

06/27/2023

David W. Stanton, Executive Officer / Clerk of Court

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

By: R. Arraiga Deputy

Rodriguez v. Hye Investments, Inc., Case No. 22STCV06218

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 \$225,000.
- B. The Net Settlement Amount ("Net") is the GSA minus the following:

- Up to \$75,000 (33 1/3%) for attorney fees (§3.2.2); [Defendant estimates that there are 39 Class Members and 4,958 Total Workweeks during the Class period. If the number of Workweeks during the Class Period is 10% or 496 workweeks higher than 4,958 workweeks worked, Plaintiff may request a pro-rata increase in the GSA equal to the percentage increase in workweeks above 5,454. (§9.)]

- Up to \$8,000 for litigation costs (§3.2.2);
- Up to \$2,500 for a Service Payment to the Named Plaintiff (§3.2.1);
- Up to \$5,000 for settlement administration costs (§3.2.3).

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

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

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **December 27, 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 January 3, 2024, 8:30 a.m., Department 9.

I.
BACKGROUND

This is a wage and hour class action. Defendants Hye Investments, Inc. dba Garfield Car Wash are a car wash doing business in Montebello, California. On February 17, 2022, Plaintiff Rolando Rodriguez commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay all wages, meal period violations, rest period violations, failure to provide accurate itemized wage statements, failure to pay all wages due at separation of employment, and unfair business practices.

Counsel represents that prior to mediation, Defendant provided the following data: (1) Plaintiff's personnel file, including timecards, wage statements, and compensation records, (2) all handbooks and policies applicable to Plaintiff's claims and in effect during the Class Period, (3) data on class members, (4) total number of workweeks, and total number of current and former class members, and (5) time and pay records for all Class Members. Class Counsel further contends that they spent time reviewing and analyzing time records, payroll records, written policies, and other documents produced by Defendant, and also engaged an expert to create a damages analysis based on Defendant's production of Class Members' time and payroll data.

On August 11, 2022, the Parties engaged in private mediation with mediator Mark LeHocky, and the Parties ultimately reached a settlement following a full day of negotiation, which was later memorialized in a Settlement Agreement. A partially executed copy of the Settlement Agreement was filed with the Court on November 3, 2022 attached to the Declaration of Laura Theriault ("Theriault Decl."), as Exhibit A. On November 7, 2022 another partially executed copy of the Settlement Agreement was filed with the Court attached to the Supplemental Declaration of Laura Theriault.

On April 4, 2023, the court continued preliminary approval for further briefing. In response, on June 6, 2023 and June 7, 2023, counsel filed Amended Settlement Agreements attached to

the Supplemental Declarations of Laura Theriault as Exhibits B and A, respectively.

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

II.
SETTLEMENT AGREEMENT

A. Definitions.

"Class": all individuals who worked for Hye Investments, Inc. as hourly and/or nonexempt employees in California at any time between February 17, 2018 and August 31, 2022. (Settlement Agreement, ¶1.4)

"Class Period": February 17, 2018 to August 31, 2022. (¶1.11)

Defendant estimates that there are 39 Class Members and 4,958 Total Workweeks during the Class period.

The Parties stipulate to class certification for settlement purposes only. (¶13)

B. Terms of Settlement Agreement.

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$225,000, non-reversionary. (¶3.1)
- The Net Settlement Amount ("Net") (\$134,500) is the GSA minus the following:
 - Up to \$75,000 (33 1/3%) for attorney fees (¶3.2.2);
- Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are thirty-nine (39) Class Members and four thousand nine hundred fifty-eight (4,958) Total Workweeks during the Class period. If the number of Workweeks during the Class Period is ten percent (10%) or four hundred ninety six (496) workweeks higher than four thousand nine hundred fifty eight (4,958) workweeks worked, Plaintiff shall, in their sole discretion, have the right to request a pro-rata increase in the gross settlement amount equal to the percentage increase in workweeks above five thousand four hundred fifty four (5,454). (¶9.)
 - Up to \$8,000 for litigation costs (¶3.2.2);

- o Up to \$2,500 for a Service Payment to the Named Plaintiff (¶3.2.1);
- o Up to \$5,000 for settlement administration costs (¶3.2.3); and
- Defendants will pay their share of taxes separate from the GSA. (¶3.1)
- Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date. (¶4.3)
- 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: 25% as wages and 75% as interest and penalties. (¶3.2.4.1)
- "Response Deadline" means sixty (60) days after the Administrator mails Notice to Class Members, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired. (¶1.32) This deadline applies to workweek challenges, too. (¶8.6)
- o If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten percent (10%) of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. (¶10)
- Uncashed Settlement Checks: For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Cy Pres recipient, Bet Tzedek, a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. (¶4.4.3) (See also Declaration of Defense Counsel Alexandra Buechner, ¶3; Declaration of Richard Harutiunian, ¶3.)
- The settlement administrator will be Phoenix Class Action Administration Solutions. (¶1.2)

- 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 August 11, 2022, the Parties engaged in private mediation with mediator Mark LeHocky, and the Parties ultimately reached a settlement following a full day of negotiation, which was later memorialized in a Settlement Agreement. (Therriault Decl., ¶8).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to mediation, Defendant provided the following data: (1) Plaintiff's personnel file, including timecards, wage statements, and compensation records, (2) all handbooks and policies applicable to Plaintiff's claims and in effect during the Class Period, (3) data on class members, (4) total number of workweeks, and total number of current and former class members, and (5) time and pay records for all Class Members. (Id. at ¶7.) Class Counsel further contends that they spent time reviewing and analyzing time records, payroll records, written policies, and other documents produced by Defendant, and also engaged an expert to create a damages analysis based on Defendant's production of Class Members' time and payroll data. (Id. at ¶9).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶35-40; Odenbreit Decl., ¶¶ 8-18.)

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 Wage Claim	\$518,571.44	\$259,285.72
Meal Period Claim	\$244,513.80	\$122,256.90
Rest Period Claim	\$281,560.85	\$56,312.17
Inaccurate Wage Statement	\$67,850.00	\$33,925.00
Waiting Time Penalty	\$44,371.20	\$13,311.00
TOTAL	\$1,156,867.29	\$485,090.79

(Therriault Decl. ¶¶ 13-34.)

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 \$225,000 non-reversionary settlement. The \$225,000 settlement amount constitutes approximately 19.45% of Defendant's maximum exposure and 46.38% of Defendant's realistic exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$225,000 settlement amount, if reduced by the requested deductions, will leave \$134,500 to be divided among approximately 39 class members. The resulting payments will average \$3,448.72 per class member. [$\$134,500 / 39 = \$3,448.72$].

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed fair, adequate, and reasonable.

C. Scope of the Release

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows: (¶6.1)

Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. 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)

Released Parties: "Released Parties" means: Defendant and each of its parent companies, subsidiaries, related companies, affiliates, dbas, current and former management companies, shareholders, and any past, present or future officers, directors and employees, predecessors, successors, and assigns. (§1.30.)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (§6.1)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 39 class members. (Motion, 12:25-26.) 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. (Motion, 13:1-3.)

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 include, but are not limited to whether Defendant

correctly paid Class Members all compensation and whether Defendant failed to provide legally compliant meal and rest periods (or pay mandated premiums in lieu thereof). Further, Plaintiff contends that, based upon review of the identified records and documents, in addition to other investigative efforts, Class Counsel determined that Defendant's written policies and practices as well as pay polices were uniform as applicable to Plaintiff and all Class Members. Finally, whether or not Defendant properly implemented lawful policies governing compensation and meal and rest period compliance are common issues. (Motion, 13:14-26.)

As to typicality, Plaintiff contends that like other Class Members: (1) Defendant employed Plaintiff as a non-exempt and/or hourly paid employee; (2) Plaintiff was subject to the same policies regarding (i) clocking-in and clocking-out; and (ii) meal and rest period compliance; resulting in the same or substantially similar violations. Plaintiff and the Class Members therefore share the same claims stemming from Defendant's alleged violations of the Labor Code and IWC Wage Orders such that their claims are typical. (Motion, 14:19-24.)

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. (Declaration of Plaintiff Rolando Rodriguez, 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 fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant 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 fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation. (¶8.4.2) Not later than three (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. (¶8.4.3.) Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶8.8.1).

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$5,000. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans,

Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$75,000 (33 1/3%) in attorney fees and up to \$8,000 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 by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiff will request a service award of \$2,500. (¶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 \$225,000.

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

Up to \$75,000 (33 1/3%) for attorney fees (§3.2.2);
[Defendant estimates that there are 39 Class Members and 4,958 Total Workweeks during the Class period. If the number of Workweeks during the Class Period is 10% or 496 workweeks higher than 4,958 workweeks worked, Plaintiff may request a pro-rata increase in the GSA equal to the percentage increase in workweeks above 5,454. (§9.)]

Up to \$8,000 for litigation costs (§3.2.2);

Up to \$2,500 for a Service Payment to the Named Plaintiff (§3.2.1);

Up to \$5,000 for settlement administration costs (§3.2.3).

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

D. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by December 27, 2023. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

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

5) Non-Appearance Case Review is set for January 3, 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 27, 2023



Yvette M. Palazuelos

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