

03/14/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy

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

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

The Parties' Motion for Final 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. [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.)<sup>1</sup>

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

\$83,333.33 for attorney fees to Class Counsel, Sani Law, APC and Haines Law Group, APC;

\$15,240.95 for attorney costs to Class Counsel;

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<sup>1</sup> The court does not routinely approve an escalator clause that unilaterally allows a change to the Class Period in order to reduce the GSA. However, the escalator did not change the GSA or the class period definition here. No harm, no foul.

\$4,500 for settlement administration costs to Phoenix Settlement Administrators;

\$5,000 for an enhancement award to the class representative, Rafael Gutierrez;

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

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.

By **August 15, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1) (3).

By March 17, 2025, Class Counsel must file a Final Report re: Distribution of the settlement funds.

Court sets **Non-Appearance Case Review for March 24, 2025, 8:30 AM, Department 9.**

I.  
INTRODUCTION

A. 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.

On July 20, 2023, the Court granted preliminary approval of the settlement. Notice was given to the Class Members as ordered. (See Declaration of Lluvia Islas ("Islas Decl.").)

The Parties now move for final approval of the class action settlement.

B. Definitions.

"Class Member(s)" or "Settlement Class": all current and former non-exempt employees of Defendant employed in California at any time during the Class Period. (§II.H.)

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

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

"PAGA Period": 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.)

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C. Terms of Settlement Agreement

The essential terms are:

- 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 ISO Prelim.)
- 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.)
  - o 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.)
  - o 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.)

o "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.)

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

## II. 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 Settlement Agreement. (Sani Decl. ISO Prelim ¶¶22-23.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class 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).

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

4. What percentage of the class has objected? No objectors. (Castro Decl. ¶12.)

The Court concludes that the settlement is presumptively fair.

**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 plaintiffs 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.

<b>Claims</b>	<b>Maximum Exposure</b>	<b>Realistic Exposure</b>
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
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(Sani Decl. ISO Prelim ¶¶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 which, given the uncertain outcomes, is within the "ballpark of reasonableness."

The settlement amount, if the maximum requested deductions are taken, leaves approximately \$119,425.72 to be divided among approximately 49 participating class members. The resulting payments will average approximately \$2,437.25 per class member.

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.

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Number of class members: 49 (Islas Decl. ¶3.)  
 Number of notice packets mailed: 49 (Id. at ¶5.)  
 Number of undeliverable notices: 0 (Id. at ¶6.)  
 Number of opt-outs: 0 (Id. at ¶7.)  
 Number of objections: 0 (Id. at ¶8.)  
 Number of Participating Class Members: 49  
 Average individual payment: \$2,437.25 [\$119,425.72 Net/49]  
 Highest estimated payment: \$4,741.56 (Id. at ¶10.)

The Court concludes that the settlement is fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of \$83,333.33 (33 1/3%) in fees and \$15,240.95 in costs. (MFA at 10:25-26, 14:3.) The Settlement Agreement provides for fees up to \$83,333.33 (33 1/3%) and costs up to \$20,000 (¶II.C).

“Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, class counsel requests attorney fees using the lodestar method. (MFA at pp. 9-14.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int’l, Inc. (2016) 1 Cal.5th 480, 503.) The fee request represents one-third of the gross settlement amount, which is the average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated.

<b>Attorney / Firm</b>	<b>Rate</b>	<b>Hours</b>	<b>Totals</b>
Sam Sani / Sani Law, APC	\$625	96.2	\$60,125.00
Paul K. Haines / Haines Law Group, APC	\$850	16.4	\$13,940.00
<b>Totals</b>		112.6	\$74,065.00

(Decl. of Sam Sani ISO Final ¶¶15-16; Decl. of Paul K. Haines ISO Final ¶10.)

Counsel's percentage-based fee request is higher than the unadjusted lodestar, which would require the application of an approximate 1.12x multiplier to reach the requested fees. 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 ISO Prelim at 3:10-15.) Plaintiff has approved this fee split. (Gutierrez Decl. ISO Prelim ¶8.)

Here, the \$83,333.33 fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet and no one objected. (Islas Decl. ¶8, Exhibit A thereto.)

As for costs, Class Counsel requests \$15,240.95. This is less than the \$20,000 cap provided in the Settlement Agreement, for which Class Members were given notice and did not object. (Islas Decl. ¶8, Exhibit A thereto.) Sani Law, APC incurred \$4,637.71 in costs, while Haines Law Group, APC incurred \$10,603.24, which include: Mediation (\$9,000), Filing Fees, Messenger Fees, LWDA Fees, Copy, Postage (\$3,480.91), and Case Anywhere (\$1,156.80). (Decl. of Sam Sani ISO Final ¶11, Exhibit B; Decl. of Paul K. Haines ISO Final ¶12.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the court awards \$83,333.33 for attorneys' fees and \$15,240.95 for attorneys' costs.

D. Claims Administration Costs

The settlement administrator, Phoenix Settlement Administrators, requests administration costs of \$4,500. (Islas Decl. ¶11.) This equals the estimated cost of \$4,500 provided for in the Settlement Agreement (¶II.E) and disclosed to Class Members in the Notice, to which no one objected. (Islas Decl. ¶8, Exhibit A thereto).

The court awards administration costs in the requested amount of \$4,500.

E. Incentive Award to Class Representative

Plaintiff Rafael Gutierrez seeks an enhancement award of \$7,500 for his contributions to the action. (MFA at 15:19-20.)

In connection with the final fairness hearing, the named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he 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.)

Plaintiff represents that his contributions to this action include: gathering documents for use in the lawsuit, providing information to his counsel regarding Defendant's practices, identified potential witnesses, attending meetings with his attorneys, assisting in settlement discussions, and reviewing the settlement. He estimates spending 25 hours on the case. (Declaration of Rafael Gutierrez ISO Final ¶7.)

Based on the above, the court grants the enhancement award in the reduced amount of \$5,000 to Plaintiff.

### III. CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final 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. [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.)

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

\$83,333.33 for attorney fees to Class Counsel, Sani Law, APC and Haines Law Group, APC;  
\$15,240.95 for attorney costs to Class Counsel;  
\$4,500 for settlement administration costs to Phoenix Settlement Administrators;  
\$5,000 for an enhancement award to the class representative, Rafael Gutierrez;  
\$15,000 (75% of \$20,000 PAGA penalty) to the LWDA.

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

D. Plaintiffs release of Defendants from claims described herein.

3) By August 15, 2024, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

4) By March 17, 2025, Class Counsel must file a Final Report re: Distribution of the settlement funds.

5) Court sets Non-Appearance Case Review for March 24, 2025, 8:30 AM, 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: March 14, 2024



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

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