

07/12/2023

David W. Stanton, Executive Officer / Clerk of Court

By: R. Aranga Deputy

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

Alcala-Luna v. Me Gusta Gourmet Foods, Inc., Case No.:  
21STCV19578

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$1,100,000.
- B. The Net Settlement Amount is the GSA minus the following:

- Up to \$366,666.67 (33 1/3%) for attorney fees (¶3.2.2); [Fee Split: The fees will be split as follows: 17.5% to Bokhour Law Group; 7.5% to Law Offices of Jake Finkel; and 75% to Mahoney Law Group.]

- Up to \$16,000 for litigation costs (Ibid.);
- Up to \$40,000 (\$10,000 x 4) for a Service Payment to the four Named Plaintiffs (¶3.2.1);

- Up to \$8,000 for settlement administration costs (¶3.2.3);
- \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA. (¶3.2.5)

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

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

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **January 12, 2024**. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

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

**Non-Appearance Case Review is set for January 19, 2024,  
8:30 a.m., Department 9.**

I.  
BACKGROUND

This is a wage and hour class action. Defendant Me Gusta Gourmet Foods, Inc., is a restaurant in Pacoima, CA. On May 24, 2021, Plaintiff Jose Alcala-Luna filed a class action complaint for the above-captioned action. Plaintiff Jose Alcala-Luna alleged (1) Defendant failed to pay all wages, including minimum wages and overtime wages; (2) Defendant failed to provide rest periods; (3) Defendant failed to provide meal periods; (4) Defendant failed to timely pay wages at time of separation; (5) Defendant failed to reimburse employees for necessary business expenditures; and (6) unfair business practices.

On June 6, 2022, Plaintiffs Vilma Diaz Pineda, Josue Diaz Pineda, and Maribel Lozano Martinez filed a complaint in the Superior Court of California - Los Angeles County, Case Number 22STCV18423 (Pineda Action), alleging Defendant: (1) failed to pay all wages owed; (2) failed to provide meal periods; (3) failed to provide rest periods; (4) failed to reimburse for necessary business expenditures; (5) failed to provide accurate wage statements; (6) failed to pay wages upon ending employment; (7) unfair competition law; and (8) violation of the Private Attorneys General Act ("PAGA").

On July 21, 2022, Plaintiffs filed a First Amended Complaint ("FAC") in this Action alleging: (1) Defendant failed to pay all wages, including minimum wages and overtime wages; (2) Defendant failed to provide rest periods; (3) Defendant failed to provide meal periods; (4) Defendant failed to timely pay wages at time of separation; (5) Defendant failed to reimburse employees for necessary business expenditures; (6) unfair business practices; (7) Defendant failed to provide accurate wage statements; and (8) violation of PAGA. The plaintiffs' claims asserted in the matter Pineda, et al. v. Me Gusta Gourmet Foods, Inc. that were pending in Los Angeles Superior Court Case Number 22STCV18423 were dismissed September 29, 2022.

Following the Court's September 16, 2021, Case Management Order, Plaintiff Jose Alcala Luna served formal discovery on Defendant. Shortly thereafter, the Parties agreed to mediation with experienced mediator, Hon. Carl West (Ret.). Prior to the

mediation, Defendant's counsel informed Plaintiff Jose Alcala Luna's counsel of the Pineda Action. The Parties collectively agreed to attend mediation to resolve this Action and the Pineda Action.

Prior to Mediation, Plaintiffs' counsel retained an expert to analyze the data provided by Defendant and provide a detailed damage analysis of Plaintiffs' claims against Defendant. Plaintiffs contend the data provided is statistically significant and how Plaintiffs' expert's analysis supported the conclusion that the sampling was sufficient to provide useful data. Plaintiffs' analysis is predicated in part on an extrapolation of a random sample of approximately twenty percent (20%) of putative class members time records and corresponding payroll records. The randomized sampling of putative class members representative of the class as a whole provided by Defendant permitted Plaintiffs' expert to determine the average rate of pay of the sampled class members, their average length of shift, and the frequency (or lack thereof) of meal period violations.

Randomized statistical sampling has long been recognized under California law as a valid means to establish commonality or typicality of asserted wage and hour claims, as long as the utilized sample is of statistically relevant size and proper controls are used to ensure statistically sound methodology, resulting in reliable and representative results consistent with fundamental fairness. (See e.g., Duran v. U.S. Bank National Association (2014), 59 Cal. 4th 1, 42-43; Lubin v. the Wackenhut Corp. (2016), 5 Cal. App. 5th 926, 937-938.) Plaintiffs' position is that the approximate twenty percent (20%) sample of class members' time and payroll records is sufficient to extrapolate across all class members here because Defendant's policies and practices related to Plaintiffs' wage and hour claims were applicable across all of Defendant's locations and applied to all class members as it relates to time keeping, breaks, and compensation. Accordingly, the sampling used by Plaintiffs' counsel in this action is statistically significant and provided valuable data in this matter.

On July 6, 2022, the Parties attended mediation with mediator Hon. Carl West (Ret.) and with his assistance, the Parties ultimately reached a resolution regarding the principal terms of settlement, which were subsequently formalized in a written "Class Action and PAGA Settlement Agreement and Class Notice" ("Settlement Agreement"), a fully executed copy of which

was filed with the court on December 9, 2022, attached to the Declaration of John A. Young ("Young Decl.") as Exhibit A.

On May 15, 2023, the Court issued a checklist of items for counsel to address. In response, on May 16, 2023, counsel filed a Supplemental Declaration of John A. Young ("Young Supp Decl.") addressing the checklist items.

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

II.  
SETTLEMENT AGREEMENT

A. Definitions.

"Class": a person employed by Defendant in California and classified as a nonexempt employee who worked for Defendant during the Class Period. (Settlement Agreement, ¶1.5)

"Class Period": May 24, 2017 to September 4, 2022. (¶1.12)

"Aggrieved Employee": a person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period. (¶1.4)

"PAGA Period": April 2, 2021 to September 4, 2022. (¶1.31)

Based on its records, Defendant estimates that, as of the date of June 21, 2022, (1) there were two hundred fifty-six (256) Class Members and fifty thousand (50,000) Total Workweeks during the Class Period. Defendant shall not be required to pay more than the GSA, as long as the number of Class Workweeks during the Class Period does not increase by more than ten (10%) percent (i.e., if the number of class members increases to eleven (11%) percent, the GSA shall increase proportionately by the amount over ten (10%) percent, i.e., by one (1%) percent of the Gross Settlement Amount), and so forth. Under no other circumstances shall Defendant be required to pay more than the GSA except as provided for in this Settlement (¶8)

The Parties stipulate to class certification for settlement purposes only. (¶13.1)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$1,100,000, non-reversionary. (¶3.1)
- The Net Settlement Amount ("Net") (\$650,583.33) is the GSA minus the following:
  - o Up to \$366,666.67 (33 1/3%) for attorney fees (¶3.2.2);
  - Fee Split: The requested attorneys' fees will be split among the firms constituting Plaintiffs' Counsel as follows: 17.5% to Bokhour Law Group; 7.5% to Law Offices of Jake Finkel; and 75% to Mahoney Law Group. The Plaintiffs have given written approval to the aforementioned fee splitting arrangement. (Young Supp Decl., ¶6)
    - o Up to \$16,000 for litigation costs (Ibid.);
    - o Up to \$40,000 (\$10,000 x 4) for a Service Payment to the four Named Plaintiffs (¶3.2.1);
    - o Up to \$8,000 for settlement administration costs (¶3.2.3); and
    - o Payment of \$18,750 (75% of \$25,000 PAGA penalty) to the LWDA. (¶3.2.5)
- Defendants will pay their share of taxes separate from the GSA. (¶3.1)
- There is no claim form requirement. (¶3.1)
- Individual Settlement Payment Calculation: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (¶3.2.4)
  - o Tax Allocation: 20% as wages and 80% as interest and penalties. (¶3.2.4.1)
- PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (¶3.2.5.1)
- "Response Deadline" means sixty (60) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the

Response Deadline has expired. (§1.43) This deadline applies to challenges to workweeks, 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. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect. (§9)

• Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount in two installments. First Installment: One-half (1/2) of the Gross Settlement Amount must be transmitted to the Administrator no later than thirty (30) days after the Effective Date. Second Installment: the remaining one-half (1/2) balance of the Gross Settlement Amount and also the amounts necessary to fully pay Defendant's share of payroll taxes must be transmitted to the Administrator on or before the later of December 31, 2023 or four (4) months after the Effective Date. (§4.3)

o Defendant's counsel filed under seal evidence of Defendant's financial situation with balance sheets, tax return information, statement of cash flows, profit and loss statement, etc. (Declaration of Eliza Langdon, Exhibits A-B)

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

• The settlement administrator will be Phoenix Settlement Administrators. (§1.2)

• Notice of Final Judgment will be posted on the Settlement Administrator's website. (§8.8.1)

• The proposed settlement was submitted to the LWDA on December 8, 2022. (Young Decl., Exhibit C.)

- 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 July 6, 2022, the Parties attended mediation with mediator Hon. Carl West (Ret.) and with his assistance, the Parties reached a resolution regarding the principal terms of settlement, which were subsequently formalized in a written Settlement Agreement. (Young Decl., ¶17.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Prior to Mediation, Plaintiffs' counsel retained an expert to analyze the data provided by Defendant and provide a detailed damage analysis of Plaintiffs' claims against Defendant. Plaintiffs contend the data provided is statistically significant and how Plaintiffs' expert's analysis supported the conclusion that the sampling was sufficient to provide useful data. Plaintiffs' analysis is predicated in part on an extrapolation of a random sample of approximately twenty percent (20%) of putative class members time records and corresponding payroll records. The randomized sampling of putative class members representative of the class as a whole provided by Defendant permitted Plaintiffs' expert to determine the average rate of pay of the sampled class members, their average length of shift, and the frequency (or lack thereof) of meal period violations.

Randomized statistical sampling has long been recognized under California law as a valid means to establish commonality or typicality of asserted wage and hour claims, as long as the utilized sample is of statistically relevant size and proper controls are used to ensure statistically sound methodology, resulting in reliable and representative results consistent with fundamental fairness. (See e.g., *Duran v. U.S. Bank National Association* (2014), 59 Cal. 4th 1, 42-43; *Lubin v. the Wackenhut Corp.* (2016), 5 Cal. App. 5th 926, 937-938.) Plaintiffs' position is that the approximate twenty percent (20%) sample of class members' time and payroll records is sufficient to extrapolate across all class members here because Defendant's policies and practices related to Plaintiffs' wage and hour

claims were applicable across all of Defendant's locations and applied to all class members as it relates to time keeping, breaks, and compensation. Accordingly, the sampling used by Plaintiffs' counsel in this action is statistically significant and provided valuable data in this matter. (Id. at ¶16).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶ 4-8; Declaration of Kevin Mahoney, ¶¶ 4-9).

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
Minimum/Overtime Wage Claim	\$866,132.46	\$433,066.23
Meal Period Claim	\$2,968,347.50	\$1,781,008.50
Rest Break Claim	\$2,561,876.25	\$640,469.06
Failure to Maintain Accurate Payroll Records Claim	\$873,400.00	\$873,400.00
Labor Code section 203 Claim	\$172,320.00	\$86,160.00
Reimbursement Claim	\$288,000.00	\$144,000.00
PAGA	\$4,192,180.00	\$1,250,000.00
TOTAL	\$11,922,256.21	\$5,208,103.79



(Young Decl. ¶¶ 18-58.)

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 \$1,100,000 non-reversionary settlement. The \$1,100,000 settlement amount constitutes approximately 9.23% to 21.12% of Defendant's maximum to realistic exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$1,100,000 settlement amount, if reduced by the requested deductions, will leave \$650,583.33 to be divided among approximately 256 class members. The resulting payments will average \$2,541.34 per class member. [ $\$650,583.33 / 256 = \$2,541.34$ ].

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, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows: (¶6)

Release by Participating Class Members: All Participating Class Members, including those who are not Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts, legal theories, and/or claims stated in the Operative Complaint and ascertained in the course of the Action, including any and all claims involving any alleged (1) failure to pay wages including minimum wage and overtime; (2) failure to provide rest periods; (3) failure to provide meal periods; (4) failure to pay wages due at separation of employment; (5) failure to reimburse for business expenditures; (6) violation of Business and Professions Code section 17200 et seq. (unfair competition law); (7) failure to provide accurate wage statements; and (8) violation of the Private Attorneys General Act. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (¶6.2)

Release by Participating and Non-Participating Class Members Who Are Aggrieved Employees: All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts, legal theories, or claims stated in the Operative

Complaint and the PAGA Notice and ascertained in the course of the Action, including but not limited to any and all claims involving any alleged (1) failure to pay wages including minimum wages and overtime; (2) failure to provide rest periods or compensation in lieu thereof; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to pay wages due at separation of employment; (5) failure to reimburse for business expenditures; and (6) failure to provide accurate wage statements. (§6.3)

"Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, and subsidiaries. (§1.41.)

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. Windsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 256 class members. (Motion, 12:11-15.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) A class is ascertainable, as would support certification under statute governing class actions generally, when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (Noel v. Thrifty Payless,

Inc. (2019) 7 Cal.5th 955, 961.) All Class Members are identifiable through a review of Defendant's employment records. (Motion, 12:15-16).

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 include, but are not limited to whether Defendant correctly paid Class Members all compensation, whether Defendant failed to provide legally compliant meal and rest periods (or pay mandated premiums in lieu thereof), and whether Defendant reimbursed Class Members for all necessary business expenditures. Plaintiffs was provided with employment records, including his personnel file and individual payroll documents, as well as payroll and time-keeping documents for the Class Members. Plaintiffs was also provided with Defendant's relevant employee policies. Based upon review of the identified records and documents, in addition to other investigation efforts, Class Counsel determined that Defendant's written policies and practices as well as pay policies were uniform as applicable to Plaintiffs and all Class Members. Whether or not Defendant properly implemented lawful policies governing overtime compensation and meal/rest period compliance are common issues. (Motion, 12:15-16.)

As to typicality, Plaintiffs contend that like other Class Members: (1) Defendant employed Plaintiffs and the other Class Members as non-exempt and/or hourly paid employee; (2) Plaintiffs and Class Members were subject to the same policies regarding (1) clocking-in and clocking-out; (2) meal/rest period compliance; (3) reimbursement; (4) payroll and compensation; resulting in the same or substantially similar violations, such that Plaintiffs and the Class Members share the same claims stemming from Defendant's alleged violations of the Labor Code and IWC Wage Orders such that their claims are typical. (Id. at 14:4-9.)

As to adequacy, Plaintiffs represent that they were informed of the risks of serving as class representative, participated in the litigation, and do not have conflicts of interest with the class. (Motion 14:23-15:3; Declaration of Jose Alcala-Luna, passim; Declaration of Josue Diaz Pineda, passim;

Declaration of Vilma Diaz Pineda, *passim*; Declaration of Maribel Lozano Martinez, *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.

The Notice will be provided in English with Spanish translation. (¶8.4.2)

2. Method of class notice. Notice will be by direct mail and publication 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. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (¶8.4.2)

In addition, notice to the Class will also be disseminated via a Court approved publication in La Opinion. The Parties'

proposed notice for the publication in La Opinion is attached hereto as Exhibit B. (¶8.4.2) For Class Members identified in the Class Data for whom Defendant does not have an address, Class Notice will be published in La Opinion in English and in Spanish. The published notice shall run for two consecutive weeks. (¶8.4.5)

In addition, for Class Members Defendant does not possess Class Data, the Settlement Administrator will perform a Class Member Address Search. If a phone number is located, the Settlement Administrator will also contact the Class Member to confirm 1) they are in fact a Class Member and 2) their current address. Upon receipt of a current address, the Settlement Administrator will mail the Class Notice. The Settlement Administrator shall also maintain a toll-free telephone line that shall be staffed by live operators during business hours. (¶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)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$8,000. 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 \$366,666.67 (33 1/3%) in attorney fees and up to \$16,000 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.

There is a fee split. The requested attorneys' fees will be split among the firms constituting Plaintiffs' Counsel as follows: 17.5% to Bokhour Law Group; 7.5% to Law Offices of Jake Finkel; and 75% to Mahoney Law Group. The Plaintiffs have given written approval to the aforementioned fee splitting arrangement. (Young Supp Decl., ¶6)

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

#### G. Incentive Award to Class Representative

The four named Plaintiffs will request a service award of \$40,000, or \$10,000 each. (¶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.

IV.  
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$1,100,000.

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

Up to \$366,666.67 (33 1/3%) for attorney fees (¶3.2.2); [Fee Split: The fees will be split as follows: 17.5% to Bokhour Law Group; 7.5% to Law Offices of Jake Finkel; and 75% to Mahoney Law Group.]

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

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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 19, 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: July 12, 2023



A handwritten signature in black ink that reads "Yvette M. Palazuelos".

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