 February 23, 2024, 8:30 a.m., Department 9.

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

IT IS SO ORDERED.

DATED: August 15, 2023



*Yvette M. Palazuelos*

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