

03/07/2024

David W. Slayton, Executive Officer / Clerk of Court

By R. Arraiga Deputy

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

Jose Melgar, v. Harvest Sensations, LLC, et al., Case No.: 22STCV26775

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 \$460,000.
- B. The Net Settlement Amount is the GSA minus the following:
 - Up to \$153,333.33 (33 1/3%) for attorney fees (¶3.2.2);
 - Up to \$16,500 for litigation costs (Ibid.);
 - Up to \$9,500 for a Service Payment to the Named Plaintiff (¶3.2.1);
 - Up to \$10,900 for settlement administration costs (¶3.2.3);
 - \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA. (¶3.2.5)
- C. Defendants will pay their share of taxes separate from the GSA. (¶3.1)
- D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **September 3, 2024**. Counsel must call the clerk to obtain a hearing date **PRIOR** to filing and serving the 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 9, 2024, 8:30 a.m., Department 9.

I.
BACKGROUND

This is a wage and hour class action. On August 18, 2022, Plaintiff filed a class action complaint against Defendants alleging the following causes of action: (1) failure to pay wages for all hours worked at minimum wage in violation of Labor Code §§ 1194 and 1197; (2) failure to pay overtime wages for daily overtime worked in violation of Labor Code §§ 510 and 1194; (3) failure to authorize or permit meal periods in violation of Labor Code §§ 512 and 226.7; (4) failure to authorize or permit rest periods in violation of Labor Code § 226.7; (5) failure to timely pay earned wages during employment in violation of Labor Code § 204; (6) failure to provide complete and accurate wage statements in violation of Labor Code § 226; (7) failure to timely pay all earned wages and final paychecks due at time of separation of employment in violation of Labor Code §§ 201, 202, and 203; and (8) unfair business practices, in violation of Business and Professions Code §§ 17200, et seq.

On October 24, 2022, Plaintiff filed a representative PAGA action against Defendants (Case No. 22STCV35214) ("PAGA Action").

On September 6, 2023, Plaintiff filed a First Amended Complaint in the Action adding a cause of action for civil penalties under PAGA ("Operative Complaint"). On September 12, 2023, the Court entered Plaintiff's Request for Dismissal of the PAGA Action.

On March 27, 2023, the Parties participated in a mediation with the Hon. Lisa Hart Cole (Ret.), which resulted in the Parties reaching the settlement. A fully executed copy of the Settlement Agreement was filed with the Court on October 20 2023 attached to the Declaration Of Courtney M. Miller ("Miller Decl."), as Exhibit 1.

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

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II.

SETTLEMENT AGREEMENT

A. Definitions.

"Class": all persons employed by either of the Defendants in California who were classified as hourly non-exempt employees and worked for Defendant Harvest Sensations during the Class Period. (§1.5)

"Class Period": February 21, 2018, to March 27, 2023. (§1.12)

"Aggrieved Employee": a person employed by either of the Defendants in California who was classified as an hourly non-exempt employee and worked for Defendant Harvest Sensations during the PAGA Period. (§1.4)

"PAGA Period": August 18, 2021, to March 27, 2023. (§1.31)

Based on a review of its records to date, Harvest Sensations estimates as follows. There are 53 Class Members who worked directly for Harvest Sensations and were not hired through Dependable Employer Solutions. These Class Members collectively worked a total of 6,414 Workweeks. There are 26 Aggrieved Employees who worked directly for Harvest Sensations and were not hired through Dependable Employer Solutions. These Aggrieved Employees worked a total of 301 PAGA Pay Periods.

Based on a review of its records to date, Dependable Employer Solutions estimates as follows. There are 328 Class Members who worked at Harvest Sensations and were hired through Dependable Employer Solutions. These Class Members collectively worked a total of 7,174 Workweeks. There are 156 Aggrieved Employees who worked at Harvest Sensations and were hired through Dependable Employer Solutions. These Aggrieved Employees worked a total of 1,979 PAGA Pay Periods. (§4.1, 8)

The parties stipulate to class certification for settlement purposes only. (§12.1.)

B. Terms of Settlement Agreement

The essential terms are as follows:

- The Gross Settlement Amount ("GSA") is \$460,000, non-reversionary. (§3.1)

- The Net Settlement Amount ("Net") (\$251,016.67) is the GSA minus the following:
 - o Up to \$153,333.33 (33 1/3%) for attorney fees (§3.2.2);
 - o Up to \$16,500 for litigation costs (Ibid.);
 - o Up to \$9,500 for a Service Payment to the Named Plaintiff (§3.2.1);
 - o Up to \$10,900 for settlement administration costs (§3.2.3); and
 - o Payment of \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA. (§3.2.5)
- Defendants will pay their share of taxes separate from the GSA. (§3.1)
- Funding of Settlement: Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of the employer-side payroll taxes, as calculated by the Administrator, by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (§4.3)
 - o The Gross Settlement Amount will be paid as follows: Defendant Harvest Sensations, LLC will pay \$455,000 and Defendant Dependable Employer Solutions, Inc. will pay \$5,000. In addition, Dependable Employer Solutions agrees to relieve and wholly release Harvest Sensations from any obligation to pay \$125,000 in amounts otherwise owed by Harvest Sensations to Dependable Employer Solutions for services provided by Dependable Employer Solutions. (§3.1)
- There is no claim form requirement. (§3.1)
- Individual Settlement Payment Calculation: 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)
 - o Tax Allocation: 20% as wages and 80% as interest and penalties. (§3.2.4.1)
- PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) 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. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (§3.2.4.1)
 - o Tax Allocation: IRS 1099 Forms. (§3.2.4.2)
- "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, her, or their 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 calendar days beyond the Response Deadline has expired. (§1.43) The deadline applies to challenges to the number of Class Workweeks and PAGA Pay Periods, too. (§7.6)

- o If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, each of the Defendants may, but is not obligated, to make its own individual decision whether to withdraw from the Settlement. (§9)
- **Uncashed Settlement Checks:** The face of each check shall prominently state the date (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 or Individual PAGA 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 Code of Civil Procedure section 384, subdivision (b). (§4.4.3)
- The settlement administrator will be ILYM Group. (§1.2)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (§7.8.1)
- The proposed settlement was submitted to the LWDA on October 19, 2023. (Miller Decl., Exhibit 4.)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

III. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On March 27, 2023, the Parties participated in a mediation with the Hon. Lisa Hart Cole (Ret.), which resulted in the Parties reaching the settlement. (Miller Decl., §9.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel

represents that prior to the mediation, Defendants provided Plaintiff with informal discovery, including Defendants' time and pay data, wage statement information, total number of workweeks worked by class members, the total number of current and former hourly non-exempt employees, total number of pay periods, average rate of pay, employee handbook with relevant policies, purchase order for walkie talkies, and information regarding use of walkie talkies. Class Counsel represents they analyzed the data as to Defendants' relevant policies and procedures, employee handbook, multiple discussions, calls, and emails with Defendants' counsel, the disputed factual and legal issues involved in this case, the risks attending further prosecution, including risks related to a contested motion for class certification. (Id. at ¶10.) Counsel represent that they expert analyzed complete punch data from June 6, 2021 - March 1, 2023, for all of Harvest Sensations' employees who were hired through Dependable Staffing, and a 10% sampling of punch data for the Harvest Sensations' employees who were hired through Dependable Staffing from 2019 - 2020 due to poor data quality issues, a sampling which the expert represented to be a good approximation for that data set. (¶15).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation. (Id. at ¶¶31-34).

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	Realistic Exposure
Unpaid Regular Wages	\$4,046.00	\$4,046.00
Meal Break Violations	\$318,222.00	\$318,222.00
Rest Break Violations	\$8,091.00	\$8,091.00
Timely Wages	\$33,800.00	\$33,800.00
Wage Statement Violations	\$1,524,000.00	\$381,000.00
Waiting Time Penalties	\$1,410,624.00	\$352,656.00
PAGA	\$11,400.00	\$11,400.00
TOTAL	\$3,310,183.00	\$1,109,215.00

(Miller Decl. ¶¶13-30.)

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 obtained a \$460,000 non-reversionary settlement. The \$460,000 settlement amount constitutes approximately 13.90% to 41.47% of Defendant's maximum to realistic exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$460,000 settlement amount, if reduced by the requested deductions, will leave \$251,016.67 to be divided among approximately 381 class members. The resulting payments will average \$658.84 per class member. [$\$251,016.67 / 381 = \658.84].

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 Defendants fully fund the entire Gross Settlement Amount and fund 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 or claims stated in the Operative Complaint or in the PAGA Notice, whether those claims are known or unknown, suspected or unsuspected, including but not limited to all claims for any alleged or actual failure to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any alleged or actual failure to timely, properly, or fully or completely pay, or any alleged or actual failure to properly calculate, any wages including but not limited to any minimum wages, regular wages, overtime premium wages, or meal or rest period premium wages; any alleged or actual failure to comply with meal or rest period requirements or requirements for recording meal or rest periods or work hours; any actual or alleged failure to timely pay all wages or compensation owed to a fired, quitting, or otherwise departing employee; or any alleged or actual failure to pay any interest, penalties, unfair business practices or attorneys' fees owed as a result of any of the foregoing . 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, workers' 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 or claims stated in the Operative Complaint or in the PAGA Notice, whether those claims are known or unknown, suspected or unsuspected, including but not limited to all claims for any alleged or actual failure to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any alleged or actual failure to timely, properly, or fully or completely pay, or any alleged or actual failure to properly calculate, any wages including but not limited to any minimum wages, regular wages, overtime premium wages, or meal or rest period premium wages; any alleged or actual failure to comply with meal or rest period requirements or requirements for recording meal or rest periods or work hours; any actual or alleged failure to timely pay all wages or compensation owed to a fired, quitting, or otherwise departing employee; or any alleged or actual failure to pay any interest, penalties, or attorneys' fees owed as a result of any of the foregoing including, any and all claims involving any alleged failure to pay minimum wages; failure to pay overtime wages; failure to authorize or permit meal periods; failure to authorize or permit rest periods; failure to timely pay earned wages during employment; failure to provide complete and accurate wage statements; and failure to timely pay all earned wages upon separation of employment. (§5.3)

Without conceding that any release of claims under the Fair Labor Standards Act ("FLSA") requires any affirmative conduct or opt-in by Participating Class Members, the Participating Class Members who cash, deposit, or otherwise negotiate checks or otherwise obtain the proceeds for their Individual Class Payment shall be deemed to have opted into a collective action under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA"), and to have released each of the Released Parties from any and all claims, penalties, costs, expenses, attorneys' fees, liabilities, damages, and actions or causes of action of

whatever kind or nature under the FLSA, known and unknown, which derive from any of the foregoing released claims. Checks to Participating Class Members shall include a notation that the cashing of the checks constitutes such an opt-in and effectuates these FLSA releases. (§5.4)

Dependable Employer Solutions and Harvest Sensations release one another, and their respective predecessor or successor entities of any of those and each of their respective past and present directors, officers, representatives, insurers, agents, shareholders, limited or general partners, members, lawyers, and employees, of and from any claims relating to or arising out of the Action or the Agreement, including but not limited to any claims for indemnity or contribution for any amounts paid or to be relieved or released under the Agreement. (Ibid.)

"Released Parties" means: (a) Defendants and each and all past or present partners, parents, subsidiaries, or affiliates (regardless whether such partners, parents, subsidiaries, or affiliates are individuals, corporations, partnerships, limited partnerships, limited liability companies, or other forms of entity) of either of them; (b) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities of any kind, including but not limited to any payroll companies, which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, integrated enterprise, or any other theory) for any violations described in the Released PAGA Claims or Released Class Claims and occurring as a result of employment by either of the Defendants; and (d) all past and present directors, officers, representatives, insurers, agents, shareholders, limited or general partners, members, lawyers, and employees of any of the individuals or entities identified in subparagraphs (a), (b), or (c). (§1.41)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (§5.1-5.1.1)

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. 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 381 class members. (MPA at 19:26-28.) 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.) A class is ascertainable, as would support certification under statute governing class actions generally, when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, 961.) All Class Members are identifiable through a review of Defendant's records. (MPA at 20:9-10).

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

Regarding commonality, Plaintiff contends that common questions of law and fact include, but are not limited to: 1) Whether Defendants failed to pay minimum wages; 2) Whether Defendants failed to pay overtime wages; 3) Whether Defendants failed to provide meal and rest periods and pay premium wages for missed or non-compliant meal and rest periods; 4) Whether Defendants failed to timely pay wages during employment; 5) Whether Defendants failed to provide complete and accurate wage statements; 6) Whether Defendants failed to timely pay all wages upon separation of employment and whether Class Members are entitled to waiting time penalties; and 7) Whether Defendants violated Business and Professions Code section 17200. (MPA at 20:20-28.)

As to typicality, Plaintiff contends that her claims are typical of the Class Members' claims because the named Plaintiff suffered the same alleged violations (e.g. failure to pay minimum and overtime wages, failure to authorize or permit meal and rest periods and failure to pay meal and rest period premium wages for non-compliant meal and rest periods, failure to timely pay wages during employment, failure to provide complete and accurate wage statements, and failure to timely pay all wages due upon separation of employment) as the Settlement Class as a whole did and, thus, the claims of the named Plaintiff fairly represent the claims of the Settlement Class as a whole. (Id. at 20:1-8.)

As to adequacy, Plaintiff represents that she was informed of the risks of serving as class representative, participated in the litigation, and does not have conflicts of interest with the class. (Id. at 20:10-19; Declaration of Jose Melgar, *passim*.)

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; attorney fees and costs; enhancement awards; 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. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants 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 USPS mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. 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)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$10,900. 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 \$153,333.33 (33 1/3%) in attorney fees and up to \$16,500 in costs will be addressed at the final 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 by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiff will request a service award of \$9,500. (§3.2.1)

In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he “should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class.” (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than pro forma claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit’” (Id. at 806-807, italics and ellipsis in original.)

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

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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 \$460,000.

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

Up to \$153,333.33 (33 1/3%) for attorney fees
(¶3.2.2);

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Up to \$9,500 for a Service Payment to the Named
Plaintiff (¶3.2.1);

Up to \$10,900 for settlement administration costs
(¶3.2.3);

\$18,750 (75% of \$25,000 PAGA penalty) to the LWDA.
(¶3.2.5)

C. Defendants will pay their share of taxes separate from the GSA. (¶3.1)

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 1, 2024. Counsel must call the clerk to obtain a hearing date PRIOR to filing and serving the motion.

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

5) Non-Appearance Case Review is set for September 9, 2024, 8:30 a.m., Department 9.

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

IT IS SO ORDERED.

DATED: March 7, 2024



A handwritten signature in black ink, reading "Yvette M. Palazuelos". The signature is written in a cursive, flowing style.

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