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Superior Court of California
County of Los Angeles

MAY 19 2022

Sheri R. Carter, Clerk of Court
By: Roxanne Arraiga, Deputy

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

Martin Jauregui v. LPF RE Manager, LLC, Case No.: 19STCV36107

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable on the condition that counsel provide proof of submission of the Amended Settlement Agreement to the LWDA.

The Parties' supplemental paperwork must be filed by June 22, 2022.

Non-Appearance Case Review is set for June 29, 2022, 8:30 a.m., Department 9.

The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$325,000 non-reversionary. (¶15) Escalator: The number of Class Members is currently estimated to be 688 as of June 30, 2020. If the Class Data shows that the number of 688 increases by more than 10% at the time of Preliminary Approval, Plaintiff has the right to request a corresponding increase in the MSA. (¶55.b)

B. The Net Settlement Amount ("Net") \$175,177.50 is the GSA minus the following:

- Up to \$108,322.50 (approx. 1/3) for attorney fees (¶51.d);
- Up to \$12,000 for costs of litigation (Ibid.);
- Up to \$12,000 for settlement administration costs (¶51.f);
- Up to \$7,500 for a Service Award to the Named Plaintiff (¶51.c.i); and

Payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA (¶51.e).

C. Defendant's share of payroll taxes will not be paid out of the Maximum Settlement Amount, but instead will be paid separate and apart from it. (¶15)

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by February 21, 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 February 28, 2023, 8:30 a.m., Department 9.

I.
BACKGROUND

Plaintiff Martin Jauregui sues his former employer, Defendant LPF RE Manager, LLC, for alleged wage and hour violations. Defendant provides staffing and management services for a cannabis cultivation, distribution, and manufacturing facility located in Greenfield, California. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

Plaintiff filed his Class Action Complaint on October 9, 2019. Plaintiff's operative First Amended Class Action Complaint, filed on February 25, 2020, alleges ten causes of action against Defendant for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; (9) Violation of Business and Professions Code § 17200 et seq.; and (10) for penalties under the Private Attorneys General Act ("PAGA"), Labor Code §§ 2698, et seq.

On June 2, 2020, Defendant served and filed a Notice of Related case regarding Zamudio v LPF RE Manager, LLC et al., Case No. 20CV000524 ("Zamudio"), which is pending in Monterey County and was filed on February 6, 2020. On July 29, 2020, Defendant served and filed a Notice of Related cases regarding Zamudio and also listing Samuel Martinez v. Greenfield Organix dba LoudPack Farms, Case No. 20CV001683 ("Martinez"), also pending in Monterey County and filed on July 19, 2020. On August

12, 2020, the Court entered an Order finding Zamudio and Martinez to be unrelated to this action.

On June 30, 2020, the parties participated in a private mediation with Lynn Frank, Esq. The mediation resulted in agreed upon general settlement terms which the parties' finalized on July 8, 2020 with their Memorandum of Understanding. On October 1, 2020, the parties finalized the long-form Joint Stipulation of Class Action and PAGA Settlement Agreement ("Settlement Agreement"), a copy of which was filed with the Court.

On November 4, 2020, Prospective Intervenors Sandra Gasca and Jose Zamudio filed a Notice of Motion for Leave to Intervene. Plaintiff and Defendant each filed briefing opposing the motion. On February 22, 2021, the Court called the matter for hearing and denied Prospective Intervenors' motion. On May 11, 2022, the Court of Appeal affirmed this Court's order denying intervention.

On March 23, 2021, the Court issued a "checklist" to the parties pertaining to deficiencies in the proposed settlement. In response, the parties filed further briefing, including the Amended Settlement Agreement attached to the Supp. Declaration of Alvin B. Lindsay as Exhibit A.

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

II.

SETTLEMENT AGREEMENT

A. Definitions

"Class Members": all current and former non-exempt, hourly employees who worked for Defendant in California at any time during the Class Period. (¶5)

"Class Period": October 9, 2015 through the date of the Court's order approving Plaintiff's Motion for Preliminary Approval, or August 30, 2020, whichever is earlier. (¶6)

"Settlement Class Members" ("SCM"): all Class Members who do not submit a Request for Exclusion. SCMs will release all of the Released Claims and be bound by all terms of the Settlement Agreement and any final judgment entered in this Lawsuit. (¶36)

"PAGA Employees": aggrieved non-exempt employees employed by Defendant who worked at least one pay period during the PAGA Period. (§19)

"PAGA Period": October 9, 2018 through August 30, 2020. (§20)

The parties stipulate to class certification for settlement purposes only. (§33)

B. Terms of Settlement Agreement

The essential terms are as follows:

- The Maximum Settlement Amount ("MSA") is \$325,000 non-reversionary. (§15)
 - o Escalator: The number of Class Members is currently estimated to be 688 as of June 30, 2020. If the Class Data shows that the number of 688 increases by more than 10% at the time of Preliminary Approval, Plaintiff has the right to request a corresponding increase in the MSA. (§55.b)
- The Net Settlement Amount ("NSA") (\$175,177.50) is the MSA minus the following:
 - o Up to \$108,322.50 (approx. 1/3) for attorney fees (§51.d);
 - o Up to \$12,000 for costs of litigation (Ibid.);
 - o Up to \$7,500 for a Service Award to the Named Plaintiff (§51.c.i);
 - o Payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA (§51.e); and
 - o Up to \$12,000 for settlement administration costs (§51.f).
- Defendant's share of payroll taxes will not be paid out of the Maximum Settlement Amount, but instead will be paid separate and apart from it. (§15)
- No Claim Form. There is no claim requirement. (Notice pg. 2)
- Response Deadline. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notices to Class Members, and the last date on which Class Members may submit requests for exclusion or objections to the Settlement Agreement. (§33)
 - o PAGA Employees cannot exclude themselves from the PAGA Released Claims, and will instead automatically receive their pro-rata share of 25% of the PAGA Payment. (§32)
 - o Defendant has the unilateral right to revoke the Settlement Agreement if, after the Response Deadline, the number of Class Members who submitted timely and valid written requests for

exclusion from the Settlement Agreement equals at least 10% of all Class Members. (§55.a)

- Individual Settlement Calculations. Using the Class Data, the Settlement Administrator will calculate the total Qualified Workweeks for all SCMs. The respective Qualified Workweeks for each SCM will be divided by the total Qualified Workweeks for all SCMs, resulting in the Payment Ratio for each individual SCM. Each SCM's Payment Ratio will then be multiplied by the NSA to calculate each SCM's estimated ISP. The ISP will be provided only to the individual SCM. Each ISP will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). The ISP checks will include an endorsement confirming that by cashing the check, each SCM is releasing state and federal claims covered by the Released Claims.

(§51.b.i)

- o Calculation of PAGA Payments: The parties have allocated \$10,000 to the PAGA Payment, with \$7,500 being paid to the California Labor and Workforce Development Agency, and \$2,500 will remain in the NSA and be distributed as described in this Settlement Agreement. The PAGA Payment and the \$2,500 portion of it that will be paid to PAGA Employees will be divided up amongst them on the same pro-rata calculation for determining the Payment Ratio for the SCMs. However, Defendant's counsel has informed Plaintiff there are 634 PAGA Employees employed during the PAGA Period, and there are 54 Settlement Class Members who were employed in the Class Period but not the PAGA Period. Dividing \$2,500 by 634 employees is not a substantial enough amount to justify the expense of printing and mailing separate checks. Therefore, for the Class Members who are also PAGA Employees, their Individual Settlement Payment will be added together with their pro rata share of the NSF and their pro rata share of the \$2,500 for the portion of the PAGA Payment allocated to the PAGA Employees. Even if a Settlement Class member determines to opt out of the Settlement, they will receive their pro rata portion of the \$2,500 employee component of the PAGA Payment, as aggrieved employees cannot opt-out of the PAGA penalty claim. See, e.g., *Robinson v So. County Oil* (2020) 53Cal.App.476. (§51.b.ii)

- o Tax Allocation: Settlement Shares shall be allocated as follows: 20% as wages, 80% as interest and penalties.

(§51.b.iii)

- Settlement Funding. The Settlement Administrator shall set up a Qualified Settlement Account ("QSA") which Defendant shall have the option of making payments into towards the MSA prior to the due date for those payments. Any portion of the MSA which remains unpaid as of the Effective Date will be paid in biweekly payments over a one year period beginning 30 calendar days

following the Effective Date. Any interest which accrues on the MSA sums paid into the QSA prior to distribution by the Settlement Administrator will become part of the NSA. (§51.a)

o To clarify, if for example there are no objectors and the Court enters final approval and judgment on November 1, 2021, that is the Effective Date. Defendant would then have 30 days plus one year, or 13 months, to fund the QSA with biweekly payments. In this instance, the QSA would be fully funded by December 1, 2022. (Ibid.)

- Distribution. After the Effective Date of the Settlement occurs, and after Defendant has made the final installment payment to the Qualified Settlement Fund to fully fund it with the Maximum Settlement Amount, then within twenty-five (25) calendar days of that final funding date, the Administrator will mail ISPs by regular, First Class, U.S. Mail to each SCM. (§51.b.iv)

- Handling of Unclaimed Funds. Any checks issued to SCMs shall remain valid and negotiable for one hundred and eighty (180) days after the date they are issued. In the event an ISP check has not been cashed within one hundred and eighty (180) days, all such checks shall be voided and funds associated with such voided checks, plus any accrued interest that has not otherwise been distributed, shall be paid out in accordance with Code of Civil Procedure section 384 or any other method of distribution consistent with Code of Civil Procedure section 384. The Parties agree that the cy pres recipient shall be California Rural Legal Assistance Foundation, or other mutually agreeable cy pres recipient should the Court not approve the Parties' proposed beneficiary and/or as otherwise consistent with Code of Civil Procedure section 384. (§51.b.v)

- ILYM Group, Inc. will act as administrator for the settlement. (§35)

- The proposed settlement was submitted to the LWDA on October 28, 2020. (Supp. Lindsay Decl., Exhibit E.)

- Notice of entry of final judgment will be posted on the administrator's website. (Notice pg. 7)

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

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III.
DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On June 30, 2020, the parties participated in a private mediation with Lynn Frank, Esq. The mediation resulted in agreed upon general settlement terms which the parties' finalized on July 8, 2020 with their Memorandum of Understanding, and later finalized in the Settlement Agreement on October 1, 2020. (Declaration of David Yeremian ¶16.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that in advance of mediation, Defendant produced hundreds of pages of documents regarding Defendant LPF Manager, including an employee handbook, Security Screening SOP, Arbitration Agreement, Lunch Waiver, Notice of Related Case, payroll records for Plaintiff, timekeeping records for Plaintiff, and Inventory Control Technician job description, and Plaintiff's personnel file documents. Defendant produced numbers and class data for 419 employees who meet the Class definition and who were directly employed by Defendant. Defendant also produced numbers and class data for 269 additional employees who meet the Class definition and were placed at Defendant's Greenfield facility through farm labor contractor, Valley Harvest, LLC. For Valley Harvest, LLC employees, Defendant produced documents including a representative arbitration agreement, a meal and rest policy and meal period waiver form, and a payroll summary for a sample of these additional Class members. (Id. at ¶28.)

Defendants also produced several Excel data files with employee numbers and a corresponding sampling of timekeeping records and wage statements for them. Defendant produced a Class list with Employee ID numbers, and hire and fire dates for workweek calculations. By way of example, the Class list initially produced included 419 Class members, while the timekeeping and payroll sampling was for 56 different employees (13.4% sampling rate). Given Plaintiffs contention that all employees were subject to security screenings, the parties agreed to the sampling as representative and statistically significant for mediation purposes. Prior to mediation, Defendant's counsel provided further class data and numbers for the other Class members employed by Valley Harvest, LLC. This data and these documents were provided to Plaintiff's

statistical analysis expert, who provided a summary report detailing the numbers drawn and extrapolated from the data set. (Id. at ¶29.)

Class Counsel also indicates that Defendant's financial condition was a factor in coming to the settlement. (Id. at ¶47.) Defendant's CEO represents that the proposed funding plan is necessary due to Defendant's inability to pay the settlement amount in one lump sum payment due to a significant state tax liability, preexisting debt obligations, and continuing business operation expenses. He represents that the installment plan was carefully drafted to ensure Defendant would be able to make the scheduled payments based on its pre-existing debt obligations and income. (See Declaration of Marc Ravner.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶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
Overtime Wage Claim	\$302,180.17
Meal Period Claim	\$1,142,170.29
Rest Period Claim	\$1,201,439.25
Wage Statement Violations	\$614,300.00
Waiting Time Penalties	\$1,235,520.00

PAGA Penalties	\$1,842,900.00
Total	\$6,338,509.71

(Yeremian Decl. ¶¶ 47-60.)

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 \$325,000 non-reversionary settlement. The \$325,000 MSA constitutes roughly 5.1% of Defendants' maximum exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$325,000 settlement amount, if reduced by the requested deductions, will leave \$175,177.50 to be divided among approximately 688 class members. The resulting payments will average \$254.62 per class member. [$\$175,177.50 / 688 = \254.62]

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

"Released Claims" means all claims and causes of action raised or that reasonably could have been raised in the operative complaint (the FAC) based upon the facts, legal theories, and causes of action alleged in the Lawsuit for the time period from October 9, 2015 through August 30, 2020, and including all of the following claims for relief: failure to pay wages due; failure to pay minimum wages; failure to pay overtime wages; failure to provide compliant meal breaks and related premium payments; failure to provide compliant rest breaks and related premium payments; failure to provide compliant wage statements; failure to provide timely wages; failure to comply with Section 221 of the California Labor Code; failure to pay final wages; unfair business practices in violation of California Business and Professions Code § 17200 et seq.; any other claims or penalties under the wage and hour laws pleaded in the FAC; and all damages, penalties, interest, fees, and other amounts recoverable under the claims, causes of action or legal theories of relief described above as may be available under California and federal law to the extent permissible. The period of the Released Claims shall extend to the limits of the Class Period, but they are ineffective after the close of the Class Period in August of 2020. The res judicata effect of the Judgment will be the same as that of the Released Claims. The definition of Released Claims shall not be limited in any way by the possibility that Plaintiff or SCMs may discover new facts, legal theories, or legal arguments not alleged in the FAC but which might serve as an alternative basis for pursuing the same or similar claims, causes of action, or legal theories of relief falling within the definition of Released Claims. (¶28)

"Release Effective Date" means the date when the releases provided by the Settlement Class of the above described Released Claims become effective, and more particularly upon both the Effective Date of the Settlement and the final installment payment to fully fund the QSF with the Maximum Settlement Amount. (¶29)

Defendant has the option to pay into the QSF so that it is fully funded by one year from the Effective Date of the

Settlement. Therefore, the Effective Date of the Settlement will occur before the Release Effective Date of the Released Claims and the PAGA Released Claims, which will occur when Defendant makes the last installment payment to fully fund the QSF. (§12)

"PAGA Released Claims" shall mean claims under the also Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. ("PAGA") that reasonably could have been premised on the facts, claims, and legal theories described above or in the FAC or in the PAGA Notice Letter Plaintiff provided to the LWDA and served on Defendants. The Released Parties shall be entitled to a release from the State of California and the Aggrieved Employees only as to all PAGA Released Claims based on the alleged facts and legal claims in the operative complaints. PAGA Released Claims will be released by the PAGA Employees even if they determine to opt out of the Settlement. (§30)

Upon the Effective Date, and following the final payment to fully fund the Qualified Settlement Fund, the effective date of the PAGA Released Claims will occur when the Administrator receives the final installment payment from Defendant to fully fund the Qualified Settlement Fund. (§30.a)

The PAGA Released Claims expressly exclude all PAGA claims outside the PAGA Period, all PAGA claims not alleged in the operative complaints in the Actions, all claims under Cal. Labor Code § 558(a)(3), and all non-PAGA claims. In no event shall the release of the PAGA Released Claims in this Settlement Agreement release any individual claims of any individuals other than Plaintiff. (§30.b)

"Released Parties" shall mean Defendant LPF RE MANAGER, LLC, Greenfield Organix, ARB Pacific, LLC, Valley Harvest, LLC, and all of those entities' past, present and/or future, direct and/or indirect, subsidiaries, parents, affiliates, divisions, joint venturers, predecessors, successors, insurers, assigns, consultants, subcontractors, current or former employees, officers, directors, servants, agents, investors, representatives, attorneys, executors, administrators, assigns, employee benefit plans (including but not limited to the trustees, fiduciaries, and administrators of those plans), and all persons acting under, by, through, or in concert with any of them, and each of them. (§31)

Named Plaintiff will additionally provide a general release and §1542 waiver. (§41)

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 688 class members. (Yeremian Decl. ¶87.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (Yeremian Decl. ¶88.)

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.)

Here, regarding commonality, Plaintiff alleges that common questions of law or fact in this case predominate over individual questions. This action involves, inter alia, a determination about Defendant's alleged failure to provide meal and rest periods, failure to pay all wages due to allegedly common and unlawful policies, the resulting failure to pay final wages when required, the failure to provide accurate paystubs, and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff contends Defendant's policies and practices affected Class members in the same way. All Class members were employed during the Class Period and all were required to pass through security screening whenever they entered or exited Defendant's facilities. Plaintiff alleges that

the operative complaint delineates a common course of conduct applicable to all Class members. (Yeremian Decl. ¶93.)

As to typicality, Plaintiff alleges that his claims are typical of class members' claims because they arose from the same factual basis and are based on the same legal theories. Plaintiff was employed by Defendant during the Class Period subject to the allegedly unlawful meal and rest policies, and pay practices at issue in this litigation, and Defendants uniformly did not compensate Class members for time spent under Defendant's control during security screenings. Accordingly, Plaintiff is a member of the Class. The central issues of this litigation (whether Defendant failed to provide meal periods and rest breaks, whether Defendant paid employees for time under its control during security screenings, etc.), which would arise if this were an individual action brought by Plaintiff, apply to the other Class members as well, and the answers to these questions would determine Defendant's liability as to the entire putative class. (Id. at ¶90.)

As to adequacy, Plaintiff represents that he has no conflicts with the Class, has participated in the litigation, and is aware of the duties and risks of serving as class representative. (Declaration of Martin Jauregui.)

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 as Exhibit 1. 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.

The Notice will be issued in English and Spanish. (Supp. Lindsay Decl. ¶14.)

2. Method of class notice. The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data or any of its information for any purpose other than to administer this Settlement Agreement. Defendant shall provide the Settlement Administrator with the Class Data to prepare and mail the Notices to the SCMs. This shall take place within fourteen (14) calendar days after the date that both of the following has occurred: (a) the Preliminary Approval Date; and (b) the date on which Defendant receives sufficient and reasonable written assurances from the Settlement Administrator that the Administrator will maintain the confidentiality of the Class Data. (¶49.a)

No later than fourteen (14) calendar days after receiving the Class Data from Defendant as provided herein, the Settlement Administrator shall mail copies of the Notice to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. (¶49.c)

Any Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. If any Notices sent to SCMs currently employed by Defendant are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendant. Defendant will request that the currently employed SCM provide a corrected address to the Defendant to forward to the Settlement Administrator. Class Members who received a re-mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline. (¶49.d)

3. Cost of class notice. As indicated above, claims administration costs are estimated to be \$12,000. (§51.f) 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 \$108,322.50 (approx. 1/3) in attorney fees and up to \$12,000 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

Plaintiff Martin Jauregui requests an enhancement award of \$7,500. (§51.c.i) 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 on the condition that counsel provide proof of submission of the Amended Settlement Agreement to the LWDA.

2) The Parties' supplemental paperwork must be filed by June 22, 2022.

3) Non-Appearance Case Review is set for June 29, 2022, 8:30 a.m., Department 9.

4) The essential terms are:

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(¶51.c.i); and
Payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA
(¶51.e).

C. Defendant's share of payroll taxes will not be paid out of the Maximum Settlement Amount, but instead will be paid separate and apart from it. (¶15)

D. Plaintiffs release of Defendants from claims described herein.

5) The Parties' Motion for Final Approval of Class Action Settlement must be filed by February 21, 2023. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

6) 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.

7) Non-Appearance Case Review is set for February 28, 2023, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: May 19, 2022

YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT