

FILED
Superior Court of California
County of Los Angeles
08/11/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: N. Navarro Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JOHN GUTH, an individual, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiff,

v.

THE GREEN GODDESS, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 20STCV12952

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS**

I. BACKGROUND

Plaintiff John Guth sues his former employer, Defendant The Green Goddess, Inc., for alleged wage and hour violations. Defendant is a company engaged in providing cannabis-based products to customers. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

1 On April 1, 2020, Plaintiff filed a complaint alleging causes of action for: (1)
2 failure to provide meal periods (Labor Code §§ 226.7, 512); (2) failure to provide rest
3 breaks (Labor Code §§ 226.7, 512, 1194); (3) failure to pay minimum wages (Labor
4 Code §§ 510, 1194, 1194.2, 1197; (4) failure to pay overtime wages (Labor Code §§
5 510, 1194); (5) failure to reimburse all necessary, business-related expenses (Labor
6 Code § 2802); (6) failure to furnish timely and accurate wage statements (Labor Code §
7 227.3); (7) failure to pay all wages upon separation (Labor Code §§ 201-203); (8)
8 violation of California's Unfair Competition Law ("UCL"), (Business & Professions
9 Code §§ 17200, et seq.); and (9) for civil penalties pursuant to the Private Attorneys
10 General Act (Labor Code §§ 2698, et seq.) ("PAGA").

11 On August 25, 2021, the parties participated in mediation before the Honorable
12 Louis M. Meisinger (Ret.), at the conclusion of which the parties accepted a
13 consensually modified mediator's proposal. The parties subsequently finalized
14 settlement terms in a Stipulation of Class Action Settlement and Release of Claims.

15 A motion for preliminary approval was filed. The Court issued a "checklist" on
16 March 29, 2022 of matters requiring attention. Supplemental papers requiring were
17 filed July 21, 2022, including an Amended Stipulation of Class Action Settlement and
18 Release of Claims attached as Exhibit 1 to the Supplemental Declaration of Kenner
19 (Settlement Agreement). All references below are to that agreement.

20 The motion came on for hearing on August 9, 2022. For the reasons set forth
21 below, the Court preliminarily grants approval for the settlement, conditioned upon (1)
22 counsel for the plaintiff filing proof of service of the Amended Stipulation of
23 Settlement on the LWDA on or before August 19, 202; (2) the Notice being corrected
24 to reflect the correct time of the Final Fairness Hearing (9:00 a.m.)

25 //

1 **II. THE TERMS OF THE SETTLEMENT**

2 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

3 “Class Member(s)” means all current and former nonexempt employees who
4 worked for Defendant The Green Goddess, Inc. in California during the Class Period
5 beginning four years prior to the filing of the Complaint, i.e., April 1, 2016 through
6 August 31, 2021. (¶6)

7 “Class Period” means the period from April 1, 2016 through August 31, 2021.
8 (¶8)

9 “Participating Class Member” means any Settlement Class Member who does
10 not opt out of the Settlement by submitting a valid and timely Request for Exclusion.
11 (¶23)

12 “PAGA Member(s)” means all current and former nonexempt employees who
13 worked for Defendant in California during the PAGA Period of January 27, 2019
14 through August 31, 2021. (¶19)

15 “PAGA Period” means the period from January 27, 2019, one year and 65 days
16 prior to the date Plaintiff filed his complaint, through August 31, 2021. (¶21).

17 “Settlement Class Members” means Class Members and all PAGA Members.
18 (¶33)

19
20 **B. THE MONETARY TERMS OF SETTLEMENT**

21 The essential monetary terms are as follows:

22 The Gross Settlement Amount (“GSA”) is **\$150,000** (¶15). This includes payment
23 of a PAGA penalty of **\$4,000** to be paid 75% to the LWDA (\$3,000) and 25% to the
24 Aggrieved Employees (\$1,000) (¶47.e).

25 The Net Settlement Amount (“Net”) (**\$61,000**) is the GSA less:

- Up to **\$50,000** (33 1/3%) for attorney fees (¶45.d);
- Up to **\$23,000** for attorney costs (*Ibid.*);
- Up to **\$5,000** for a service award to the proposed class representative (¶45.c); and
- Estimated **\$7,000** for settlement administration costs (¶33).
- Employer-side payroll taxes will be paid by Defendant in addition to the GSA (¶47).
- Assuming the Court approves all maximum requested deductions, approximately \$61,000 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$241.10. ($\$61,000 \text{ Net} \div 253 \text{ class members} = \241.10). In addition, each PAGA Member will receive a portion of the PAGA penalty, estimated to be \$ 5.88 per PAGA Member. See Kenner Supp. Dec. ¶ 30. ($\$1,000 \text{ or } 25\% \text{ of } \$4,000 \text{ PAGA penalty} \div 170 \text{ PAGA Members} = \$ 5.88$).
- There is no Claim Requirement (¶44.b).
- The settlement is not reversionary (¶44.b).
- Individual Settlement Share Calculation: Defendant will calculate the Total Weeks Worked by each Settlement Class Member. The respective Total Weeks Worked for each Settlement Class Member will be divided by the Total Weeks Worked for all Settlement Class Members who do not opt out, resulting in the Payment Ratio for each Settlement Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated deductions for each Settlement Class Member. With the exception of the Class Representative

1 Enhancement Award for the Class Representative, Settlement Class Members
2 are not eligible to receive any compensation under the Settlement other than
3 Individual Settlement Payments. (§47.a.i)

4 ○ PAGA Payment: . Defendant will calculate the Total Workweeks during
5 the PAGA Period for each Settlement Class Member. The respective
6 PAGA Payment for each PAGA Member will be calculated by dividing
7 the PAGA Member's Total Workweeks during the PAGA Period by the
8 Total Workweeks during the PAGA Period among all PAGA Members,
9 resulting in the PAGA Payment Ratio for each PAGA Member. Each
10 PAGA Member's Payment Ratio is then multiplied by the \$1,000
11 allocated to all PAGA Members to determine his or her respective PAGA
12 Payment. Each PAGA Payment will not be reduced by any deductions
13 and will be issued on a 1099. (§47.a.ii)

- 14 • Tax Withholdings: Individual Settlement Payments will be allocated as follows:
15 40% as wages, 30% as penalties, and 30% as interest and expense
16 reimbursement. (§47.a)
- 17 • Funding of Settlement: Defendant will deposit \$60,000 into a Qualified
18 Settlement Fund ("QSF") with the Settlement Administrator within fourteen (14)
19 calendar days of the Court granting preliminary approval (the "First
20 Installment"). The \$90,000 balance will be deposited into the QSF in six equal
21 monthly installments of \$15,000 commencing thirty (30) calendar days from the
22 date of the First Installment. For illustrative purposes, Defendant shall deposit
23 into the QSF the third installment of \$15,000 within thirty (30) calendar days of
24 the second installment. Thirty (30) calendar days after the fifth installment,
25 Defendant shall deposit the final and sixth installment of \$15,000 with the

1 Settlement Administrator into the QSF, which shall bring the QSF to \$150,000.
2 Defendant's share of employer taxes on the wage portion of the Individual
3 Settlement Payments will be paid in addition to the Gross Settlement Amount.
4 (§47)

- 5 • Distribution: Individual Settlement Payments shall be mailed by regular
6 First-Class U.S. Mail to the respective Settlement Class Member's last
7 known mailing address within fourteen (14) calendar days after Defendant
8 provides the full Gross Settlement Amount to the Settlement Administrator.

9 (§47.a) The Class Representative Enhancement Award shall be paid to
10 Plaintiff from the Gross Settlement Amount no later than fourteen (14)
11 calendar days after Defendant tenders all funds to the Settlement
12 Administrator for disbursement. (§47.c) Class Counsel shall be paid any
13 Court-approved fees and costs no later than fourteen (14) calendar days after
14 Defendant tenders all funds to the Settlement Administrator. (§47.d)]

- 15 • Uncashed Settlement Payment Checks: Funds represented by Individual
16 Settlement Payment checks returned as undeliverable and Individual Settlement
17 Payment checks remaining uncashed for more than one hundred and eighty (180)
18 calendar days after issuance, plus any accrued interest in the Settlement
19 Administrator's qualified settlement fund that has not otherwise been distributed,
20 will be tendered to the California State Controller's Office's Unclaimed Property
21 Division in the name of the Participating Class Member. (§47.b)
- 22 • Other: At the mediation, Defendant represented that its financial condition does
23 not permit it to fund a higher settlement amount nor fully fund the Gross
24 Settlement Amount any sooner than under the terms set forth in this Agreement.
25 Defendant has agreed to provide financial documents to Plaintiff's Counsel, to

1 be specified by Plaintiff's Counsel, prior to the time Plaintiff's Counsel must file
2 the motion for preliminary approval (the "Confidential Financial Discovery").
3 Defendant, through its counsel, shall provide Plaintiff's Counsel with the
4 requested Confidential Financial Discovery no later than February 25, 2022. The
5 Parties agree that the Confidential Financial Discovery will be provided for
6 attorneys-eyes only and will not be shown or otherwise communicated to
7 Plaintiffs, Class Members, or anyone other than Plaintiffs' Counsel and its
8 retained consultants/experts. (¶45). In addition, Defendant's Chief Financial
9 Officer, John Chadwick Huffman, provided a Declaration, filed July 25, 2022,
10 respecting Defendant's financial situation and ability to fund the settlement.

- 11 ○ If the Confirmatory Discovery referenced in the preceding paragraph
12 indicates that Defendant's financial condition unequivocally permits it to
13 fund a substantially higher settlement amount in the opinion of Plaintiff's
14 Counsel, then Plaintiff's Counsel and Defense Counsel shall, within (5)
15 calendar days of receipt of the financial-related documents, meet and
16 confer in good faith to determine if there is a mistake in or a
17 misunderstanding of the financial-related documents. If such meet and
18 confer efforts do not alter the opinion of Plaintiff's Counsel, then Plaintiff
19 shall have, in his sole discretion, the option to terminate this Settlement
20 and rescind this Agreement. (¶46)

22 C. TERMS OF RELEASES

- 23 • Release as to All Class Members: As of the date that Defendant has fully funded
24 the Settlement, Plaintiff and the Settlement Class Members who are not excluded
25 from this Settlement and all PAGA Members, on behalf of themselves and each

1 of their heirs, representatives, successors, assigns and attorneys, shall be deemed
2 to have released and discharged Defendant and Released Parties from the
3 Released Claims and PAGA Release as consideration for Defendant's payment
4 of the Gross Settlement Amount. (§40)

- 5 • "Class Release" and "Released Claims" mean all claims, rights, demands,
6 liabilities, and causes of action, whether statutory, in tort, contract, or otherwise,
7 alleged in the operative Complaint in this Action or that could have been alleged
8 based on the facts pleaded in the operative Complaint in this Action, arising
9 during the period from April 1, 2016 through August 31, 2021, including, but not
10 limited to, claims under the California Labor Code, California Industrial Welfare
11 Commission Wage Orders, regulations, and/or all other provisions of law, for
12 failure to pay wages (including minimum wages, overtime and double time
13 wages), failure to provide compliant meal periods and associated premium pay,
14 failure to provide compliant rest periods and associated premium pay, failure to
15 provide compliant wage statements, failure to timely pay wages upon
16 termination of employment, failure to timely pay wages during employment,
17 failure to maintain requisite payroll records, unreimbursed business expenses,
18 and unfair or unlawful business practices in violation of California Business and
19 Professions Code § 17200, et seq. (§9)

- 20 ○ "Class Release" also includes any claims, rights, demands, liabilities,
21 damages, wages, benefits, expenses, penalties, debts, obligations,
22 attorneys' fees, costs, any other form of relief or remedy in law, equity, or
23 whatever kind or nature, and causes of action, that could potentially arise
24 from the receipt of any monies as a result of this Settlement by any
25 member of the Settlement Class. (§9)

- 1 ○ “PAGA Release” means that the State of California, and each PAGA
2 Member who would pursue a representative action on behalf of the State
3 of California, all of whom shall be deemed to have released Defendant,
4 and all of its parents, subsidiaries, affiliates, shareholders, agents,
5 predecessors, successors, and assigns, including Defendants’ respective
6 pension, profit sharing, savings, health, and other employee benefit plans
7 of any nature, from all claims for PAGA and California Labor Code
8 section 558 penalties that arise out of or relate to the factual allegations in
9 the LWDA Letter and pled in the Operative Complaint, from January 27,
10 2019 through August 31, 2021, including: failure to pay wages (including
11 minimum wages, overtime and double time wages), failure to provide
12 compliant meal periods and associated premium pay, failure to provide
13 compliant rest periods and associated premium pay, failure to provide
14 compliant wage statements, failure to timely pay wages upon termination
15 of employment, failure to timely pay wages during employment, failure to
16 maintain requisite payroll records, and unreimbursed business expenses.
17 (¶23)
- 18 ○ In light of the binding nature of a PAGA judgment on non-party
19 employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969
20 (2009), PAGA Members who exclude themselves from the Class
21 Settlement shall still receive their pro-rata share of the twenty-five percent
22 (25%) of PAGA settlement (i.e., the \$1,000.00), to be calculated by the
23 Settlement Administrator. (¶23)
- 24
25

- 1 • “Released Parties” means Defendant and each of its predecessors in interest,
2 successors in interest, and each parent, subsidiary, affiliate, predecessor or
3 successor, and all agents, supervisory and/or exempt employees (current and
4 former), shareholders, officers, directors, insurers and attorneys. (¶29)
- 5 • The named Plaintiff will also provide a general release and a waiver of the
6 protections of Cal. Civ. Code §1542. (¶¶ 9, 38)
- 7 • The releases are effective as of the date that Defendant has fully funded the
8 Settlement, which will occur in accordance to the funding schedule detailed in
9 ¶45.

10 11 **D. SETTLEMENT ADMINISTRATION**

- 12 • The proposed Settlement Administrator is CPT Group, Inc., which has provided
13 evidence that no counsel are affiliated with it and that it has adequate procedures
14 in place to safeguard the data and funds to be entrusted to it. (See Declaration of
15 Julie Green; Supp. Declaration of Julie Green.)
- 16 • Settlement administration costs are estimated to be \$7,000 (see Green Decl. ¶7).
- 17 • Notice: The manner of giving notice is described below.
- 18 • Opt Out/Objection Dates: “Response Deadline” means the date forty-five (45)
19 calendar days after the Settlement Administrator mails the Notice to Settlement
20 Class Members and the last date on which Settlement Class Members may
21 postmark written Requests for Exclusion, disputes to Total Weeks Worked, or a
22 Notice of Objection to the Settlement. (¶31) For settlement members who are sent
23 re-mailed Class Notices the “extended Response Deadline” shall mean forty
24 five(45) calendar days from the date the Settlement Administrator re-mails the
25 Notice of Settlement to Class Members but not later than sixty (60) calendar days

1 from the Response Deadline. The Extended Response Deadline is the last date on
2 which Settlement Class Members who are sent re-mailed Class Notices may
3 postmark written Requests for Exclusion, disputes to Total Weeks Worked, or a
4 Notice of Objection to the Settlement. (§31)

- 5 ○ PAGA Members who exclude themselves from the Class Settlement shall
6 still receive their pro-rata share of the twenty-five percent (25%) of PAGA
7 settlement (i.e., the \$1,000.00), to be calculated by the Settlement
8 Administrator. (§47.e)
- 9 ○ Notice of Final Judgment will be posted on the settlement administrator's
10 website (§44.f)

11 12 **E. OTHER MATERIAL SETTLEMENT TERMS**

13 "Certified Class Size" means 254 Class Members, which is the estimated total
14 number of Class Members from April 1, 2016 to August 31, 2021. This is a material
15 term upon which Plaintiff has agreed to settle this case for the consideration set forth in
16 the Agreement. (§2)

17 Omitted Class Members: If additional individuals not originally included on the
18 Class List provided to the Settlement Administrator are discovered after Class Notices
19 have been distributed and no later than thirty-five (35) calendar days before the
20 Effective Date as defined in paragraph 14 of the Agreement, Defendant shall, in good
21 faith, make a determination as to whether those individuals should be deemed
22 Settlement Class Members and entitled to participate in the Settlement. If Defendant
23 determines that the omitted individual is a Settlement Class Member, the third-party
24 administrator shall mail the individual a Class Notice as provided in paragraph 42(a)
25 and recalculate the Individual Settlement Payments of all Settlement Class Members by

1 the formula set forth herein to include any additional Weeks Worked by any additional
2 individuals determined to be Settlement Class Members. The Omitted Class Member
3 will have until the calendar day before Individual Settlement Payments are mailed by
4 the third-party administrator as provided in paragraph 42 of the Agreement to submit a
5 Request for Exclusion or Objection. If additional individuals not originally included on
6 the Class List are discovered later than thirty-five (35 days) before the Effective Date,
7 those individuals shall not be deemed Settlement Class Members, will not receive
8 payment, and will not release claims against Defendant or Released Parties. (§50)

9 10 **III. SETTLEMENT STANDARDS AND PROCEDURE**

11 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
12 of an entire class action, or of a cause of action in a class action, or as to a party,
13 requires the approval of the court after hearing.” “Any party to a settlement agreement
14 may serve and file a written notice of motion for preliminary approval of the settlement.
15 The settlement agreement and proposed notice to class members must be filed with the
16 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
17 Court, rule 3.769(c).

18 “In a class action lawsuit, the court undertakes the responsibility to assess
19 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
20 dismissal of a class action. The purpose of the requirement [of court review] is the
21 protection of those class members, including the named plaintiffs, whose rights may not
22 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
23 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
24 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
25 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)

1 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
2 agreement to the extent necessary to reach a reasoned judgment that the agreement is
3 not the product of fraud or overreaching by, or collusion between, the negotiating
4 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
5 concerned.”] [internal quotation marks omitted].

6 “The burden is on the proponent of the settlement to show that it is fair and
7 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
8 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
9 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
10 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
11 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

12 Notwithstanding an initial presumption of fairness, “the court should not give
13 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
14 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
15 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
16 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
17 members, the court must independently and objectively analyze the evidence and
18 circumstances before it in order to determine whether the settlement is in the best
19 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
20 In that determination, the court should consider factors such as “the strength of
21 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
22 the risk of maintaining class action status through trial, the amount offered in
23 settlement, the extent of discovery completed and stage of the proceedings, the
24 experience and views of counsel, the presence of a governmental participant, and the
25 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of

1 factors is not exclusive and the court is free to engage in a balancing and weighing of
2 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
3 245.

4 At the same time, “[a] settlement need not obtain 100 percent of the damages
5 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
6 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
7 substantially narrower than it would be if the suits were to be successfully litigated,’
8 this is no bar to a class settlement because ‘the public interest may indeed be served by
9 a voluntary settlement in which each side gives ground in the interest of avoiding
10 litigation.’” *Id.* at 250.

11 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

12 **A. THERE IS A PRESUMPTION OF FAIRNESS**

13
14
15 The settlement is entitled to a presumption of fairness for the following reasons:

16 17 **1. The settlement was reached through arm’s-length bargaining**

18 On August 25, 2021, the parties participated in mediation before the Honorable
19 Louis M. Meisinger (Ret.), at the conclusion of which the parties accepted a mediator’s
20 proposal, the terms of which were modified prior to both sides’ agreement. (Kenner
21 Decl. filed March 11, 2022, ¶6.)

22 23 **2. The investigation and discovery were sufficient**

24 The proposed class consists of both delivery drivers and persons who worked in
25 Defendant’s retail location. The primary theory of the case is that Defendant staffed

1 employees too thinly in light of work demands and delivery time frames, with the
2 consequence that employees were unable to take legally compliant meal and rest breaks
3 and that they engaged in “off the clock” work. It is contended Defendant did not
4 reimburse for phone expense needed to clock in and out. (*Id.* at ¶5). Class Counsel
5 represents that through informal discovery, they obtained class-wide data, including
6 Class Members’ dates of employment, total workweeks, and payroll data. (*Id.* at ¶13.)
7 Class Counsel further represents that prior to the mediation, Defendant provided
8 Plaintiff with confidential discovery, including Defendant’s policies and practices,
9 exemplar paystubs provided to employees, and a 25% sampling of class members’
10 complete timekeeping records and corresponding payroll records, along with other
11 class-wide statistics. Counsel represents that the 25% sample produced covered both
12 delivery drivers and brick-and-mortar store employees throughout the liability period.

13 Counsel retained an expert who reviewed and analyzed the records produced and
14 confirmed that the 25% sampling was representative of the class and yielded
15 statistically significant data for purposes of representing the entire class. (*Id.* at ¶7.)
16 Counsel and her expert reviewed and analyzed the data in order to assess, inter alia, the
17 maximum incidence of meal and rest period violations, lack of premiums paid for the
18 purported violations, unpaid minimum wages and overtime wages, the potential
19 incidence of wage statement violations, and waiting time penalties. (*Id.* at ¶13.)
20 Counsel also received reports from Plaintiff and several other Class Members to
21 determine the extent and frequency of the alleged violations and to learn more about the
22 day-to-day circumstances giving rise to the alleged violations. (*Id.* at ¶¶ 11,14.)

23 A significant factor informing the settlement was Defendant’s financial
24 condition. Counsel represents that she reviewed Defendant’s profit and loss statements,
25 balance sheets, and tax returns to substantiate its inability to fund a larger settlement

1 sum. (*Id.* at ¶11.) Defendant’s Chief Financial Officer also asserts that Defendant
2 provided financial documents from 2019 through 2021 and a letter from its accountant
3 addressing Defendant’s liabilities, income stream and tax burdens. (Declaration of
4 John Chadwick Huffman ¶4.) He represents that Defendant lacks the liquidity to fund
5 the settlement in a simple lump sum. (*Id.* at ¶10.) A supplemental Declaration sets
6 forth Defendant’s ability to fund the settlement over time. See Declaration of John
7 Chadwick Huffman filed July 25, 2022.

8 This is sufficient to value the case for settlement purposes.

9
10 **3. Counsel is experienced in similar litigation**

11 Class Counsel represent that she and her firm are experienced in class action
12 litigation, including wage and hour class actions. (Kenner Dec. at ¶¶ 22-23.)

13
14 **4. Percentage of the class objecting**

15 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
16 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
17 the court receive objections to the proposed settlement, it will consider and either sustain
18 or overrule them at the fairness hearing.”].

19
20 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
21 **FAIR, ADEQUATE, AND REASONABLE**

22 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
23 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
24 does when it approves a settlement as in good faith under Code of Civil Procedure
25 section 877.6, the court must at least satisfy itself that the class settlement is within the

‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and *the exercise of business judgment* in determining whether the proposed settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p. 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

1. Amount Offered in Settlement

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.* at 130.)

Class Counsel estimated Defendant’s maximum exposure at \$4,505,412.67 and “realistic” exposure at \$2,252,706.34, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
Meal Break Claim	\$426,810.84	\$213,405.42
Rest Break Claim	\$472,984.01	\$236,492.01
Unpaid Overtime/Double-time Wages	\$49,102.56	\$24,551.28
Reimbursement Claim	\$76,410.00	\$38,205.00
Interest on Amounts Above	\$286,524.26	\$143,262.13
Wage Statement Penalties	\$672,000.00	\$336,000.00
Accurate Records Penalties	\$111,000.00	\$55,500.00
Overtime Penalties	\$286,500.00	\$143,250.00
Waiting Time Penalties	\$838,656.00	\$419,328.00
PAGA Penalties	\$1,285,425.00	\$642,712.50

1 **Total**

\$4,505,412.67

\$2,252,706.34

2 Supplemental Kenner Dec. ¶¶ 8-24. Class Counsel obtained a gross settlement
3 valued at \$150,000. This is approximately 3.3% of Defendant's total maximum exposure
4 and 6.7% of Defendant's realistic total exposure. It is approximately 29% of the
5 "realistic" exposure for the claims at issue before interest and penalties (meal break, rest
6 break, overtime, and reimbursement).

7
8 **2. The Risks of Future Litigation**

9 The case is likely to be expensive and lengthy to try. Liability is not a foregone
10 conclusion, as it is represented that Defendant would argue that it had legally complaint
11 policies. Certification as to all claims is not assured. Procedural hurdles (e.g., motion
12 practice and appeals) are also likely to prolong the litigation as well as any recovery by
13 the class members. Even if a class is certified, there is always a risk of decertification.
14 *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme
15 Court has recognized that trial courts should retain some flexibility in conducting class
16 actions, which means, under suitable circumstances, entertaining successive motions on
17 certification if the court subsequently discovers that the propriety of a class action is not
18 appropriate."].) Further, the settlement was negotiated and endorsed by Class Counsel
19 who, as indicated above, are experienced in class action litigation. Based upon their
20 investigation and analysis, the attorneys representing Plaintiff and the class are of the
21 opinion that this settlement is fair, reasonable, and adequate. (Kenner Decl. ¶11.)

22 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
23 which was sent a copy of the original Settlement Agreement on March 7, 2022 and has
24 not yet objected. (Kenner Decl., Exhibit B.) It does not appear that the Amended
25 Settlement Agreement was served on the LWDA. Counsel for the plaintiff shall file

1 proof of service of the Amended Stipulation of Settlement on the LWDA on or before
2 August 19, 2022

3 The amount of the PAGA payment is modest. However, given the financial
4 situation of Defendant it preliminarily appears adequate. Any objection by the LWDA
5 will be considered at the final fairness hearing.

6 7 **3. The Releases Are Limited**

8 The Court has reviewed the Releases to be given by the absent class members and
9 the named plaintiff. The releases, described above, are tailored to the pleadings and
10 release only those claims in the pleadings. There is no general release by the absent
11 class. The named plaintiff's general release is appropriate given that he was represented
12 by counsel in its negotiation.

13 14 **4. Conclusion**

15 Class Counsel estimated Defendant's maximum exposure at \$4,505,412.67 and
16 realistic exposure at \$2,252,706.34. Class Counsel obtained a gross settlement valued at
17 \$150,000. This is approximately 3.3% of Defendant's maximum exposure, 6.7% of
18 Defendant's realistic exposure, and 29% of exposure before penalties and interest. which,
19 given Defendant's financial condition and the uncertain outcomes, including the potential
20 that the class might not be certified, that liability is a contested issue, and that the full
21 amount of penalties would not necessarily be assessed even if the class is certified and
22 liability found, the settlement is within the "ballpark of reasonableness."

23 //

24 //

1 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

2 A detailed analysis of the elements required for class certification is not required,
3 but it is advisable to review each element when a class is being conditionally certified.
4 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
5 advocating class treatment must demonstrate the existence of an ascertainable and
6 sufficiently numerous class, a well-defined community of interest, and substantial
7 benefits from certification that render proceeding as a class superior to the alternatives.”
8 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

9 **1. The Proposed Class is Numerous**

10 There are approximately 253 putative Class Members. (Kenner Decl. ¶10.)
11 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
12 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
13 *parties to a class action is liberally construed,*” and citing examples wherein classes of
14 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
15 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

16 **2. The Proposed Class Is Ascertainable**

17 “A class is ascertainable, as would support certification under statute
18 governing class actions generally, when it is defined in terms of objective
19 characteristics and common transactional facts that make the ultimate identification
20 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
21 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

22 The class is defined above. Class Members are ascertainable through
23 Defendant’s business records. (MPA at 29:7-8.)

24 **3. There Is A Community of Interest**

1 “The community of interest requirement involves three factors: ‘(1) predominant
2 common questions of law or fact; (2) class representatives with claims or defenses typical
3 of the class; and (3) class representatives who can adequately represent the class.’”

4 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

5 As to predominant questions of law or fact, Plaintiff contends that the California
6 statutes relating to each of Plaintiff’s claims apply with equal force and effect to all Class
7 Members, and that Defendant’s policies and practices apply class-wide and Defendant’s
8 liability can be determined by facts common to all members of the class. (MPA at 30:2-
9 15.)

10 As to typicality, Plaintiff contends that his wage and hour claims are typical of the
11 proposed Settlement Class because they arise from the same factual basis and are based
12 on the same legal theories applicable to the other Class Members. (MPA at 30:16-20.)

13 As to adequacy, Plaintiff represents that he understands his fiduciary duty to the
14 class, does not have conflicts of interest with the class, has participated in the litigation,
15 and is aware of the risks of serving as class representative. (Declaration of John Guth ¶¶
16 6-8.) As previously stated, Class Counsel have experience in class action litigation.

17 **4. Substantial Benefits Exist**

18
19 Given the relatively small size of the individual claims, a class action is superior to
20 separate actions by the class members.

21 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 22 **OF DUE PROCESS**

23 The purpose of notice is to provide due process to absent class members. A practical
24 approach is required, in which the circumstances of the case determine what forms of
25 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California

Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the stake of the individual class members; (4) the cost of notifying class members; (5) the resources of the parties; (6) the possible prejudice to class members who do not receive notice; and (7) the res judicata effect on class members.

1. Method of class notice

Within seven (7) business days after the Court grants preliminary approval of this Agreement, Defendant shall provide the Settlement Administrator with the Class Information for purposes of mailing the Notice to Settlement Class Members. (¶44)

Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within ten (10) business days after receiving the Class Information from Defendant, the Settlement Administrator shall mail copies of the Notice to all Settlement Class Members via regular First-Class U.S. Mail. (¶44.a)

Any Notice returned to the Settlement Administrator as undeliverable 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 promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or Social Security number of the respective Settlement Class Member, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. If a Settlement Class Member's Notice is returned to the Settlement Administrator more than once as non-deliverable on or before the Response Deadline, then an additional Notice need not be re-mailed and the Settlement Class Member is deemed to have received Notice. The Settlement Administrator shall email a Settlement Class Member's Notice upon request and proper

1 verification by the Settlement Class Member or his or her counsel, provided a valid
2 email address is given. (§44.a.i)

3 In the event the Settlement Administrator remails a Notice to a Settlement Class
4 Member, the Settlement Administrator will update the Response Deadline on the re-
5 mailed Notice to reflect the applicable Extended Response Deadline or else will include
6 a cover letter indicating the applicable Extended Response Deadline. (§44.a.ii)

7 8 **2. Content of class notice.**

9 A copy of the proposed class notice is attached to the Amended Settlement
10 Agreement as Exhibit 1. The notice includes information such as: a summary of the
11 litigation; the nature of the settlement; the terms of the settlement agreement; the
12 maximum deductions to be made from the gross settlement amount (i.e., attorney fees
13 and costs, the enhancement award, and claims administration costs); the procedures and
14 deadlines for participating in, opting out of, or objecting to, the settlement; the
15 consequences of participating in, opting out of, or objecting to, the settlement; and the
16 date, time, and place of the final approval hearing. See Cal Rules of Court, rule
17 3.766(d). The time, however, is incorrect and must be corrected to state the correct
18 time: 9:00 a.m.

19 The Notice is to be given in English only as it is represented that the services of
20 the Class Members were provided in English. See Huffman Supp. Dec. ¶8.

21 22 **3. Settlement Administration Costs**

23 Settlement administration costs are estimated at **\$7,000**, including the cost of
24 notice (¶31). Prior to the time of the final fairness hearing, the settlement administrator
25

1 must submit a declaration attesting to the total costs incurred and anticipated to be
2 incurred to finalize the settlement for approval by the Court.

4 E. ATTORNEY FEES AND COSTS

5 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
6 implied, that has been entered into with respect to the payment of attorney fees or the
7 submission of an application for the approval of attorney fees must be set forth in full in
8 any application for approval of the dismissal or settlement of an action that has been
9 certified as a class action.”

10 Ultimately, the award of attorney fees is made by the court at the fairness
11 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
12 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
13 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
14 1132-1136. In common fund cases, the court may use the percentage method. If
15 sufficient information is provided a cross-check against the lodestar may be conducted.
16 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
17 agreement by the parties to the contrary, “the court ha[s] an independent right and
18 responsibility to review the attorney fee provision of the settlement agreement and
19 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
20 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

21 The question of class counsel’s entitlement to **\$50,000** (33 1/3%) in attorney fees
22 will be addressed at the final fairness hearing when class counsel brings a noticed
23 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
24 the court with current market tested hourly rate information and billing information so
25

1 that it can properly apply the lodestar method and must indicate what multiplier (if
2 applicable) is being sought.

3 Class counsel should also be prepared to justify the costs sought (capped at
4 \$23,000) by detailing how they were incurred.

5 6 **F. SERVICE AWARD**

7 The Settlement Agreement provides for a service award of up to \$5,000 for the
8 class representative. Trial courts should not sanction enhancement awards of thousands
9 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
10 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
11 quantification of time and effort expended on the litigation, and in the form of reasoned
12 explanation of financial or other risks incurred by the named plaintiffs, is required in
13 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
14 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
15 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

16 The Court will decide the issue of the enhancement award at the time of final
17 approval.

18 19 **V. CONCLUSION AND ORDER**

20 Conditioned upon counsel for the plaintiff filing proof of service of the
21 Amended Stipulation of Settlement on the LWDA on or before August 19, 2022 and
22 the Notice being corrected to reflect the correct time of the final fairness hearing (9:00
23 a.m.) the Court hereby:

24 (1) Grants preliminary approval of the settlement as fair, adequate, and
25 reasonable;

- 1 (2) Grants conditional class certification;
2 (3) Appoints John Guth as Class Representative;
3 (4) Appoints Shegerian & Associates, Inc. as Class Counsel;
4 (5) Appoints CPT Group, Inc. as Settlement Administrator;
5 (6) Approves the proposed notice plan; and
6 (7) Approves the proposed schedule of settlement proceedings as follows:

- 7 • Deadline for Defendant to provide class list to settlement administrator: August
8 22, 2022 (within 7 business days from preliminary approval)
9 • Deadline for settlement administrator to mail notices: September 6, 2022 (within
10 10 business days from receipt of the Class Information)
11 • Deadline for class members to opt out: November 7, 2022 (60 calendar days
12 from the initial mailing of the Notice Packets)
13 • Deadline for class members to object: November 7, 2022 (60 calendar days from
14 the initial mailing of the Notice Packets)
15 • Deadline for class counsel to file motion for final approval: December 20, 2022
16 (16 court days prior to final fairness hearing)
17 • Final fairness hearing: January 13, 2023 at 9:00 a.m.

18 **Any failure to fully and timely comply with the conditions may result in the**
19 **revocation of this Order in its entirety.**

20
21 Dated: 8/11/2022



22 MAREN E. NELSON

23 Judge of the Superior Court
24
25