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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF CONTRA COSTA**

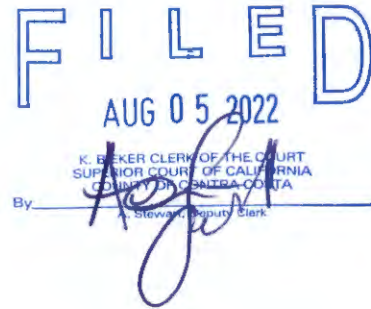
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13 PAULA DURAN, ELIZABETH RAMIREZ, and  
ESTHER RODRIGUEZ, on behalf of themselves  
14 and other aggrieved employees,

15 Plaintiffs,

16 v.

17 RATNAKAR & SONS, a California Company;  
RATNAKAR, INC., a California Company;  
18 NIMESH VAKHARIA, and individual; DOES 1  
through 10, inclusive,

19 Defendants.  
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**Case No. C-20-01172**

**ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

[Assigned for all purposes to the Honorable  
Edward Weil]

1 Plaintiffs' Motion for Final Approval of the Class Action and PAGA Settlement (the "Final  
2 Approval Motion") as set forth in the Joint Stipulation of Class and PAGA Action Settlement and  
3 Release (the "Settlement Agreement") came for hearing on July 7, 2022, in Department 39 of the  
4 above-entitled court. On March 15, 2022, the Court entered an order granting preliminary approval  
5 of the settlement. Having considered the Final Approval Motion, the Settlement Agreement, the  
6 Declarations, and all other materials properly before the Court and having conducted an inquiry  
7 pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement Agreement  
8 was entered by all parties in good faith, and the Settlement Agreement is approved. Due and  
9 adequate notice having been given to the Class, and the Court having considered the Settlement  
10 Agreement, all papers filed and proceedings had herein and all oral and written comments received  
11 regarding the proposed settlement, and having reviewed the record in this Litigation, and good cause  
12 appearing,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS<sup>1</sup>:

- 14 1. The Court grants final approval of the Settlement Agreement.
- 15 2. The Court, for purposes of this Judgment and Order ("Judgment"), refers to the terms  
16 as set forth in the Settlement Agreement.
- 17 3. The Court has jurisdiction over the subject matter over this Action, the Class  
18 Representatives, the Class Members, and Defendants.
- 19 4. The Court finds that the distribution of the Class Notice, as provided for in the Order  
20 Granting Preliminary Approval of the Settlement, constituted the best notice practicable under the  
21 circumstances to all Class Members and fully met the requirements of California law and due  
22 process under the Constitution of the State of California and United States Constitution. Based on  
23 evidence and other material submitted, the actual notice to the Class was adequate and reasonably  
24 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the  
25 action, the terms of the proposed settlement, and of their right to appear, object to, or exclude  
26 themselves from the proposed settlement.

27  
28 <sup>1</sup> Attached as **Exhibit A** is a copy of the Court's tentative ruling on this motion.

1           5.       The Court finds that the instant Action presented a good faith dispute of the claims  
2 alleged, and the Court finds in favor of settlement approval. Specifically, the claims on behalf of the  
3 Class Members included the alleged: (1) failure to pay Class Members overtime for all work hours at  
4 the correct regular and premiums rates; (2) failure to pay Class Members minimum wages; (3)  
5 failure to provide Class Members with meal periods or pay meal period premiums; (4) failure to  
6 provide Class Members with rest periods or pay rest period premiums; (5) failure to provide Class  
7 Members with accurate itemized wage statements; (6) failure to pay Class Members all wages due  
8 upon separation of employment; (7) unfair competition; and (8) claims for civil penalties under the  
9 California Private Attorneys General Act of 2004 ("PAGA").

10           6.       Zero Class Members requested exclusion from the Settlement following a full and fair  
11 opportunity to do so, so all Class Members are entitled to payment pursuant to the Settlement and  
12 this Judgment.

13           7.       Zero Class Members objected to the Settlement following a full and fair opportunity  
14 to participate in the Final Approval Hearing.

15           8.       The Court approves the Settlement, as set forth in the Settlement Agreement and each  
16 of the releases and other terms, as fair, just, reasonable, and adequate. The Parties are directed to  
17 perform in accordance with the terms set forth in the Settlement Agreement.

18           9.       The Parties are to bear their own costs, except as otherwise provided in the Settlement  
19 Agreement.

20           10.      For purposes of effectuating this Order and Judgment (including the Released  
21 Claims), this Court makes final its earlier provisional certification of the following class:

22                   All workers who are currently employed, or formerly have been  
23                   employed, as non-exempt hourly employees at Defendants' facilities  
24                   in California, at any time from June 26, 2016, through August 21,  
25                   2021. The Court deems this definition sufficient for purposes of  
26                   California Rules of Court, rule 3.765(a).

1 Excluded from the Settlement Class are persons who validly and timely exclude themselves using  
2 the procedures set forth in the Settlement Agreement, as well as any judicial officer who presides  
3 over this matter and members of their family.

4 11. With respect to the Settlement Class and for purposes of approving this Settlement,  
5 this Court finds and concludes as follows: (a) the Class Members are ascertainable and so numerous  
6 that joinder of all members is impracticable; (b) there are questions of law or fact common to the  
7 Class Members, and there is a well-defined community of interest among the Class Members with  
8 respect to the subject matter of the Action; (c) the claims of the Class Representatives are typical of  
9 the claims of the Class Members; (d) the Class Representatives have fairly and adequately protected  
10 the interests of the Class Members; (e) a class action is superior to other available methods for an  
11 efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel for  
12 the Plaintiffs in their individual and representative capacities and for the Settlement Class.

13 12. The Court further finds that the Settlement is fair, adequate, and reasonable and in the  
14 best interests of the Class. The Court finds that the Parties reached the Settlement following  
15 meaningful discovery and investigation conducted by Class Counsel and that the Settlement is the  
16 result of serious, informed, adversarial, and arms-length negotiations between the Parties. In so  
17 finding, the Court has considered all the evidence presented, including evidence regarding the  
18 strength of Plaintiffs' case; the risk, expense, and complexity of the claims presented; the likely  
19 duration of further litigation; the amount offered in the Settlement; the extent of investigation and  
20 discovery completed; and the experience and views of Class Counsel.

21 13. By this Judgment, the Class Representatives shall release, relinquish, and discharge,  
22 and each of the Settlement Class Members shall be deemed to have, and by operation of the  
23 Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released  
24 Claims, as defined in the Settlement Agreement.

25 14. Neither the Settlement Agreement nor the Settlement contained therein, nor any act  
26 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the  
27 Settlement (i) is or may be deemed to be or may be used by the Plaintiffs or Class Members as an  
28 admission of, or evidence of, the validity of any of the Class Members' Released Claims, or of any

1 wrongdoing or liability of Defendants or any of the other Released Parties; or (ii) is or may be  
2 deemed to be or may be used by the Plaintiffs or Class Members as an admission of, or evidence of,  
3 any fault or omission of Defendants or any of the other Released Parties in any civil, criminal, or  
4 administrative proceeding in any court, administrative agency, or other tribunal.

5 15. The Gross Settlement Amount to be paid under the Settlement Agreement is  
6 \$200,000.00. From this amount, Class Counsel collectively sought an award of attorney fees of  
7 \$70,000.00, litigation expenses of \$9,438.28, Representative payment for each Plaintiff of \$5,000.00  
8 (\$15,000.00 total), \$4,000.00 to Simpluris, Inc. as the Settlement Administrator, and \$5,000.00 for  
9 PAGA penalties, \$3,750.00 of which is paid to the California Labor and Workforce Development  
10 Agency ("LWDA") and \$1,250.00 to eligible Class Members who were employed during the PAGA  
11 Period as set forth in the Settlement Agreement.

12 16. The Court finds that the amounts for the attorney fees, litigation costs and expenses,  
13 representative payments, costs of settlement administration, and allocation toward PAGA penalties  
14 are fair, reasonable, and appropriate in light of the services and work performed, costs incurred and  
15 to be incurred, and the results achieved in this Action.

16 17. The Court finds that the Settlement Amount is fair, reasonable and adequate, and  
17 awards the payments set forth below from the Settlement Amount:

- 18 a) \$70,000.00 to Class Counsel for attorney fees;
- 19 b) \$9,438.28 to Class Counsel for litigation costs and expenses;
- 20 c) \$5,000.00 to each Plaintiff as an Enhancement Award (\$15,000.00 total);
- 21 d) \$4,000.00 to the Settlement Administrator for the costs of settlement administration;
- 22 e) \$3,750.00 to the LWDA; and
- 23 f) After deducting the foregoing payments from the Settlement Amount, the remainder  
24 shall form the Net Settlement Fund payable to the Settlement Class Members as set  
25 forth in the Settlement Agreement and as calculated by the Settlement Administrator.

26 18. Regarding the attorneys' fees, the Court orders that five percent (5%) of the  
27 attorneys' fees shall be withheld by the Settlement Administrator pending satisfactory compliance as  
28 found by the Court.

1           19.     The Settlement Administrator is directed to calculate the Class Members' Individual  
2 Settlement Amounts from the Net Settlement Fund and issue all payments within and in accordance  
3 with the Settlement Agreement and the timeline set forth below:

|                              |                                                                                                                                                                                                                 |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5           January 27, 2023 | Defendants to issue the payment of the total Gross Settlement Amount of \$200,000.00 to the Settlement Administrator (To be made within 120 days upon final approval, and the expiration of any appeal period). |
| 6           February 3, 2023 | The Settlement Administrator shall issue payments to the Settlement Class Members, Class Counsel, Plaintiffs, the LWDA and itself.                                                                              |
| 7           August 2, 2023   | Deadline for Class Members to cash checks. Settlement Administrator shall issue the uncashed check fund to Bay Area Legal Aid.                                                                                  |
| 8           August 17, 2023  | Class Counsel shall file a declaration from the Settlement Administrator setting forth the disbursements that were actually made.                                                                               |

9           20.     The Settlement Class Members shall have 180 days to negotiate the settlement check  
10 from the date of issuance by the Settlement Administrator. If a Class Member does not negotiate  
11 their check within this time period, the check shall be tendered to the *cy pres* recipient, Bay Area  
12 Legal Aid.

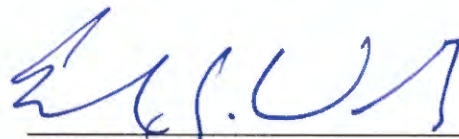
13           21.     Pursuant to California Code of Civil Procedure § 384, before the entry of a judgment,  
14 the Court shall also set a compliance hearing for August 24, 2023, at 9:00 a.m., in Department 39.  
15 Within 5 court days of the hearing, the Parties shall submit a report to the court including total  
16 amount paid to the Class, as well as a report about the status of any unresolved issues and any other  
17 matters appropriate to bring to the Court's attention. Within 30 days after the final report is filed  
18 with the Court, the parties shall prepare and file a stipulation and proposed order and Proposed  
19 Amended Judgment. The stipulation and proposed order shall include, *inter alia*, the amount of the  
20 distribution of unpaid cash residue, and unclaimed or abandoned funds to the non-party, the accrued  
21

1 interest on that sum and any other information required to be set forth pursuant to Section 68520 of  
2 the Government Code, as incorporated into California Code of Civil Procedure section 384.5. The  
3 stipulation shall be signed by Class Counsel, counsel for Defendants and counsel for (or an  
4 authorized representative of) the non-party ("*cy pres*") recipient, Bay Area Legal Aid. The  
5 stipulation shall include a statement to the effect that all interested persons are in accord with the  
6 amended judgment and have no objection to the entry of an amended judgment. If there are  
7 objections by any party, Class Counsel shall immediately notify the Court and the matter will be set  
8 for further hearing.

9 22. The Court reserves exclusive and continuing jurisdiction over the Action, the Class  
10 Representatives, the Class Members, and Defendants for the purposes of supervising the  
11 implementation, enforcement, construction, administration, and interpretation of the Settlement  
12 Agreement.

13 **IT IS HEREBY SO ORDERED.**

14 **AUG 03 2022**  
15 Dated: \_\_\_\_\_

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18 HON. EDWARD WEIL  
19 Contra Costa County Superior Court Judge  
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**EXHIBIT A**

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY  
MARTINEZ, CA DEPARTMENT 39  
HEARING DATE: 07/07/2022

6. 9:00 AM CASE NUMBER: MSC20-01172  
CASE NAME: DURAN, ET AL. VS RATNAKAR & SONS, ET AL.  
MOTION FINAL APPROVAL OF CLASS ACTION SETTLEMENT+0001+  
**\*TENTATIVE RULING:\***

Plaintiffs Paula Duran, Elizabeth Ramirez, and Esther Rodriguez move for final approval of their class action and PAGA settlement with defendants Ratnakar & Sons, Ratnakar, Inc., and Nimesh Vakharia.

**A. Background and Settlement Terms**

The original complaint was filed on June 26, 2020.

The settlement would create a gross settlement fund of \$200,000. The class representative payment to each plaintiff would be \$7,500. Counsel's attorney's fees would be \$70,000 (35% of the settlement). Litigation costs would not exceed \$10,000. The settlement administrator (Simpluris) would have costs of administration capped at \$4,000. PAGA penalties would be \$5,000, resulting in a payment of \$3,750 to the LWDA and \$1,250 to the class members. Thus, the net settlement amount available to the class would be \$89,000, resulting in an average payment to each of the estimated 159 class members of about \$564. The fund is non-reversionary. The payments will be allocated 70% to penalties and 30% to wages. "Employee-side" tax withholding or deductions will be deducted from the wage portion of the settlement payment amount.

The parties settled after extensive informal discovery and meeting with an experienced mediator.

The proposed settlement would certify a class of non-exempt employees employed by defendants in California between June 26, 2016 and August 21, 2021.

The class members will not be required to file a claim. The distribution of the PAGA payment and the "Class Member" payment will be based on the number of pay periods worked during the class period.

Notice was provided by the settlement administrator, who mailed 153 notices based on a class list. 21 notices were returned as undeliverable. Based on follow-up, notices were remailed to new addresses for 13 class members. No objections or requests for exclusion were received.

Uncashed checks would be cancelled and the amounts would be provided to a cy pres beneficiary, Bay Area Legal Aid. Counsel provided a declaration indicating that they have no inappropriate connection with Bay Area Legal Aid.

Plaintiffs will release all claims that were "alleged in the Complaint, or could have been alleged, based upon the same factual predicate as the claims raised in the Complaint[.]" The Court notes that the reference to claims with "the same factual predicate as the claims raised in the complaint" can be critical in ascertaining the extent of preclusive effect of the judgment. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 535-536.)

Counsel's top-end estimates for damages for rest and meal break violations are \$362,136. Of course, this provides a point of departure, but does not reflect an actual analysis based on various risks associated with the merit of the claim, evidence issues, class certification issues, and the burden of litigation. Thus, actual value is far lower. Claims for PAGA penalties, are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, and the law may only allow application of the "initial violation" penalty amount. In supplemental briefing, Plaintiffs have provided further analysis of the PAGA claim. First, they indicate that compliance improved during the PAGA claims period. Second, they note that based on the more limited time period applicable to the PAGA claims (compared to the class claims), fewer than half of the employees in question have claims within the PAGA period. Ultimately, they determined an amount of "waiting time" penalties for employees whose employment terminated during the relevant time period.

The documentation submitted with the motion attests that pre-suit notices to the LWDA were filed, and that the LWDA was notified of the settlement.

#### **B. Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement." (See also *Amaro v. Anaheim Arena Management, LLC*, *supra*, 69 Cal.App.5th at 534-535.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

**C. Attorney fees**

Plaintiffs seek 35% of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Counsel have provided an estimated lodestar fee, based on 230.99 hours of work, plus another 40 hours until final disposition, and using billing rates ranging from \$750 to 380. The resulting lodestar is \$146,602, yielding an implied multiplier of .51. No adjustment in the fee is necessary. The attorney's fee request is approved.

The litigation costs of \$9,438.28, and administrator's costs of \$4,000 are reasonable and are approved.

The requested representative payment of \$7,500 for each of the three plaintiffs was deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

Paula Duran has provided a declaration, attesting that she spent more than 80 hours on the case. Elizabeth Ramirez has provided a declaration, attesting that she spent more than 80 hours on the case. Esther Rodriguez has provided a declaration, attesting that she spent approximately more than 80 hours on the case. Each faced potential liability, and possible stigma within the industry, but none have documented any special concern. Each released individual claims, but none have indicated that they had any individual claims of particular value. All things considered, particularly the relatively small size of the settlement, the requested payment is reduced to \$5,000 each.

**D. Conclusion**

The Court finds that the settlement is fair, reasonable, and adequate and grants the motion, with the reduction in the plaintiffs' incentive payments. Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order. The judgment must provide for a compliance hearing after the settlement has been completely implemented, including an amended judgment filed after the cy pres payment is made. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Counsel are to contact the Department clerk to obtain a date for the compliance hearing. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.