

AUG 02 2021

~~TENTATIVE~~ RULINGS/ORDERS

Sherri R. Carter, Executive Officer/Clerk of Court
By: A. Abramyan, Deputy

Francisco Calderon v. Smiledirectclub, LLC, et al., Case No.:
20STCV03799

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

The essential terms are, among other things:

A. The Gross Settlement Amount ("GSA") is \$650,000. Defendants represent that there are an estimated 11,463 workweeks worked by the Settlement Class Members during the Class Period. If the number of workweeks during the Class Period is more than 10% greater than this figure, (i.e., if there are 12,609 or more workweeks worked by the Settlement Class Members), Defendants agree to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, Defendants would agree to increase the Gross Settlement Amount by 10%). However, instead of increasing the Gross Settlement Amount if this escalator clause is triggered, Defendants retain the option to end the Class Period and release period as of the date that the increase in workweeks reaches 12,609 without any increase in the Gross Settlement Amount. (§13)

B. The Net Settlement Amount ("Net") \$363,583.34 is the GSA minus the following:

Up to \$216,666.66 (1/3) for attorney fees;
Up to \$35,000 for litigation costs;
Up to \$5,000 for a service award to the proposed class representative;
Up to \$7,250 for settlement administration costs;
\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA; and

C. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by February 4, 2022. The parties must 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.

~~14~~ 14 Nonappearance case management review is set for February 14, 2022, 8:30 a.m., Dept. 9.

I.
BACKGROUND

Plaintiff Francisco Calderon sues his former employer, Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation (collectively, "Defendants"), for alleged wage and hour violations. Defendants provide teeth straightening services and operate various locations known as SmileShops throughout California. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On January 30, 2020, Plaintiff filed a putative class action complaint against Defendants in Los Angeles County Superior Court, alleging that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages upon separation of employment; and (7) engaged in unlawful business practices. On April 6, 2020, Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the Labor Code Private Attorneys General Act ("PAGA").

On November 10, 2020, the parties attended mediation before Jeffrey Krivis, Esq. After a full day mediation, the Parties reached agreement and executed a Memorandum of Understanding. Thereafter, the Parties signed the Stipulation of Settlement ("Settlement Agreement"), a copy of which was filed with the Court.

Pursuant to the terms of the Settlement, subject to Court approval, the Parties stipulated to allow Plaintiff to file a Second Amended Complaint Class and Representative Action Complaint adding a cause of action for Defendants' failure to

timely pay all wages upon separation of employment. Plaintiff filed the Second Amended Complaint on May 19, 2021.

On June 16, 2021, the parties filed supplemental briefing to address issues raised by the Court, including the Amended Settlement Agreement attached to the Supplemental Declaration of Elizabeth Nguyen ("Nguyen Decl.") as Exhibit 2.

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

II. SETTLEMENT AGREEMENT

A. Definitions

Class: All current and former non-exempt, hourly, employees of Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation who worked in California at any time from November 8, 2017 through the date of preliminary approval. (¶1)

Class Period: November 8, 2017 through the date of preliminary approval. (¶1)

PAGA Employees: All current and former non-exempt, hourly, employees of Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation who worked in California at any time from January 30, 2019 through the date of preliminary approval. (¶2)

PAGA Period and release under PAGA: January 30, 2019 through the date of preliminary approval. (¶2)

The parties stipulate to class certification for settlement purposes only. (¶1)

B. Terms of Settlement Agreement

The essential terms are as follows:

- The Gross Settlement Amount ("GSA") is \$650,000, non-reversionary. (¶6)
 - o Escalator Clause. Defendants represent that there are an estimated 11,463 workweeks worked by the Settlement Class Members during the Class Period. If the number of workweeks during the Class Period is more than 10% greater than this

figure, (i.e., if there are 12,609 or more workweeks worked by the Settlement Class Members), Defendants agree to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, Defendants would agree to increase the Gross Settlement Amount by 10%). However, instead of increasing the Gross Settlement Amount if this escalator clause is triggered, Defendants retain the option to end the Class Period and release period as of the date that the increase in workweeks reaches 12,609 without any increase in the Gross Settlement Amount. (¶13)

- The Net Settlement Amount ("Net") (\$363,583.34) is the GSA minus the following:
 - o Up to \$216,666.66 (1/3) for attorney fees (¶6.D.4);
 - o Up to \$35,000 for litigation costs (Ibid.);
 - o Up to \$5,000 as a Service Award to the class representative (¶6.D.3);
 - o Up to \$7,250 for settlement administration costs (¶6.D.2);and
 - o Payment of \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA (¶6.D.5).
- Defendants' share of payroll taxes shall be paid by Defendants separately from, and in addition to, the Gross Settlement Amount. (¶6.E)
- No Claim Form. Class Members are not required to submit a claim form to receive their individual settlement payment. (¶7)
- Response Deadline. The "Response Deadline" will be sixty (60) calendar days of the date of the initial mailing of the Notice Packets, applying to the submission of Requests for Exclusion (¶12.D), written objections (¶12.E), and workweek disputes (¶12.F).
 - o If more than ten percent (10%) of the Class Members opt out of the Settlement, Defendants may, at their election, rescind the Settlement and all actions taken in furtherance of it will thereby be null and void. (¶15)
- Individual Settlement Share Calculation. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula: (¶7.B)
 - o Workweek Based Amount: Ninety-Five Percent (95%) of the Net Settlement Amount, not including the PAGA Amount payable to Settlement Class Members as described above, shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of

which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period. (§7.B.i)

- o Waiting Time Penalty Amount: Five Percent (5%) of the Net Settlement Amount, not including the PAGA Amount payable to Settlement Class Members as described above, shall be designated as the "Waiting Time Penalty Amount." Each participating Settlement Class member who was separated from employment with Defendants at any time during the Class Period shall receive a portion of the Waiting Time Penalty Amount. The Waiting Time Penalty amount shall be divided equally between all Settlement Class Members who were separated from their employment during the Class Period. (§7.B.ii)

- o PAGA Amount: In addition, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period, which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of workweeks worked during this time period, and the denominator of which is the total number of workweeks worked by all PAGA Employees. (§7.B.iii)

- o Tax Allocation. Each individual settlement payment will be allocated as 33% to wages, 67% to interest and penalties. (§7.C)

- Funding of Settlement. Defendants agree to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the expiration of any appeal period following the Court's final approval of the Settlement (at or following the Final Approval Hearing) and entry of a Final Judgment and Order Approving Settlement in the same or substantially the same form as Exhibit C ("Judgment"); or (b) the final resolution of any appeal that has been filed, with the California Court of Appeal or the California Supreme Court rendering a final judgment affirming the Court's final approval of the Settlement without material modification. (§6.B)

- Uncashed Checks. Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member. (§7.E)

- Phoenix Settlement Administrators will perform notice and settlement administration. (§6.A)
- The Settlement Agreement was submitted to the LWDA on March 2, 2021. (Supp. Proof of Service Re: Motion for Preliminary Approval)
- Notice of Entry of Judgment will be provided to class members in writing by mail with the Settlement Award. (§16.C)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

III. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On November 10, 2020, the parties attended mediation before Jeffrey Krivis, Esq. After a full day mediation, the Parties reached agreement and executed a Memorandum of Understanding, and thereafter, signed the Settlement Agreement. (Declaration of Elizabeth Nguyen ¶12.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that after agreeing to participate in early mediation, Defendants informally produced time records and payroll data for the putative class, as well as its wage and hour policies and other documents and information relevant to the claims alleged in advance of mediation. Plaintiff retained an expert to conduct an analysis of the payroll data and time records produced by Defendants. (Id. at ¶11.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶ 6-8; Declaration of Paul K. Haines ¶¶ 6-7.)

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

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

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

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

Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

Violation	Maximum Exposure	Realistic Exposure
Unpaid Wages	\$11,065.00	\$9,986.16
Meal Period Claim	\$181,722.50	\$155,372.74
Rest Period Claim	\$1,024,235.00	\$696,479.80
Wage Statement Violations	\$200,150.00	\$162,121.50
Waiting Time Penalties	\$1,041,835.00	\$708,447.80
PAGA Penalties	\$201,300.00	\$163,053.00
Total	\$2,660,307.50	\$1,895,461.00

(Nguyen Decl. ¶¶ 16-28.)

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 \$650,000 non-reversionary settlement, which represents approximately 24.4% of Defendant's maximum potential damages and 34.3% of Defendant's realistic potential damages, which, given the uncertain outcomes, and Defendant's financial condition, is within the "ballpark of reasonableness."

The \$650,000 settlement amount, after reduced by the requested deductions, leaves approximately \$363,583.34 to be divided among approximately 277 putative class members. Assuming full participation, the resulting payments will average approximately \$1,312.58 per class member. [$\$363,583.34 / 277 = \$1,312.58$]

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

1. Release by Settlement Class Members and Plaintiff. Plaintiff and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) ("Settlement Class Member" or "Class Members") will fully and forever completely release and forever discharge Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation, and all of their past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the "Released Parties"), as follows:
(¶4)

Settlement Class Members' Release: Settlement Class Members and Plaintiff will release and forever discharge all claims, demands, rights, liabilities and causes of action that were pled

in, or arising out of facts asserted in, the operative Second Amended Complaint that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages due upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, "Released Claims"). Except as provided for under the Settlement Agreement, Class Members (who do not submit a timely Request for Exclusion) will not be eligible to receive or receive any additional wages or penalty payments based on the Released Claims from Defendants. (§4.A)

The time period for the release of the Released Claims against the Released Parties shall be the same time period as the Class Period. (§4.B)

2. PAGA Release: PAGA Employees, including Plaintiff, will release and forever discharge all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on (as alleged in the letters to the Labor & Workforce Development Agency ("LWDA") January 30, 2020 and December 9, 2020): the (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; and (f) failure to pay all wages due upon separation of employment that occurred during the PAGA Period (collectively, "PAGA Released Claim"). The PAGA Period and the time period of the PAGA Released Claims is defined as the time period January 30, 2019 through [the date the Court enters the order granting preliminary approval] ("PAGA Period"). (§4.C)

Class Members who submit a Request for Exclusion will still receive a proportionate share of the PAGA Payment regardless of whether they exclude themselves from the Settlement if they are PAGA Employees. (Notice pg. 4)

The releases identified herein shall become effective on the date on which Defendants fully fund the Settlement

("Effective Date of the Release"). Upon the Effective Date of the Release, all Class Members shall be deemed to have, and by operation of Judgment shall have, released, waived and relinquished the Released Claims. (§4.D)

The Parties acknowledge that under the release, the right of the LWDA to investigate the released PAGA claims is not released, but Released Claims do include any claims for penalties by a Class Member as a result of any such LWDA investigation, and Class Members are waiving their right to act as a private attorney general as to the Released Claims. (§4.E)

The releases identified herein shall be null and void if the Settlement is not fully funded. (§4.H)

3. Individual Release: Named Plaintiff will additionally provide a general release and §1542 waiver. (§§ 4.F, 4.G)

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 277 Class Members. (Motion at 4:26-27). This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (Motion at 5:3-8).

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims

or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Plaintiff contends that Settlement Class Members' claims arise from Defendants' common, uniform policies and practices that applied to Plaintiff and Settlement Class Members during the class period. As a result, Plaintiff contends that their claims involve common questions of law and fact, including but not limited to:

1. Whether Defendants properly paid all overtime wages;
2. Whether Defendants properly paid all minimum wages;
3. Whether Defendants provided all legally compliant meal periods;
4. Whether Defendants authorized and permitted all legally required rest periods;
5. Whether Defendants failed to furnish accurate, itemized wage statements;
6. Whether Defendants failed to timely pay all wages owed upon separation; and
7. Whether Defendants' conduct constituted unlawful and/or unfair business practices. (Motion at 5:13-6:3.)

Regarding typicality, Plaintiff contends that his claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by Defendants during the Class Period as a non-exempt employee and was subject to Defendants' wage and hour policies at issue in this case. Second, Plaintiff alleges that he was injured by the same challenged policies that injured the Settlement Class as a whole. For example, Plaintiff asserts that he, like the members of the Classes, was not provided with all required meal periods, was not provided all legally required minimum wages and overtime wages, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal or rest periods, was not provided with accurate, itemized wage statements, and was not paid all of his wages owed upon separation of employment. Given that Defendants' policies and practices applied to all non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. (Motion at 6:9-21.)

Finally, as to adequacy, Plaintiff represents that he understands the risks and burden of serving as Class Representative, has been actively involved in the case since

joining the lawsuit, and has no conflicts with any of the other Settlement Class members. (Declaration of Francisco Calderon ¶¶ 8-12.)

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. A copy of the proposed notice to class members is attached to the Settlement Agreement as Exhibit B. 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; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

The Notice will be sent in English only (¶12.B), as Plaintiff asserts that Defendants employed Plaintiff and the Settlement Class in a retail setting that required the Settlement Class to be able to read and write in English. As such, the Parties believe that Defendants' workforce possesses sufficient English language skills and that it is unnecessary to mail the proposed Notice Packets in any other languages. (Motion at 20:18-25.)

2. Method of class notice. Within twenty (20) calendar days after entry of an order preliminarily approving this Agreement, Defendants will provide the Settlement Administrator with the Class Data. (¶12.A) Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class Members through the National Change of Address ("NCOA") database to determine any

updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet in English to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. (¶12.B) Notice Packets shall be mailed to all Settlement Class Members within (10) business days from receipt of the Class Data. Plaintiff and Class Counsel will not distribute any other documents or notices (whether by mail, on-line, or otherwise) regarding this Action or Settlement. (¶12.C)

Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendants' Counsel to provide notice of the proposed settlement. (¶12.G)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$7,250. 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.

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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 \$216,666.66 (1/3) in attorney fees will be addressed at the 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. Class Counsel represents that Plaintiff has provided written approval of the split of attorneys' fees in this action: 46.5% to Haines Law Group, APC, 31% to Lidman Law, APC, and 22.5% to the Michael Burgis & Associates, PC. Michael Burgis & Associates, PC is the referring attorney. (Nguyen Decl. ISO Prelim ¶30.)

Class Counsel must also be prepared to justify the costs sought (capped at \$35,000) by detailing how they were incurred.

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$5,000 for the class representative, Francisco Calderon (¶6.D.3). 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, among other things:

A. The Gross Settlement Amount ("GSA") is \$650,000. Defendants represent that there are an estimated 11,463 workweeks worked by the Settlement Class Members during the Class Period. If the number of workweeks during the Class Period is more than 10% greater than this figure, (i.e., if there are 12,609 or more workweeks worked by the Settlement Class Members), Defendants agree to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, Defendants would agree to increase the Gross Settlement Amount by 10%). However, instead of increasing the Gross Settlement Amount if this escalator clause is triggered, Defendants retain the option to end the Class Period and release period as of the date that the increase in workweeks reaches 12,609 without any increase in the Gross Settlement Amount. (§13)

B. The Net Settlement Amount ("Net") \$363,583.34 is the GSA minus the following:

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Up to \$7,250 for settlement administration costs;

\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA; and

C. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by February 4, 2022. The parties must 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) Nonappearance case management review is set for February ~~11~~, 2022, 8:30 a.m., Dept. 9.

14

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: July 29, 2021



YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

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