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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

RUDY SANDOVAL, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

US FOODS, INC., dba US FOODSERVICE,
INC., a Delaware Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. STK-CV-UOE-2020-0000978

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL FOR CLASS
SETTLEMENT

Date: July 12, 2021
Time: 9:00 a.m.
Dept.: 10A

BY FAX

[PROPOSED] ORDER GRANTING FINAL APPROVAL FOR CLASS SETTLEMENT

1 On July 12, 2021, Plaintiff's Motion for Final Approval of Class Action Settlement,
2 Attorneys' Fees and Expenses, and Incentive Award came before the Court, in Department 10A, for
3 hearing pursuant to the Order of this Court, dated March 10, 2021 ("Preliminary Approval Order"),
4 on the application of Plaintiff Rudy Sandoval ("Plaintiff") and the Certified Class for approval of the
5 Settlement set forth in the Joint Stipulation of Class Action and PAGA Settlement (the
6 "Stipulation"). Full and adequate notice having been given to the Class as required in the Court's
7 Preliminary Approval Order, and the Court having considered all papers filed and proceedings held
8 herein and otherwise being fully informed in the premises and good cause appearing therefor,

9 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

10 1. This Order incorporates by reference the definitions in the Stipulation, and all
11 capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

12 2. This Court has jurisdiction over the subject matter of the Action and over all parties
13 to the Action, including all Class Members.

14 3. The Motion for final approval is granted. The Court approves the settlement as fair,
15 reasonable and adequate. The Court makes the following awards and approves the following
16 payments:

17 a. \$360,000.00 (three-hundred and sixty-thousand dollars only) in attorneys' fees
18 and \$15,783.19 (fifty-thousand seven-hundred and eighty-three dollars and
19 nineteen-cents) in costs to Class Counsel;

20 b. \$7,500.00 (seven-thousand and five-hundred dollars only) as an Enhancement
21 Award to Plaintiff Rudy Sandoval as the Class Representative; and,

22 c. \$9,981.00 (nine-thousand and nine-hundred and eight-one dollars only) in
23 Settlement Administrator's Fees to the claims administrator ILYM Group, Inc.

24 4. In accordance with the Settlement and the terms set forth in this order, this Order
25 shall not be deemed a judgment in favor of Class Members or any them and shall not constitute an
26 obligation for direct compensation of any one or any number of the Class Members, but rather it
27 simply approves and undertakes to monitor the execution of the settlement between the Parties.
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1 Except for the payment due under the Stipulation, the parties are each to bear their own costs and
2 attorneys' fees. The Court approves the Stipulation and Defendant US Foods, Inc., dba US
3 Foodservice, Inc. ("Defendant"), and the Released Parties are discharged from all Released Claims
4 in accordance with the terms of the Stipulation.

5 5. In this wage and hour class action lawsuit, Plaintiff sued Defendant for a variety of
6 Labor Code violations. The operative complaint alleges that Defendant failed to pay minimum
7 wages and overtime, failure to pay wages under Fair Labor Standards Act ("FLSA") failed to
8 provide accurate wage statements, failure to keep required payroll records, failed to pay final wages
9 when due, committed unfair business practices under California's Unfair Competition Law ("UCL"),
10 and violated the Private Attorneys General Act of 2004 ("PAGA"), all in violation of California law.
11 The operative complaint seeks recovery of unpaid minimum wages and overtime, failure to pay
12 wages under Fair Labor Standards Act, premium pay for penalties for improper wage statements,
13 waiting time penalties, restitution under the UCL, penalties under Labor Code § 2699 *et seq.*,
14 prejudgment interest, post-judgment interest, and attorneys' fees and costs. Defendant answered the
15 Complaint and denied all of Plaintiff's claims and maintained that it complied with all applicable
16 laws.

17 6. The parties settled this matter at mediation and thereafter sought and obtained
18 preliminary approval of the class action settlement on March 10, 2021. Defendant made and makes
19 no admission of liability and none shall be inferred from the Stipulation or entry of judgment.
20 Neither this order nor the Stipulation shall be used or submitted into evidence in any proceeding or
21 action, except for the sole purpose of enforcing the terms hereof.

22 7. In California, the notice to class members must have "a reasonable chance of reaching
23 a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001) 91
24 Cal.App.4th 224, 251. Importantly, however, the plaintiff need not demonstrate that each member of
25 the class received notice. As long as the notice had a "reasonable chance" of reaching a substantial
26 percentage of class members, it should be found effective.

27 8. ILYM Group, Inc. ("ILYM") is providing settlement administration services for this
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1 settlement. (Declaration of Madely Nava with Respect to Notification with the Final Approval
2 Motion, ¶ 1.) On March 31, 2021, ILYM received the class information from Defendant; the list
3 contained 344 individual Class Members. (*Id.* at ¶ 5.) ILYM conducted a search of the NCOA to
4 update addresses and, on April 9, 2021, mailed the Notice Packet to all Class Members. (*Id.* at ¶¶ 6,
5 7.) ILYM forwarded Notice Packets returned with forwarding addresses and performed skip
6 searches on all other returned mail. (*Id.* at ¶¶ 8-9.) Ultimately, 5 Notice Packets were undeliverable.
7 (*Id.* at ¶ 10.) ILYM received no objections, no request for exclusion, and no disputes. (*Id.* at ¶¶ 11,
8 12.) Based on the foregoing, the Court finds that the notice provided to Class Members conforms to
9 due process requirements.

10 9. It is the duty of the Court, before finally approving the settlement, to conduct an
11 inquiry in the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before
12 Trial, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in determining
13 whether the settlement is fair. In exercising that discretion, it normally considers the following
14 factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further
15 litigation; the risk of maintaining class action status through trial; amount offered in settlement;
16 extent of discovery completed and stage of the proceedings; experience and views of counsel;
17 presence of a governmental participant; and reaction of the class members to the proposed class
18 settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In Re Microsoft I-V Cases*
19 (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is free to balance and weigh
20 the factors depending on the circumstances of the case. *Wershba v. Apple Computer, Inc.* (2001) 91
21 Cal.App.4th 224, 244-245.

22 10. The proponent bears the burden of proof to show the settlement is fair, adequate and
23 reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
24 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption that a proposed
25 settlement is fair and reasonable when it is the result of arms'-length negotiations. 2 Herbert
26 Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *Manual for*
27 *Complex Litigation* (Third) §30.42.
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1 11. At the time of preliminary approval, Class Counsel's claim that Defendant failed to
2 pay minimum wage/overtime claim were valued in terms of maximum exposure at \$1,104,019.95
3 (Yeremian Declaration re: Preliminary Approval, at ¶ 27. The paystub violations were valued at
4 \$158,200.00. (*Id.* at ¶ 30.) The claim for failure to pay final wages was valued at \$592,416.00. (*Id.* at
5 ¶ 34.) The claim under Labor Code § 2699 *et seq.* was valued at \$158,200.00 (*Id.* at ¶ 38.)

6 12. Had this case not settled, there would have been additional risks and expenses
7 associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also
8 likely to prolong the litigation as well as any recovery by the Class Members.

9 13. There is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180
10 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some
11 flexibility in conducting class actions, which means, under suitable circumstances, entertaining
12 successive motions on certification if the court subsequently discovers that the propriety of a class
13 action is not appropriate.")

14 14. As part of the Court's analysis of this factor, the Court should take into consideration
15 the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*,
16 objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be
17 fair, reasonable, and adequate without any evidence of the amount to which class members would be
18 entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the
19 agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate
20 responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be
21 considered in making that determination, and a trial court was not required to decide the ultimate
22 merits of class members' claims before approving a proposed settlement, an informed evaluation
23 could not be made without an understanding of the amount in controversy and the realistic range of
24 outcomes of the litigation.

25 15. Defendant has agreed to settle for the non-reversionary amount of (\$1,080,000.00 all
26 in, with no additional sums being due from Defendant for damages, costs, attorneys' fees,
27 contributions, reimbursements or for any other reason). According to the claims administrator's
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1 calculations, the average settlement payment will be approximately \$1,860.52 per Class Member
2 (Nava Declaration, ¶ 14.)

3 16. Class Counsel conducted an investigation that included informal discovery, reviewed
4 time records, reviewed Plaintiff's documents, and formed damage models based on all of these.
5 (Yeremian Declaration re: Preliminary Approval, ¶ 12.) The parties also mediated this case with
6 Tripper Ortman, a respected and highly experienced mediator in wage and hour class actions. In
7 connection with mediation and through discussions with counsel for Defendant, Class Counsel also
8 discussed all aspects of the case, including the risks of litigation and the risks to both parties of
9 proceeding with a motion for class certification as well as the law relating to unpaid wages.
10 (Yeremian Declaration re: Preliminary Approval, ¶ 14.)

11 17. Class Counsel has experience with wage and hour class litigation. (Yeremian
12 Declaration re: Preliminary Approval, ¶¶ 3-9.) He is of the opinion that this settlement is in the best
13 interest of the class (Yeremian Declaration re: Final Approval, ¶ 6.) and provides substantial benefit
14 to Class Members. (Id. at ¶ 8.)

15 18. The class reacted very positively with 100% participation rate. (Nava Declaration, ¶
16 13.)

17 19. On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final
18 approval is warranted.

19 20. Class Counsel requested attorneys' fees of \$360,000.00. The Court employs the
20 lodestar method in awarding fees, as opposed to a "percentage of the common fund" method. This
21 amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize
22 counsel's efforts. In common fund cases, the Court may employ a percentage of the benefit method,
23 as cross-checked against the lodestar. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 503.

24 21. Here, fees are sought pursuant to the percentage method. (Motion at p. 14.) The
25 determination of what constitutes an appropriate percentage "is somewhat elastic and depends
26 largely on the facts of a given case, but certain factors are commonly considered. Specifically, the
27 court may address the percentage likely to have been negotiated between private parties in a similar
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1 case, percentages applied in other class actions, the quality of class counsel, and the size of the
2 award.” *In re Ikon Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.

3 22. These factors favor the \$360,000.00 award. As for the first factor, private contingency
4 fee agreements are routinely 30% to 40% of the recovery. (*Id.* at 194.) As for the second factor,
5 although the median percentage of attorney fees in class action is 25%, “most fees appear to fall in
6 the range of nineteen to forty-five percent.” (*Id.*) As for the third factor, Class Counsel has
7 experience in class actions, including wage and hour cases. Most importantly, Class Counsel
8 achieved good results for the class as evidenced by the Class Members’ reaction to the settlement.
9 As for the fourth factor, Class Counsel negotiated a \$1,080,000.00 Gross Settlement Amount.
10 Applying the lodestar cross-check, Class Counsel states that members of his firm have spent at least
11 295 hours on this case, with an estimated 15 hours yet to come. (Yeremian Declaration re: Final
12 Approval, ¶¶ 13, 14.) At the firm’s blended billing rate of \$625.00/hour, the lodestar is calculated at
13 \$184,375.00. (Yeremian Declaration re: Final Approval, ¶ 21.) The hourly rates appear to be
14 reasonable for attorneys with their respective years of experience. (Yeremian Declaration re: Final
15 Approval, ¶ 16), and the hours spent is reasonable for this case, which has been pending for three
16 years. It appears that Class Counsel utilized skill in litigating this case, and by all accounts, have
17 good reputations in the legal community; at the very least, there is no evidence before the Court to
18 indicate that the attorneys have negative reputations in the legal community. It also appears that
19 Class Counsel spent appreciable time on the case, which time could have been spent on other
20 meritorious fee-generating cases. Based on the \$184,375.00 lodestar, the fee request of \$360,000.00
21 translates into a multiplier of 1.95. Because the fee request is based on a reasonable percentage of
22 the settlement fund and is supported by the lodestar calculation, and because the class was provided
23 with notice of the fee request and did not object, the Court awards fees in the amount requested.

24 23. Class Counsel requests costs in the amount of \$15,783.19. (Yeremian Declaration re:
25 Final Approval, ¶ 31, and Exhibit F thereto.) Class Counsel’s actual costs, totaling \$15,783.19,
26 consist of filing fees, mediation fees, court appearances, copying, filing and service. These costs
27 appear reasonable and necessary to the conduct of the litigation. Further, as with the fee requests, the
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1 maximum cost request was disclosed to Class Members and deemed unobjectionable. For these
2 reasons, the cost request is granted in the amount of \$15,783.19.

3 24. Claims administrator ILYM requests administration costs of \$9,981.00. (Nava
4 Declaration, ¶15.) Based upon the work performed and yet to be performed, and the fact that the
5 class was provided notice of up to \$9,981.00 for claims administration expense and none objected,
6 the request for administration costs of \$9,981.00 is granted.

7 25. The Court also approves the payment to the Labor and Workforce Development
8 Agency ("LWDA") in the amount of \$37,500.00 (out of \$50,000.00 as allocated to the claim under
9 the California Private Attorneys General Act).

10 26. Finally, Class Counsel seeks an Enhancement Award of \$7,500.00 to Plaintiff as the
11 class representative. The Court considers the following factors, among others, in determining
12 whether to pay an incentive or enhancement award to a class representative: whether an incentive
13 was necessary to induce the class representative to participate in the case; actions, if any, taken by
14 the class representative to protect the interests of the class; the degree to which the class benefited
15 from those actions; the amount of time and effort the class representative expended in pursuing the
16 litigation; the risk to the class representative in commencing suit, both financial and otherwise; the
17 notoriety and personal difficulties encountered by the class representative; the duration of the
18 litigation; and the personal benefit (or lack thereof) enjoyed by the class representative as a result of
19 the litigation. California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group
20 2012) (citing *Clark v American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v.*
21 *Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010)
22 186 Cal.App.4th 1380, 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
23 Cal.App.4th 399, 412. Plaintiff devoted numerous hours to this litigation. (Rudy Sandoval
24 Declaration "Sandoval Decl." ¶5.) He assisted his attorneys by having multiple conferences with
25 them and by providing documents. (*Id.*) Plaintiff also helped Class Counsel prepare for mediation.
26 (*Id.*) Plaintiff freely chose to champion the rights of the class and accepted the risks associated with
27 acting as a class representative. (Sandoval Decl. ¶ 7.) The Court grants an enhancement award of
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1 \$7,500.00 to Plaintiff for the following reasons: Plaintiff spent significant time on this litigation;
2 Plaintiff's actions benefitted the Class; and Plaintiff accepted the risks and notoriety that are
3 associated with acting as a class representative.

4 27. All Parties, including each and all Class Members, are bound by this Final Approval
5 Order and by the Stipulation. All Class Members shall be deemed to have entered into the
6 Stipulation and the releases provided therein. Defendant shall have no obligation to pay any sums in
7 excess of the \$1,080,000.00 settlement payment set forth in the Stipulation (save and except for the
8 additional employer payroll taxes associated therewith). Other than as provided in the Stipulation,
9 Defendant shall have no obligation after entry of judgment to pay any sum to any person, whether
10 for costs, attorneys' fees, Class Member reimbursement or contribution, as a result of entry of
11 judgment.

12 28. The Court previously certified the Action as a class action under California Code of
13 Civil Procedure section 382. The Class is defined as follows:

14 a. "Participating Class Members:" all current and former non-exempt, non-Driver,
15 non-union employees of Defendant who worked an alternative workweek
16 schedule in California at any point during the Class Period.

17 b. "Class Period:" is defined as January 21, 2016 through November 25, 2020.

18 29. Excluded from the Class would have been those persons who validly requested
19 exclusion in accordance with the requirements set forth in the Preliminary Approval Order.

20 30. The certified Class continues to meet all the requirements of California Code of Civil
21 Procedure section 382, as already found, and for the reasons set forth, in the Court's Preliminary
22 Approval Order.

23 31. Plaintiff Rudy Sandoval is the Court-appointed Class Representative for the Claims
24 Class.

25 32. David Yeremian of the law firm David Yeremian & Associates, Inc. is the Court-
26 appointed Class Counsel.

27 33. As set forth in the Stipulation any checks issued to Class Members will expire one
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1 hundred and eighty (180) days from the date they are issued by the Claims Administrator and any
2 uncashed checks will be will be distributed pursuant to Cal. Code Civ. Proc. § 384(b) to California
3 Rural Legal Assistance, Inc..

4 34. Upon the Effective Date (as defined in the Stipulation), all Released Claims of each
5 and every member of the Classes, save and except for those who timely requested exclusion, are and
6 shall be deemed to be conclusively released as against the Releasees. All persons and entities who
7 are in the Classes are hereby forever barred and enjoined from commencing, prosecuting or
8 continuing, either directly or indirectly, against the Releasees, in this or any other jurisdiction or
9 forum, any and all Released Claims (as defined in the Stipulation).

10 35. Class Counsel shall file the declaration and exhibit with the Court as the current
11 record of all consents by Participating Class Members to opt into the action and release their FLSA
12 claim.

13 36. Without affecting the finality of this Order in any way, this Court hereby retains
14 continuing jurisdiction over: (a) implementation of the Stipulation and any award or distribution of
15 the Gross Settlement Amount, including interest earned thereon; (b) disposition of the Gross
16 Settlement Amount; (c) hearing and determining applications for attorney fees and expenses in the
17 Action; (d) all parties hereto for the purpose of construing, enforcing, and administering the
18 Stipulation and the Settlement therein; and (e) Class Members who seek to pursue Released Claims,
19 including any dispute as to whether such claims were released as against the Releasees.

20 37. There is no just reason for delay in the entry of judgment approving the Class
21 Settlement and immediate entry by the Clerk of the Court is expressly directed.

22
23 IT IS SO ORDERED.

24
25 DATED: July 12, 2021

26 
27 HON. GEORGE J. ABDALLAH
28 JUDGE OF THE SUPERIOR COURT

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