

[TENTATIVE] RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

Orantes, et al. v. Westlake Wellbeing Properties, LLC, et al.,
Case No. BC666337

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 file declarations with the following information:

1. Details of Plaintiffs' separate individual settlements, including attorney fees.
2. Whether the individual and class settlements were negotiated at the same mediation.
3. Whether the sources of funds between the class settlement and individual settlements are the same. Decl. of Huether attached to Plaintiffs' Supp. Briefing, ¶¶5-11.

The Parties' supplemental paperwork must be filed by **July 19, 2023**.

Non-Appearance Case Review is set for July 26, 2023, 8:30 a.m., Department 9.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$410,000.
- B. The Net Settlement Amount is the GSA minus the following:
 - \$20,000 in Prior Release Payments previously made to Class Members (¶I.J);
 - Up to \$143,500 (35%) for attorney fees (¶I.B);
 - Up to \$18,000 for litigation costs (Ibid.);
 - Up to \$22,500 total [\$7,500 each] for service payments to the 3 named Plaintiffs (¶I.I);
 - Up to \$10,000 for settlement administration costs (¶I.C);
 - \$11,250 (75% of \$15,000 PAGA penalty) to the LWDA (¶I.W).
- C. Employer share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (¶I.J)

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **January 5, 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 email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Non-Appearance Case Review is set for January 12, 2024, 8:30 a.m., Department. 9.

I.
BACKGROUND

Plaintiffs Odilia Orantes, Maria Elena Avila Cardona, and Karla Blanco sue their former employer, Defendants Westlake Wellbeing Properties, LLC, Castle & Cooke, Inc., D/B/A Four Seasons Hotels & Resorts, Castle & Cooke, Inc., Castle & Cooke California, Inc., and Four Seasons Hotel Limited (collectively, "Defendants"), for alleged wage and hour violations. Plaintiffs seek to represent a class of Defendants' current and former non-exempt employees.

On June 23, 2017, Plaintiffs filed the initial class action complaint alleging causes of action for: (1) failure to pay wages for all time worked at the minimum wage rate in violation of Labor Code sections 1194, 1194.2, and 1197 and the Wage Orders; (2) failure to pay proper overtime wages for daily overtime hours worked and all hours worked in violation of Labor Code sections 510 and 1194 and the Wage Orders; (3) failure to authorize or permit rest periods in violation of Labor Code section 226.7; (4) failure to provide complete and accurate wage statements in violation of Labor Code section 226 and the Wage Orders; (5) failure to timely pay wages due at time of separation of employment in violation of Labor Code sections 201, 202, and 203; and (6) unfair business practices in violation of Business and Professions Code section 17200, et seq.

On December 4, 2017, Plaintiffs filed a First Amended Complaint adding a seventh cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA").

On May 21, 2018, the Parties attended their first full day mediation session with Rob Kaplan, Esq. The Parties were unable to reach a resolution at mediation.

On August 17, 2018, Defendant Westlake Wellbeing Properties LLC filed a Motion to Compel Arbitration as to Plaintiff Odilia Orantes as well as a Motion to Stay Case Pending Arbitration as to Plaintiff Orantes. Concurrently, on August 17, 2018, Defendant Westlake Wellbeing Properties LLC filed a Motion to Compel Arbitration as to Plaintiff Maria Cardona as well as a Motion to Stay Case Pending Arbitration as to Plaintiff Cardona.

On November 13, 2018, the Court entered an order denying Defendant's Motion to Compel as to Plaintiff Orantes and Plaintiff Cardona.

On January 7, 2019, Defendant Westlake Wellbeing Properties LLC appealed the Court's order denying its Motion to Compel Arbitration of Plaintiff Orantes' and Plaintiff Cardona's claims.

On August 19, 2019, the Parties attended another mediation session with Rob Kaplan, Esq. The Parties were again unsuccessful at mediation.

On October 21, 2019, Defendants filed a Motion to Compel Arbitration and Motion to Stay Case Pending Arbitration as to Plaintiff Karla Blanco. Defendant's Motion to Compel Plaintiff Blanco's claims was not heard.

On March 19, 2021, the Court of Appeals entered an opinion affirming the trial court's order denying Defendant's motions to compel arbitration.

Thereafter, the parties participated in additional negotiations which ultimately resulted in settlement. The terms are finalized in the Joint Stipulation and Settlement of Class, Collective, and Representative Action ("Settlement Agreement"), a copy of which is attached to the Declaration of Melissa A. Huether ("Huether Decl.") as Exhibit 1.

On February 21, 2023, 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 Supplemental Declaration of Melissa A. Huether ("Supp. Huether Decl.") as Exhibit 3.

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

II.
SETTLEMENT AGREEMENT

A. Definitions

"Class Member(s)" or "Settlement Class": All current and former non-exempt employees of Defendants employed as Guestroom Attendants or Guestroom Attendant Self Inspectors in the state of California at any time during the Class Period. (¶I.G)

Class Period: June 23, 2013, and end on August 1, 2022. (¶I.H)

"PAGA Members": All current and former non-exempt employees of Defendants employed as Guestroom Attendants or Guestroom Attendant Self Inspectors in the state of California at any time during the period from June 23, 2016 through August 1, 2022 (the "PAGA Period"). (¶I.V)

"Participating Class Members": All Class Members who are entitled to receive his/her share of the Net Settlement Amount and who do not submit a valid and timely Request for Exclusion. (¶I.X)

The Parties stipulate to class certification for settlement purposes only. (¶XIX.11)

B. Terms of Settlement Agreement

The essential terms are:

- The Class Settlement Amount is \$410,000, non-reversionary. (¶I.J)
- The Net Settlement Amount ("Net") (\$184,750) is the Class Settlement Amount minus the following:
 - o \$20,000 in Prior Release Payments previously made to Class Members (¶I.J);
 - o Up to \$143,500 (35%) for attorney fees (¶I.B);
 - o Up to \$18,000 for litigation costs (Ibid.);

- o Up to \$22,500 total [\$7,500 each] for service payments to the 3 named Plaintiffs (¶I.I);
- o Up to \$10,000 for settlement administration costs (¶I.C); and
- o Payment of \$11,250 (75% of \$15,000 PAGA penalty) to the LWDA (¶I.W).
- In addition to the Class Settlement Amount, Defendants shall also pay the employer-side share of payroll taxes on the wage portion of the Individual Settlement Payments. (¶I.J)
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (Notice p. 1)
- Response Deadline. "Response Deadline" means the deadline by which Class Members must mail or fax to the Settlement Administrator valid Requests for Exclusion, Notices of Objection to the Settlement, or disputes to Workweeks. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notice Packet by the Claims Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. (¶I.HH)
- o Eligible PAGA Members will receive their share of the employee portion of the PAGA Penalties and will be deemed to have released the Released PAGA claims, regardless of whether they opt-out from the release of their class claims. (¶X.3)
- o If 20 or more of the Class Members request to be excluded from the Settlement (or are otherwise excluded), Defendants, in their sole discretion, shall have the option of nullifying the Settlement Agreement. (¶X.1)
- Individual Settlement Payment Calculation. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each participating Class Member's individual Pay Periods by the total Pay Periods of all Participating Class Members and multiplying the resulting fraction by the Net Settlement Amount. (¶VIII.1.a)
- o Any Participating Class Members who received payment from the Prior Release Payments made by Defendant shall have such amounts credited against their Individual Settlement Payment. However, each Participating Class Member shall receive a payment of at least One Hundred Dollars (\$100.00) for the class portion of their Individual Settlement Payment. (¶VIII.1.d)

o PAGA Payments: The amount that each PAGA Member will receive will be calculated by dividing each participating PAGA Member's individual Pay Periods by the total Pay Periods of all PAGA Members, and multiplying the resulting fraction by the 25% share of the PAGA Penalties designated for distribution to aggrieved employees. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they opt out of the participation regarding the class claims.

(¶VIII.1.b)

o Tax Allocation. Each individual settlement payment will be allocated as 20% wages, 40% interest, and 40% penalties. (¶XIII)

• Funding and Distribution of Settlement. Within fourteen (14) calendar days after the Effective Date of the Settlement, Defendants will make a one-time deposit of the Class Settlement Amount (less the amount paid in Prior Release Payments) plus all employer-side payroll taxes into a Qualified Settlement Account to be established by the Settlement Administrator. The Settlement Administrator will then issue payments within fourteen (14) calendar days to: (a) Participating Class Members/PAGA Members; (b) the Labor and Workforce Development Agency; (c) Plaintiffs; and (d) Class Counsel. The Claims Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement. Defendants have no obligation to deposit such funds prior to the deadline set forth herein. (¶II)

• Uncashed Checks. Any checks issued by the Claims Administrator to Participating Class Members will be negotiable for at least one hundred eighty (180) calendar days. Those funds represented by settlement checks returned as undeliverable and those settlement checks remaining uncashed for more than one hundred eighty (180) calendar days after issuance shall be forwarded to the Controller of the State of California pursuant to the Unclaimed Property Law, California Civil Code § 1500, et seq., to be held in trust for those Participating Class Members and PAGA Members who did not timely cash their Settlement checks. (¶XII.3)

• ILYM Group, Inc. will perform notice and settlement administration. (¶I.D)

• The Settlement Agreement was submitted to the LWDA on June 14, 2023. (Supp. Huether Decl., Exhibit 7.)

• Notice of Entry of Judgment will be posted on the administrator's website. (¶IX.1.k)

• Participating class members and the named Plaintiffs will release certain claims against Defendants. (See further discussion below)

III.
DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On May 21, 2018, the Parties attended their first full day mediation session with Rob Kaplan, Esq., which did not result in settlement. (Huether Decl. ¶7.) On August 19, 2019, the Parties attended another mediation session with Rob Kaplan, Esq., which did not result in settlement. (Id. at ¶10.) After the Court of Appeals entered an opinion affirming the trial court's order denying Defendant's motions to compel arbitration on March 19, 2021, the parties continued negotiations and ultimately reached the proposed settlement. (Id. at ¶¶12-13.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that the information informally produced by Defendants and reviewed included, but was not limited to, the time and wage records for 100% of class members who were employed during the period through the first mediation, the number of current and former employees during the entire class period; number of workweeks during the entire class period; number of pay periods during the PAGA Period; number of employees during the PAGA Period; average rate of pay; and Defendants' policies (including but not limited to employee handbook, job descriptions, meal period waiver, and grooming policy). (Id. at ¶14).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶34.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (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 estimated exposure for each of the claims alleged:

Violation	Maximum Exposure
Unpaid Wages	\$188,742.40
Rest Period Violations	\$362,233.74
Wage Statement Penalties	\$272,000.00
Waiting Time Penalties	\$120,372.00
PAGA Penalties	\$404,500.00
Total	\$1,347,848.14

(Huether Decl. ¶¶17-32.)

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. (Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement. Plaintiffs' counsel estimated Defendants' maximum exposure at \$1,347,848.14. The \$410,000 settlement amount represents approximately 30.4% of Defendants' maximum exposure which, given the uncertain outcomes, is within the "ballpark of reasonableness."

The \$410,000 settlement amount, after reduced by the requested deductions, leaves approximately \$184,750 to be divided among approximately 68 putative class members. Assuming

full participation, the resulting payments will average approximately \$2,716.91 per class member. [\$184,750 Net / 68 = \$2,716.91]

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

It is the desire of the Plaintiffs, Class Members (except those who exclude themselves from the Settlement), and Defendants to fully, finally, and forever settle, compromise, and discharge the Released Class Claims as to the Released Parties. Thus, following the Effective Date and after Defendants fully funds the Class Settlement Amount, and except as to such rights or claims as may be created by this Settlement Agreement, the Class Members shall fully release and discharge the Released Parties from any and all Released Class Claims for the entire Class Period. This release shall be binding on all Class Members who have not timely submitted a valid and complete Request for Exclusion, including each of their respective attorneys, agents, executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the Released Parties, who shall have no further or other liability or obligation to any Settlement Class Member with respect to the Released Class Claims, except as expressly provided herein.

(¶XV.2)

"Released Claims": The Released Claims include both the Released Class Claims which will be released by Class Members who do not request exclusion and the Released PAGA Claims which will be released by the PAGA Members. (§I.EE)

"Released Class Claims": Following the Effective Date, and upon Defendants fully funding the Class Settlement Amount, all Class Members shall fully and finally release Released Parties of the Released Class Claims for the Class Period. The Released Class Claims include all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and arising during the Class Period, including: (1) failure to pay straight or overtime wages for work performed off the clock, (2) failure to authorize or permit rest periods, (3) failure to provide accurate wage statements, and (4) failure to pay all final wages owed at termination. (§I.CC)

"Released PAGA Claims": Following the Effective Date, and upon Defendants fully funding the Class Settlement Amount, all PAGA Members 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 facts stated in the operative complaint, and the PAGA Notice which arose during the PAGA Period. (§I.DD)

"Released Parties": The Released Parties include Westlake Wellbeing Properties, LLC, Castle & Cooke, Inc. d/b/a Four Seasons Hotels & Resorts, Castle & Cooke, Inc., Castle & Cooke California, Inc, and Four Seasons Hotel Limited, as named by Plaintiffs in the Operative Complaint, as amended, and their past, present and/or future, direct and/or indirect, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships (defined as a company/corporation and/or partnership that is, directly or indirectly, under common control with Defendant or any of its parents), divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, any entity with potential joint liability, employee benefit plans and fiduciaries thereof, and all of their respective employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns. (§I.FF)

Named Plaintiffs will additionally provide a separate general release. (§IV) Class Counsel represents that Plaintiffs each entered into a separate Settlement Agreement and General Release for a separate settlement sum which is separate and in addition to their service award. (Supp. Huether Decl. §7.) Plaintiffs allege they were each terminated from their employment with Defendants after suffering work injuries and having various work restrictions. (Id. at §§7-10.) Class Counsel represents that Plaintiffs had facts which supported a potential wrongful termination, retaliation, and/or discrimination lawsuit, and chose not to pursue those claims and resolved them with this litigation in a separate and distinct and wholly unrelated settlement agreement. Counsel contends that the individual settlement agreements do not create a conflict of interest between Plaintiffs and the Class because they are for valid claims which the Plaintiffs could have brought a separate action for and the funds for such individual settlements are wholly separate and in addition to the Gross Settlement Amount being paid to resolve the class action matter. (Id. at §11.)

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 68 Class Members. (Huether Decl. §17.) 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. (Huether Decl. §17).

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, Plaintiffs contend that common questions of law and fact include, but are not limited to: 1) Whether Defendants failed to pay Class Members at the minimum wage; 2) Whether Defendants failed to pay Class Members at their overtime wage; 3) Whether Defendants failed to provide the Class Members rest period premium wages for missed rest periods; 4) Whether Defendants failed to provide the Class Members complete and accurate wage statements; 5) Whether Class Members are entitled to waiting time penalties for Defendants' failure to pay all wages upon separation of employment; and 6) Whether Defendants violated Business and Professions Code section 17200. (MPA at 21:16-24.)

Regarding typicality, Plaintiffs assert that they suffered the same alleged violations (e.g. failure to pay wages for all hours of work at the minimum wage rate, failure to pay wages for all hours of work at the overtime wage rate, failure to pay rest period premium wages for missed and/or non-compliant rest periods, failure to provide complete and accurate wage statements, and failure to pay all wages due upon separation of employment) as the class as a whole did. (MPA at 20:24-21:3.)

Finally, as to adequacy, Plaintiff each represent that they participated in the prosecution of this case and are aware of the risks of serving as class representatives. (Declarations of Odilia Orantes, Maria Elena Avila Cardona, and Karla Blanco.)

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. A copy of the revised proposed notice to class members is attached to the Settlement Agreement as Exhibit A. 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 Settlement Administrator shall provide Notices in English and Spanish. (§IX.1.c).

2. Method of class notice. Within fourteen (14) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator. (§IX.2) Within fourteen (14) calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. (§IX.3)

Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. The Settlement Administrator will re-mail any returned Notice Packets within five (5) business days of receipt. Those Class Members who receive a remailed Notice Packet, whether by skip-trace or by request, will have between the later of (a) an additional fourteen (14) calendar days or (b) the Response Deadline to postmark or electronically submit a Request for Exclusion or an objection to the Settlement. (§IX.4)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$10,000. Prior to the time of the final fairness hearing, the settlement 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 \$143,500 (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 \$18,000) 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 each for the class representatives, Odilia Orantes, Maria Elena Avila Cardona, and Karla Blanco (¶I.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 file declarations with the following information:

1. Details of Plaintiffs' separate individual settlements, including attorney fees.
2. Whether the individual and class settlements were negotiated at the same mediation.
3. Whether the sources of funds between the class settlement and individual settlements are the same. Decl. of Huether attached to Plaintiffs' Supp. Briefing, ¶¶5-11.

2) The Parties' supplemental paperwork must be filed by July 19, 2023.

3) Non-Appearance Case Review is set for July 26, 2023, 8:30 a.m., Department 9.

4) The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$410,000.
- B. The Net Settlement Amount is the GSA minus the following:

- \$20,000 in Prior Release Payments previously made to Class Members (¶I.J);
- Up to \$143,500 (35%) for attorney fees (¶I.B);
- Up to \$18,000 for litigation costs (Ibid.);
- Up to \$22,500 total [\$7,500 each] for service payments to the 3 named Plaintiffs (¶I.I);
- Up to \$10,000 for settlement administration costs (¶I.C);
- \$11,250 (75% of \$15,000 PAGA penalty) to the LWDA (¶I.W).

- C. Employer share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (¶I.J)

- D. Plaintiffs release of Defendants from claims described herein.

5) The Parties' Motion for Final Approval of Class Action Settlement must be filed by January 5, 2024. 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 email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

7) Non-Appearance Case Review is set for January 12, 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: June 30, 2023

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT