

AMENDED RULINGS/ORDERS

**AUG 25 2023**

David W. Slayton, Executive Officer/Clerk of Court

Gonzales v. Draper and Kramer Mortgage Corp., Case No.: **By: P. Herrera, Deputy**  
19STCV20063

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 \$350,000.
- B. The Net Settlement Amount is the GSA minus the following:
  - Up to \$ 116,666.67 (33 1/3%) for attorney fees (¶III.3);
  - Up to \$18,335 for litigation costs (Ibid. Further Supplemental Szilagyi Declaration filed 08/17/23);
  - Up to \$10,000 for a Service Payment to the Named Plaintiff (¶III.2);
  - Up to \$6,500 for settlement administration costs (¶III.5);
  - \$15,000 (75% of \$20,000 PAGA penalty) to the LWDA. (¶III.4.)
- 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 **February 2, 2024**. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

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

Nonappearance case management review is set for February 9, 2024 , 8:30 a.m., Dept. 9.

I.  
BACKGROUND

This is a wage and hour class action. Defendant Draper and Kramer Mortgage is a national mortgage lender. On June 10, 2019, Plaintiff filed the Complaint alleging alleges the following causes of action: (1) failure to pay wages; (2) failure to provide meal periods; (3) failure to permit rest breaks; (4) failure to provide accurate wage statements; (5) failure to pay all wages timely and upon separation of employment; (6) violation of Business and Professions Code § 17200, et seq., based on the preceding claims; and (7) enforcement of Lab. Code § 2698, et seq. ("PAGA"), for the preceding claims.

On August 23, 2019, Plaintiff filed a First Amended Complaint (hereinafter, the operative "Complaint") seeking penalties under the Private Attorneys General Act of 2004 for alleged violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198.

On August 26, 2020, the Parties attended private mediation, but a settlement was not reached. On January 25, 2022, the Parties attended a mediation session with Cynthia Remmers. At mediation the Parties reached an agreement in principle. The Parties spent the next several months following mediation negotiating at arms-length the final terms of the Settlement, which was fully executed in March of 2022. A copy of the Settlement Agreement was filed with the Court on February 17, 2023 attached to the Declaration Of Joseph M. Szilagyi ("Szilagyi Decl."), as Exhibit 1.

Counsel represents that Defendant is also named in the class action entitled Jose Vasquez v. Draper and Kramer Mortgage Corporation, filed on January 26, 2021 and pending in the United States District Court, Central District of California, Case Number 2:21-cv-00693-FMO-AS (the "Vasquez Action"). Counsel further represents that Counsel for plaintiff in the Vasquez Action declined to participate in the Parties' mediation. On March 17, 2022, the district court in the Vasquez Action granted conditional class certification limited to claims related to violations of the Fair Labor Standards Act ("FLSA") and including non-California employees.

Plaintiff's counsel in the Vasquez Action filed a motion to intervene into the present action, which was denied on September 20, 2022 by this Court.

On March 16, 2023, the court issued a checklist of items for the parties to address and continued preliminary approval. In response, on March 22, 2023, counsel filed a fully executed Amended Settlement Agreement attached to the Supplemental Declaration Of Joseph M. Szilagyi ("Szilagyi Supp. Decl."), as Exhibit 1.

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

## II. SETTLEMENT AGREEMENT

### A. Definitions

"Settlement Class": all individuals who are or were previously employed as loan officers by Defendant in California during the period of June 10, 2015 to January 25, 2022. (Settlement Agreement, ¶II.1.)

"Class Period": June 10, 2015 through January 25, 2022. (¶II.9.)

"PAGA Group": all individuals who are or were previously employed as loan officers by Defendant in California during the period of June 10, 2018 to January 25, 2022. (¶II.2.)

"PAGA Period": June 10, 2018 through January 25, 2022. (¶II.10.)

Class End Date Modification. Defendant represented that as of January 25, 2022, there was approximately 65 Class Members who collectively worked 5,631 workweeks during the Class Period. Defendant will provide a declaration as to the number of Class Members and workweeks worked by the Class Members and the PAGA Group during the California Class Period prior to the filing of the motion for preliminary approval. If the total number of workweeks worked by Class Members, as of January 25, 2022, exceeds 5,631 by more than 10% (i.e., by 564 or more additional workweeks), then the end date of the Release Period shall be reduced accordingly so that the number of actual workweeks does not exceed 5,631 by more than 10% and the definitions set forth

in Paragraph 2 for Class Members and the PAGA Group will be modified accordingly to account for the new end dates. (¶III.11.)

The parties stipulate to class certification for settlement purposes only. (¶VI.3.b.)

B. Terms of Settlement Agreement

The essential terms are:

- The **Gross Settlement Amount** ("GSA") is \$350,000, non-reversionary. (¶III.1.)
- The **Net Settlement Amount** ("Net") (\$201,833.33) is the GSA minus the following:
  - **Up to \$ 116,666.67 (33 1/3%)** for attorney fees (¶III.3);
  - **Up to \$18,335 for litigation costs** (Ibid. Further Supplemental Szilagyi Declaration filed 08/17/23)
  - **Up to \$10,000 for a Service Payment** to the Named Plaintiff (¶III.2);
  - **Up to \$6,500** for settlement administration costs (¶III.5); and
  - Payment of \$15,000 (75% of \$20,000 PAGA penalty) to the LWDA. (¶III.4.)
- Defendants will pay their **share of taxes separate from the GSA.** (¶III.1.)
- **Funding of Settlement:** Defendant shall fund the Gross Settlement Amount within fifteen (15) calendar days of the Settlement Effective Date. (¶IV.9.)
- There is no claim form requirement. (Notice at p. 1.)
- **Calculation of Settlement Share:** The value of each Participating Class Member's Settlement Share will be based on the number of each Participating Class Member's Workweeks. Specifically, the Net Settlement Amount less 25% of the approved PAGA Payment will be divided by the total number of Workweeks at issue for all Class Members, and then taking that number and multiplying it by the number of Workweeks at issue for each respective Participating Class Member. (¶III.7.)
  - **Tax Allocation:** 60% as wages and 40% as interest and penalties. (¶III.9.)
- **PAGA Share:** The value of each PAGA Group member's PAGA Share will be based on the number of each PAGA Group member's Workweeks during the PAGA Period. Specifically, 25% of the approved PAGA Payment allocated to the Net Settlement Amount will be divided by the total number of Workweeks at issue for all PAGA Group members and then taking that number and

multiplying it by the number of Workweeks at issue for each respective PAGA Group member. (§III.8.)

o Tax Allocation: 100% penalties. (§III.8.)

• **Response Deadline:** Each Participating Class Member shall have **45 calendar days** from the date of the initial mailing of the Class Notice Packet in which to object to the settlement, dispute the number of workweeks the Class Notice allocates to them during the Class Period, or request exclusion from the settlement. If the 45th day falls on a Sunday or holiday, the deadline will be the next business day that is not a Sunday or holiday. (§IV.3.a-b) Class Members for whom Class Notice Packets are **remailed will have an additional 14 calendar** days added to the response deadline. (§IV.2.c.)

o If more than 3 Class Members submit valid Elections Not to Participate in Settlement, Defendant will have the right to void the Settlement. (§IV.4.)

• **Uncashed Settlement Share Checks** or PAGA Share Checks: A Participating Class Member or PAGA Group members must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member or PAGA Group members at his or her correct address. If a Participating Class Member's Settlement Share check is not cashed within **180 days after** its last mailing to the Participating Class Member, or a PAGA Group member's PAGA Share check is not cashed within 180 days after its last mailing to the PAGA Group, the funds from such uncashed checks will be paid 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 Participating Class Members and PAGA Group members who did not cash their checks, until such time that they claim their property, within 30 days of expiration of the check void date. No funds from the Gross Settlement Amount will revert to Defendant. The Parties agree that this disposition results in no "unpaid residue" under California Code of Civil Procedure section 384. (§IV.10.)

• The settlement administrator will be Phoenix Settlement Administrators. (§12)

• The proposed settlement was submitted to the LWDA on March 22, 2022. (Szilagyi Decl., Exhibit 2.)

• 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. On August 26, 2020, the Parties attended private mediation, but a settlement was not reached. (Szilagyi Decl., ¶6.) On January 25, 2022, the Parties attended a mediation session with Cynthia Remmers. At mediation the Parties reached an agreement in principle. (Id. at ¶11.) The Parties spent the next several months following mediation negotiating at arms-length the final terms of the Settlement, which was fully executed in March of 2022. (Id. at ¶12).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to the mediation, Plaintiff's Counsel served discovery for documents necessary to evaluate the claims in this action, including payroll records, time punches, compensation agreements, job descriptions, written work policies, and other information for damages calculations. (Id. at ¶¶ 5-9.) Plaintiff's Counsel further agreed to the informal production of additional data and documents to assess the value of the class claims for mediation. (Id. at ¶10.)

Counsel represents that prior to mediation Plaintiff received all the timekeeping and payroll data for all putative class members in lieu of a statistical sampling. Plaintiff retained an expert for purposes of mediation to provide an analysis of this data and calculate Defendant's damages. (Szilagyi Supp. Decl., ¶6).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Szilagyi Decl., ¶¶ 38-50; See also Declaration of Jonathan M. Lebe, passim).

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the estimated exposure for each of the claims alleged:

Violation	Maximum Exposure	Realistic Exposure
Unpaid Overtime	\$1,156,750.00	\$231,350.00
Meal Breaks	\$507,300.00	\$50,730.00
Rest Period Violations	\$694,600.00	\$69,460.00
Waiting Time Penalties	\$139,000.00	\$0.00
Wage Statement Violations	\$133,750.00	\$0.00
PAGA	\$136,400.00	\$20,000.00
TOTAL	\$2,767,800.00	\$371,540.00

(Szilagyi Decl., ¶¶ 25-34.)

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. (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 \$350,000 non-reversionary settlement. The \$305,000 settlement amount constitutes approximately 12.65% of Defendant's maximum exposure and 94.20% of Defendant's realistic exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."



The \$350,000 settlement amount, if reduced by the requested deductions, will leave approximately \$201,833.33 to be divided among approximately 65 class members. The resulting payments will average \$3,105.13 per class member. [ $\$201,833.33 / 65 = \$3,105.13$ ].

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.

On March 3, 2023, an Amicus Curiae Brief On Behalf Of Absent Putative Class Members In Opposition to Plaintiff's Uncontested Motion for Preliminary Approval of Class Action Settlement ("Amicus Brief") was filed by Counsel for the Vasquez Action on behalf of the same eleven putative class members ("Vasquez Plaintiffs") who had filed a Motion to Intervene in this case. The Amicus Brief contends the following issues exist with the settlement:

1) The proposed Settlement on its face provides no compensation for the value of numerous released claims not pled in the Complaint, including FLSA claims (for unpaid minimum wages, overtime, liquidated damages, and more). Additionally, no compensation for California minimum wage claims, Labor Code §2802 expense reimbursement violations, liquidated damages or interest is provided - yet the Settlement releases them all. (Amicus Brief at 1:13-18)

2) The proposed Settlement misrepresents the value of the claims it does explicitly release. (Id. at 1:18-2:2)



3) The Settlement's key distribution and valuation factor is itself unknown - the total number of workweeks - a factor which, Plaintiff concedes, may dilute recovery by 10% or more here if the 5,631 workweek assumption is actually off "by 564 or more additional workweeks" - a variable proposed to be resolved by arbitrarily stripping some but not other putative class members of all or a portion of their recovery without any relationship to liability or damages pled or incurred. (Id. at 2:7-12)

4) Inadequate settlement amount. (Id. at pp. 2-3)

5) Inadequate Notice because no "maximum realistic recovery of each claim" is specified. (4:5-9) Amici contend the Notice fails entirely to identify the value of the claims being released, the putative class members receiving the proposed Notice have no plausible means of evaluating the propriety of accepting, objecting, or opting-out of a \$35.84 per workweek settlement. (4:6-9)

On March 9, 2023, Plaintiff's counsel filed a reply to the Amicus Brief ("Reply") contending the Amicus Brief is improper because: 1) it Violates The Court's Order On September 20, 2022 and is a run around the Court's denial of intervention; 2) it is a premature objection as approval has not yet been granted; 3) it makes baseless claims concerning what must be included in the proposed settlement notice; and 4) the Vasquez plaintiffs offer no support to allow this Court to consider their baseless amici curiae briefing. (Reply, pgs. 1-4.)

It is unclear on what grounds the Vasquez Plaintiffs bring this Amicus Brief as an "Opposition" to the Motion for Preliminary Approval. To the extent that the purported Amicus Brief acts as either an opposition or objection to the motion for preliminary approval, and under the presumption that the purported amici are indeed class members, any opposition would in essence be a premature objection. As the settlement has not yet been approved and intervention was denied, class members do not yet have standing to object. As such, the arguments set forth in the Amici Brief are treated as premature objections which are reserved for ruling upon final approval.

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

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C. Scope of the Release

As of the date Defendant funds the Gross Settlement Amount, Plaintiff and the Participating Class Members shall release all Released Class Claims that occurred during the respective Release Period as to the Released Parties. As of the date Defendant funds the Gross Settlement Amount, all PAGA Group members shall release all Released PAGA Claims. (§IV.1.)

"Released Class Claims" are defined as any and all federal, state, local and common law claims for unpaid wages and overtime compensation (including but not limited to any claims based on working "off-the-clock"), unpaid minimum wages, unpaid rest break premiums, unpaid meal period premiums, waiting time penalties, wage statement penalties, any and all claims for civil penalties (including those asserted under PAGA) based on any of the acts alleged in the Action or arising out of the facts, matters, transactions or occurrences set forth in the Action as set forth above. Released Class Claims shall also include any and all claims for attorneys' fees, costs, expenses, interest, penalties, liquidated damages, and any other damages or relief that have been or could have been asserted by any Class Member arising out of the facts, matters, transactions or occurrences set forth in the Action. Specifically excluded from the Released Class Claims are claims that: (1) cannot be waived as a matter of law, such as claims for unemployment insurance, workers' compensation and vested benefits covered by ERISA; (2) claims for wrongful termination, discrimination, retaliation and harassment under any state or federal civil rights law, including Title VII and California's Fair Employment and Housing Act; and (3) claims outside the temporal scope of the Release Period. (§I.26.)

"Released PAGA Claims" are defined as the claims asserted by the PAGA Group for alleged violations of the California Labor Code and IWC Wage Order provisions identified in the PAGA notices Plaintiff sent to the LWDA and further identified in the operative Complaint in the Action that are alleged to have occurred during the PAGA Period, including alleged violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198 ("Released PAGA Claims"). (§I.27.)

"Released Parties" means Defendant, and its parents, subsidiaries, affiliates, related entities, predecessors or successors in interest, and each of their respective owners, officers, directors, shareholders, partners, members, managing

agents, employees, consultants, attorneys, joint venturers, agents, successors, assigns, insurers, or reinsurers of any of them, and other related persons and entities. (¶I.28.)

"Release Period" for the Released Class Claims means the period of time from June 10, 2015 through January 25, 2022, unless the total number of unique Workweeks implicated for the Settlement Period exceeds 5,631 by more than 10% (i.e., by 564 or more additional Workweeks), in which case the end date of the Release Period shall be shortened accordingly so that the number of actual Workweeks does not exceed 5,631 by more than 10%. Workweeks covered by Individual Releases executed by Class Members will be excluded from the Workweek count. However, all class members who signed an individual release shall receive at least some consideration to bind the Class Release on them. (¶I.29.)

"Individual Releases" are defined as all claims released by Class Members consistent with the individual settlement agreements between Class Members and Defendant. (¶I.31.)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶I.30; ¶V.2.)

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 65 class members. (Szilagyi Decl., ¶21.) 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.4<sup>th</sup> 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (Szilagyi Decl., ¶21).

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.4<sup>th</sup> 429, 435.)

Regarding commonality, Plaintiff alleges that Defendant maintained uniform employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, and waiting time pay. Plaintiff further contends that their allegations present common legal and factual questions of, inter alia, whether Defendant applied the same scheduling, timekeeping, minimum and overtime pay, meal period, and rest break policies to all Class Members; whether these policies and practices resulted in Labor Code violations; whether Defendant's conduct was intentional; and whether Class Members are entitled to damages and penalties. These common questions could be resolved using Class Members' schedules, time punches, and payroll records, Defendant's corporate representative's testimony, written communications between Defendants and Class Members, and Class Member declarations. (Szilagyi Decl., ¶22.)

As to typicality, Plaintiff alleges that he and other Class Members were employed by Defendant and injured by Defendant's common wage and hour policies and practices, including Defendant's scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices. Plaintiff further contends that through documents and information exchanged in formal and informal discovery, it is understood these common policies and practices similarly affected Plaintiff and the Class. (Id. at ¶23.)

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 Ernest Gonzales, 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 Amended Settlement Agreement as Exhibit A. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; 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. No later than 14 calendar days after the Court enters its Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator with each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. The Settlement Administrator shall update addresses using the National Change of Address database. This information will otherwise remain confidential and will not be disclosed to anyone (including Class Counsel, Plaintiff, or any other Class Members), except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in this Agreement, or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration, and shall not be used for any other purpose by Class Counsel. Except as specifically provided herein, the Class Data shall not be disclosed to Class Counsel, Plaintiff, or any other Class Members without the written consent of Defendant. (¶IV.2.a.)

Using best efforts to mail it as soon as possible, and in no event later than 14 calendar days after receiving the Class Data, the Settlement Administrator will mail the Class Notice

Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement. (§IV.2.b.)

If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and no longer than 10 calendar days from receipt of the returned packet, search for a more current address for the Class Member in the National Change of Address database and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to locate a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches in the National Change of Address database for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. (§IV.2.c.)

Notice of Final Judgment will be posted on the Settlement Administrator's website. (§I.33.)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$6,500. 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 \$116,666.67 (33 1/3%) in attorney fees and up to \$18,335 in costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

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

#### G. Incentive Award to Class Representative

The named Plaintiff, Ernest Gonzales, will request a service award of \$10,000. (¶III.2)

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 \$350,000.

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

Up to \$ 116,666.67 (33 1/3%) for attorney fees  
(¶III.3);

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Up to \$6,500 for settlement administration costs  
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\$15,000 (75% of \$20,000 PAGA penalty) to the LWDA.  
(¶III.4.)

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.

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5) Nonappearance case management review is set for February 9, 2024 , 8:30 a.m., Dept. 9.

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

IT IS SO ORDERED.

DATED: August 25, 2023

A handwritten signature in black ink, appearing to read "Yvette M. Palazuelos", written in a cursive style.

**YVETTE M. PALAZUELOS**

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YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT