

07/20/2023

David W. Slayton, Executive Officer / Clerk of Court

FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL OF R. Araiga Deputy
CLASS ACTION SETTLEMENT

Rafael Gutierrez v. M. Argueso & Co. Inc., dba Paramelt, Case No.: 21STCV22694

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 \$250,000. There is an escalator clause.¹

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

- Up to \$83,333.33 (33 1/3%) for attorney fees (§II.C);
- Up to \$20,000 for litigation costs (Ibid.);
- Up to \$4,500 for settlement administration costs

(§II.E.);

Up to \$7,500 for a Service Payment to the Named Plaintiff (§II.J.);

\$15,000 (75% of \$20,000 PAGA penalty) to the LWDA.

(§II.R.)

C. Defendants will pay their share of taxes separate from the GSA. (§4.3)

¹ Forty-five (45) Class Members have worked approximately 6,422 workweeks through May 17, 2022. If the actual number of workweeks worked by Class Members during the Class Period (i.e., through the date of Preliminary Approval or September 6, 2022 - whichever is sooner) grows by more than ten percent (10%), or more than the 7,065 workweeks, then Plaintiff has the option to nullify this Agreement. Plaintiff shall provide ten (10) business days' notice of such intent to nullify prior to taking any action with the court. During this 10-day nullification notice period, Defendant at its exclusive discretion may cure by agreeing to increase the Class Settlement Amount proportionately for any excess increase in the total number of workweeks worked by Class Members during the Class Period. For example, if the total number of workweeks worked by Class Members during the Class Period increases by 11% beyond 6,422 workweeks (i.e., approximately 7,129 workweeks), the Class Settlement Amount will increase by 1% (actual increase minus the 10% tolerated increase). In the alternative, Defendant shall have the exclusive option to modify the applicable Class Period to a date prior to Preliminary Approval to avoid incurring the pro rata increase. (§XII.2.)

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **January 22, 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 29, 2024, 8:30 a.m., Department 9.

I.
BACKGROUND

This is a wage and hour class action. Defendant M. Argueso & Co. Inc. ("Defendant") is in the business of manufacturing and selling wax blends and adhesives. Plaintiff Rafael Gutierrez ("Plaintiff") brought this action on behalf of all current and former non-exempt employees of Defendant for various alleged wage and hour violations.

On June 15, 2021, Plaintiff filed the instant action in Los Angeles County Superior Court and on August 23, 2021, Plaintiff filed the operative First Amended Class and Representative Action Complaint ("FAC") alleging, in total, that Defendant: (1) failed to pay minimum wages, (2) failed to pay overtime wages, (3) failed to provide legally compliant meal and rest periods, (4) failed to provide accurate, itemized wage statements, (5) failed to pay all final wages owed to employees, (6) engaged in unfair competition. The FAC also seeks civil penalties on behalf of aggrieved employees based on the aforementioned alleged Labor Code violations pursuant to the California Private Attorneys General Act of 2004 ("PAGA").

The Parties agreed to mediate the matter on June 6, 2022 with Jeffrey Krivis Esq. where the Parties reached a class-wide resolution of Plaintiff's claims and executed a Memorandum of Understanding ("MOU"). In the months that followed, the Parties finalized and executed the Stipulation and Settlement of Class,

Collective and Representative Action ("Settlement Agreement") before the Court, a fully executed copy of which is attached to the Declaration of Sam Sani ("Sani Decl."), as Exhibit A.

On March 1, 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 revised Settlement Agreement attached to the Plaintiffs' Supplemental Brief filed June 29, 2023 as Exhibit B.

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" means all current and former non-exempt employees of Defendant employed in California at any time during the Class Period. (¶II.H.)

"Class Period" means the period from June 15, 2017 through the date of Preliminary Approval of the Settlement, or September 6, 2022, whichever date is sooner. (¶II.I.)

"Aggrieved Employee" means all current and former non-exempt employees of Defendant employed in California at any time during the PAGA Period. (¶II.B.)

"PAGA Period" means the period from June 15, 2020 through the date of Preliminary Approval of the Settlement, or September 6, 2022, whichever date is sooner. (¶II.W.)

The parties stipulate to class certification for settlement purposes only. (¶XX.10.)

B. Terms of Settlement Agreement

The essential terms are as follows:

- The Gross Settlement Amount ("GSA") is \$250,000, non-reversionary. (¶II.K.)
 - o Escalator: Defendant represents that the approximately forty-five (45) Class Members have worked approximately 6,422 workweeks through May 17, 2022. If the actual number of workweeks worked by Class Members during the Class Period (i.e.,

through the date of Preliminary Approval or September 6, 2022 - whichever is sooner) grows by more than ten percent (10%), or more than the 7,065 workweeks, then Plaintiff has the option to nullify this Agreement. Plaintiff shall provide ten (10) business days' notice of such intent to nullify prior to taking any action with the court. During this 10-day nullification notice period, Defendant at its exclusive discretion may cure by agreeing to increase the Class Settlement Amount proportionately for any excess increase in the total number of workweeks worked by Class Members during the Class Period. For example, if the total number of workweeks worked by Class Members during the Class Period increases by 11% beyond 6,422 workweeks (i.e., approximately 7,129 workweeks), the Class Settlement Amount will increase by 1% (actual increase minus the 10% tolerated increase). In the alternative, Defendant shall have the exclusive option to modify the applicable Class Period to a date prior to Preliminary Approval to avoid incurring the pro rata increase. (§XII.2.)

- The Net Settlement Amount ("Net") (\$119,666.67) is the GSA minus the following:
 - o Up to \$83,333.33 (33 1/3%) for attorney fees (§II.C);
 - o Up to \$20,000 for litigation costs (Ibid.);
 - o Up to \$7,500 for a Service Payment to the Named Plaintiff (§II.J.);
 - o Up to \$4,500 for settlement administration costs (§II.E.);and
 - o Payment of \$15,000 (75% of \$20,000 PAGA penalty) to the LWDA. (§II.R.)
- Defendants will pay their share of taxes separate from the GSA. (§II.K.)
- There is no claim form requirement. (Notice, pg. 5.)
- Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount as follows: (§§ IX.a-IX.c.)
 - o Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each Class Member who was employed by Defendant at any time from June 15, 2020 through the date of Preliminary Approval of the Settlement, or September 6, 2022, whichever date is sooner shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
 - o Waiting Time Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." Each Class Member who separated their employment with Defendant between June 15, 2018 through the date of Preliminary Approval of the Settlement, or September 6, 2022, whichever

date is sooner shall receive an equal, pro-rata share of the Waiting Time Amount.

o The remainder of the Net Settlement Amount will be distributed to each Class Member based on the number of workweeks a Class Member worked during the Class Period. Specific calculations of Individual Settlement Payments will be made as follows:

▪ (1) The Claims Administrator will calculate the total number of weeks worked (weeks in which at least one day was worked) by each Class Member ("Individual Workweeks") and the total number of weeks worked by all Class Members ("Class Workweeks") during the Class Period.

▪ (2) To determine each Class Member's Individual Settlement Payment, the Claims Administrator will use the following formula: Individual Settlement Payment = (Individual Workweeks ÷ Class Workweeks) × Net Settlement Amount.

o Tax Allocation: 20% as wages and 80% penalties and other non-taxable items. (Ibid.)

• PAGA Payments: Individual PAGA Payments will be calculated and apportioned from the Aggrieved Employees Amount based on the number of pay periods an Aggrieved Employee worked during the PAGA Period. Specific calculations of Individual PAGA Payments will be made as follows: (¶X.)

o (a) The Claims Administrator will calculate the total number of pay periods worked (pay periods in which at least one days was worked) by each Aggrieved Employee ("Individual Pay Periods") and the total number of pay periods worked by all Aggrieved Employees ("Total Pay Periods") during the Class Period.

o (b) To determine each Aggrieved Employees Individual PAGA Payment, the Claims Administrator will use the following formula: Individual PAGA Payment = (Individual Pay Periods ÷ Total Pay Periods) × Aggrieved Employees Amount.

o Tax Allocation: 100% penalties. (¶XIV.)

• Response Deadline: The deadline by which Class Members must mail or fax to the Claims Administrator valid Requests for Exclusion, Notices of Objection to the Settlement, or workweek disputes. 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 for Requests for Exclusion, Notices of Objection, or workweek disputes will be extended fifteen (15) calendar days for any Class Member who is remailed a Notice Packet by the Claims 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. (§II.FF.)

o If ten percent (10%) or more of the Class Members opt out of the Settlement (or are otherwise excluded), Defendant, in its sole discretion, shall have the option of nullifying the Settlement Agreement. (§XII.1.)

• Funding of Settlement: Within fifteen (15) calendar days after the Effective Date of the Settlement, Defendant will make a one-time deposit of the Class Settlement Amount into a Qualified Settlement Account to be established by the Claims Administrator as well as an amount sufficient to pay the Employer Paid Taxes with respect to the wages portion of the Individual Settlement Payments. (§III.)

• Distribution: Within fourteen (14) calendar days of the funding of the Settlement, the Claims Administrator will issue payments to: (a) Class Members who have not timely and validly requested exclusion; (b) Aggrieved Employees; (c) the LWDA; (d) Plaintiff; and (e) Class Counsel. (§III.)

• Uncashed Settlement Checks: Any checks issued by the Claims Administrator to Class Members will be negotiable for one-hundred eighty (180) calendar days. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members or Aggrieved Employees who did not cash their checks until such time that they claim their property. The Settling Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Settlement Payment will be paid out to Settlement Class members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not be required to pay any interest on said amount. (§XIII.2.)

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

• Notice of Final Judgment will be posted on the Settlement Administrator's website. (Notice, pg. 7.)

• The proposed settlement was submitted to the LWDA on June 29, 2023. (Exhibit F to Plaintiff's Supp. Brief.)

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

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III.
DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. The Parties agreed to mediate the matter on June 6, 2022 with Jeffrey Krivis Esq. of First Mediation, where the Parties reached a class-wide resolution of Plaintiff's claims and executed a Memorandum of Understanding ("MOU"). In the months that followed, the Parties finalized and executed the Stipulation and Settlement of Class, Collective and Representative Action ("Settlement Agreement") before the Court. (Sani Decl., ¶¶ 22-23).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represent that prior to the mediation, Defendant produced (1) relevant policies in effect during the Class Period; (2) the approximate count of putative class members, (3) the approximate count of workweeks and pay periods worked by putative class members during the Class Period, (4) Plaintiff's employment, payroll, and timekeeping records, and (5) a sampling of putative class members' timekeeping and payroll records from during the putative Class Period. (Id. at ¶22.)

With respect to the sampling of putative class members' timekeeping data and payroll data, Defendant used a randomizer function in Microsoft Excel to identify a random sample of five putative class members (from approximately 45 total putative class members). Defendant then produced these putative class members' timekeeping data and payroll data to Plaintiff. This sample size represents more than ten percent of the putative class. Given the modest class size, the Parties did not utilize an expert to analyze the data. Instead, Defendant's counsel and Plaintiff's counsel analyzed the sample timekeeping data and payroll data, in conjunction with the key data points, to evaluate Defendant's potential exposure. (Plaintiff's Supp. Brief at 2:22-3:2.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Sani Decl., ¶¶ 1-6; Declaration of Paul K. Haines).

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.

Claims	Maximum Exposure	Realistic Exposure
Unpaid Minimum Wages	\$232,826.74	\$58,206.59
Unpaid Overtime	\$103,365.44	\$25,841.36
Meal Breaks	\$304,980.78	\$76,245.20
Rest Period Violations	\$508,301.30	\$60,996.16
Wage Statement Violations	\$115,900.00	\$17,385.00
Waiting Time Violations	\$72,184.80	\$18,046.20
PAGA	\$231,800.00	\$37,088.00
TOTAL	\$1,569,359.06	\$293,808.51

(Sani Decl. ¶¶ 12-21.)

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 \$250,000 non-reversionary settlement. The \$250,000 settlement amount constitutes approximately 15.93% to 85.09% of Defendant's maximum to realistic exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$250,000 settlement amount, if reduced by the requested deductions, will leave \$116,666.67 to be divided among approximately 45 class members. The resulting payments will average \$2,592.59 per class member. [$\$116,666.67 / 45 = \$2,592.59$].

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 Plaintiff, Class Members (except those who exclude themselves from the Settlement), and Defendant to fully, finally, and forever settle, compromise, and discharge the Released Class Claims and Released Aggrieved Employee Claims. As of the date Defendant fully funds the Settlement, 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 and the Aggrieved Employees shall fully release and discharge the Released Parties from any

and all Released Aggrieved Employee Claims for the entire PAGA Period. This release of the Released Class Claims 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, representatives, 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 Class Member with respect to the Released Class Claims, except as expressly provided herein. (§XVI.2.)

Released Class Claims: As of the date Defendant fully funds the Settlement, all Class Members shall fully and finally release Released Parties of the Released Class Claims. The Released Class Claims consist of all claims asserted in the Action and/or arising from or related to the facts and claims alleged in the Action or the PAGA letter sent to the LWDA on Plaintiff's behalf, or that could have been raised in the Action or the PAGA letter sent to the LWDA on Plaintiff's behalf based on the facts and claims alleged. The Released Class Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work and/or donning/doffing; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; unfair business practices related to the Released Class Claims; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; non-compliant wage statements; and attorneys' fees and costs; all claims related to the Released Class Claims arising under: the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 206, 210, 215, 216, 218, 218.5, 218.6, 221-223, 224, 225, 225.5, 226, 226.3, 226.7, 510, 511, 512, 515, 516, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2699 et seq.); the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (PAGA); California Business and Professions Code section 17200, et seq.; the California Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; the

California common law of contract; the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq.; 29 CFR 778.223; 29 CFR 778.315; and federal common law. This release excludes the release of claims not permitted by law. (§II.CC.)

"Action" means the case titled Rafael Gutierrez v. M. Argueso & Co. Inc., dba Paramelt, Los Angeles County Superior Court Case No. 21STCV22694, as amended. (§II.A)

Class Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and, as to those Class Members, the Released Class Claims include any and all claims the Class Members may have under the FLSA asserted in the Action, arising from or related to the facts and claims alleged in the Action, or that could have been alleged in the Action based on the facts and claims alleged in the Action, as amended, during the Class Period. Only those Class Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Actions for purposes of the FLSA and thereby release and waive any of their claims under the FLSA arising under or relating to the alleged claims. (§II.CC.)

This release excludes the release of claims not permitted by law. (Ibid.)

The period of the Released Class Claims shall extend from June 15, 2017 through the date of Preliminary Approval of the Settlement, or September 6, 2022, whichever date is sooner. (Ibid.)

Released Aggrieved Employee Claims: All Aggrieved Employees, including those who timely and effectively exclude themselves from the Released Class Claims (Settlement), shall nevertheless be bound by the Released Aggrieved Employee Claims and shall receive a pro rata portion of 25% of the PAGA Settlement Amount. Aggrieved Employees shall release the Released Parties of all known and unknown claims for civil penalties under PAGA that were asserted in the Action, or could have been pled in the Action based on the allegations asserted during the PAGA Period in the operative First Amended Class and Representative Action Complaint, and Plaintiff's June 16, 2021 LWDA exhaustion letter identified on the LWDA's website as LWDA-CM-835165-21, including any claims involving any alleged failure to pay minimum wage, alleged failure to pay overtime wages, alleged meal period violations, alleged rest period violations, alleged wage statement violations, and alleged failure to timely

pay all final wages owed at end of employment, including claims relating to alleged violations of Labor Code Sections 201, 202, 203, 204, 210, 216, 226, 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 ("Released Aggrieved Employee Claims"). Aggrieved Employees' Released Aggrieved Employee Claims are limited to the PAGA Period. (§II.Z.)

"Released Parties" means Defendant, and each of its past, present and future agents, employees, servants, officers, directors, managing agents, members, owners (whether direct or indirect), partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and alleged joint employers, temporary staffing agencies, dual employers, potential and alleged dual employers, co-employers, potential and alleged co-employers, common law employers, potential and alleged common law employers, contractors, affiliates, service providers, alter-egos, potential and alleged alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns, and any and all persons and/or entities acting under, by, through or in concert with any of them. (§II.DD.)

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

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 45 class members. (Motion, 19:26-28.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) A class is ascertainable, as would support certification under statute governing class actions generally, when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, 961.) All Class Members are identifiable through a review of Defendant's employment records. (Motion, 19:22-26).

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, Class Counsel contend Plaintiff's claims are predicated on Defendant's allegedly unlawful timekeeping/payroll policies/practices (e.g., allegedly not compensating for off-the-clock work; auto-deduction practice/policy; unlawful rounding practice/policy) and meal and rest period practices. (Motion, 20:5-8.)

As to typicality, Counsel contend typicality is satisfied because Plaintiff has suffered the same injuries as other Settlement Class Members and was subject to Defendant's wage and hour policies at issue in this lawsuit. Plaintiff further alleges he was injured by the same challenged policies that injured the Settlement Class as a whole, including allegedly not receiving minimum wages and overtime wages for all hours worked, working shifts in excess of 5.0 hours without a timely first meal periods, working shifts in excess of 10.0 hours without timely second meal periods, not receiving legally compliant rest periods, receiving inaccurate and incomplete itemized wage statements as a result, and not receiving all wages owed at the end of employment. (Id. at 20:19-28.)

As to adequacy, Plaintiff represents that he 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 Rafael Gutierrez, 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 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.

Notice will be provided in English and Spanish. (Notice, pg. 1.)

2. Method of class notice. Within fourteen (14) days of Preliminary Approval, Defendant will provide the Class List to the Claims Administrator. (§XI.2.) Within seven (7) calendar days after receiving the Class List from Defendant, the Claims Administrator will (i) run the names of all Class Members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members, (ii) update the addresses of any Class Member for whom an updated address was found through the NCOA search, and (iii) mail the Notice Packet to each Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. (§XI.3.)

Any Notice Packets returned to the Claims 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 Claims Administrator will indicate the date of such remailing on the Notice Packet. If no forwarding address is provided, the Claims 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. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for Exclusion or Notice of Objection to the Settlement. (§XI.4).

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$4,500. 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 \$83,333.33 (33 1/3%) in attorney fees and up to \$20,000 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 following attorneys' fee-split exists in this case: (1) sixty percent (60%) of attorneys' fees collected to be distributed to Sani Law, APC, and (2) forty percent (40%) of attorneys' fees collected to be distributed to Haines Law Group, APC. (Plaintiff's Supp. Brief at 3:10-15.) Plaintiff has approved this fee split. (Gutierrez Decl. ¶8.)

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

G. Incentive Award to Class Representative

The named Plaintiff Rafael Gutierrez will request a service award of \$7,500. (¶II.J)

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 \$250,000. There is an escalator clause.

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

Up to \$83,333.33 (33 1/3%) for attorney fees (¶II.C);
Up to \$20,000 for litigation costs (Ibid.);
Up to \$4,500 for settlement administration costs (¶II.E.);
Up to \$7,500 for a Service Payment to the Named Plaintiff (¶II.J.);
\$15,000 (75% of \$20,000 PAGA penalty) to the LWDA. (¶II.R.)

C. Defendants will pay their share of taxes separate from the GSA. (¶4.3)

D. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by January 22, 2024. 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 29, 2024, 8:30 a.m., Department 9.

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

IT IS SO ORDERED.

DATED: July 20, 2023



Yvette M. Palazuelos

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