

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

FILED
Superior Court of California
County of Los Angeles

FEB 15 2023

David W. Staylor, Executive Officer/Clerk of Court
By: R. Arreaga, Deputy

Ernesto Delgado v. Kloeckner Metals Corporation, Case
20STCV22503

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$465,000, non-reversionary. (§15) [Escalator Clause: Defendant represents that, as of August 6, 2021, there were approximately 339 Settlement Class Members. If, as of the end of the Class Period, the number of Settlement Class Members increases by more than ten percent (10%), Defendant shall increase the Gross Settlement Amount proportionally (i.e., for an increase of eleven percent (11%) in the number of Class Members, Defendant shall add an extra one percent (1%) to the Gross Settlement Amount; for a fifteen percent (15%) increase in the number of Class Members, Defendant shall add an extra five percent (5%) to the Gross Settlement Amount). (§65)]

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

Up to \$155,000 (33 1/3%) for attorney fees (§44.f);
Up to \$25,000 for litigation costs (Ibid.);
Up to \$10,000 for a service payment to the named
Plaintiff (§44.f);
Up to \$11,000 for settlement administration costs
(§44.g);
\$30,000 (75% of \$40,000 PAGA penalty) to the LWDA
(§44.h).

C. Employer payroll taxes will be paid by Defendant separately from the GSA. (§15)

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by August 15, 2023. The parties are ordered to 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.

Non-Appearence Case Review is set for August 22, 2023, 8:30 a.m., Department 9.

I.
BACKGROUND

Plaintiff Ernesto Delgado sues his former employer, Defendant Kloeckner Metals Corporation, for alleged wage and hour violations. Defendant is metals manufacturing, supply, and service companies based in Roswell, Georgia. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On June 10, 2020, Plaintiff filed his class action complaint against Defendant alleging claims for violations of California Labor Code §§ 201-203, 212-213, 226, 226.7, 512, and 2698, et seq., the Private Attorneys General Act ("PAGA"), and California Business and Professions Code § 17200 et seq.

On August 17, 2020, Defendant filed a Notice of Removal of Action to the United States District Court for the Central District of California. The matter was remanded to this Court on January 28, 2022.

On March 22, 2021, the parties mediated before Steven J. Serratore, Esq., which did not result in settlement. The parties continued negotiations over the course of several months, and ultimately reached an agreement with the aid of the mediator. The terms are finalized in the Amended Stipulated Settlement Agreement and Release of Claims ("Settlement Agreement"), a copy of which is attached to the Declaration of Nicholas Rosenthal ("Rosenthal Decl.") as Exhibit A.

On August 23, 2022, the Court issued a "checklist" to the parties pertaining to deficiencies in the proposed settlement. In response, the parties filed further briefing, including the Second Amended Settlement Agreement, the fully executed copy of

which is attached to the Supplemental Declaration of Nicholas Rosenthal ("Supp. Rosenthal Decl.") as Exhibit C.

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

II. SETTLEMENT AGREEMENT

A. Definitions

"Settlement Class" or "Settlement Class Members": all persons employed by Defendant in California as an hourly non-exempt employee during the Class Period. (§36)

"Class Period" or "Released Period": April 6, 2016 through October 4, 2021. (§6)

"Aggrieved Employees": all persons employed by Defendant in California as an hourly non-exempt employee during the PAGA Period. (§2)

"PAGA Period": May 20, 2019 through October 6, 2021. (§22)

"Participating Class Member" or "Participating Class": any and all Settlement Class Members who have not submitted a valid and timely Request for Exclusion. (§24)

The Parties stipulate to class certification for settlement purposes only. (§78)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$465,000, non-reversionary. (§15)
 - o Escalator Clause: Defendant represents that, as of August 6, 2021, there were approximately 339 Settlement Class Members. If, as of the end of the Class Period, the number of Settlement Class Members increases by more than ten percent (10%), Defendant shall increase the Gross Settlement Amount proportionally (i.e., for an increase of eleven percent (11%) in the number of Class Members, Defendant shall add an extra one percent (1%) to the Gross Settlement Amount; for a fifteen percent (15%) increase in the number of Class Members, Defendant

shall add an extra five percent (5%) to the Gross Settlement Amount). (§65)

- The Net Settlement Amount ("Net") (\$234,000) is the GSA minus the following:
 - o Up to \$155,000 (33 1/3%) for attorney fees (§44.f);
 - o Up to \$25,000 for litigation costs (Ibid.);
 - o Up to \$10,000 for a service payment to the named Plaintiff (§44.f);
 - o Up to \$11,000 for settlement administration costs (§44.g); and
 - o Payment of \$30,000 (75% of \$40,000 PAGA penalty) to the LWDA (§44.h).
- Employer payroll taxes will be paid by Defendant separately from the GSA. (§15)
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (Notice p. 1)
- Response Deadline. "Response Deadline" is 45 calendar days from the date the Notice is mailed to the Settlement Class Members. (§32) Settlement Class Members will have until the Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court. (§61)
 - o Any Settlement Class Member who timely requests exclusion will not be entitled to receive any payments under this Agreement other than for their share of the PAGA award and will not be bound by this Agreement, or the Judgment other than as it relates to the release of PAGA claims. (§63.a)
 - o If more than 10% of the total Settlement Class Members ("Blow-Up Number") request exclusion from the Settlement and/or object to the terms of the Settlement pursuant to Paragraph 59 then Defendant may, in its sole discretion, elect to terminate this Agreement. (§73)
- Individual Settlement Payment Calculation. The Individual Settlement Amount for each Settlement Class Member will be calculated by the Settlement Administrator using the Class List and Data provided by Defendant as follows. The Settlement Administrator will determine the aggregate number of Weeks Worked by Settlement Class Members during the Class Period ("Total Weeks Worked"). The Settlement Administrator will then divide the Net Settlement Amount by the Total Weeks Worked to determine a per workweek value ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks Worked by each Settlement Class Member during the Class Period to determine the distribution, prior to legal deductions, for each Settlement Class Member. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately

increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount. (§44.c)

o PAGA Payments: The PAGA Individual Settlement Amount for each Aggrieved Employee will be calculated by the Settlement Administrator using the Class List and Data provided by Defendant as follows. The Settlement Administrator will determine the aggregate number of Weeks Worked by Aggrieved Employees during the PAGA Period ("PAGA Total Weeks Worked"). The Settlement Administrator will then divide the portion of the Net Settlement Amount that is going to Aggrieved Employees PAGA Net Settlement Amount by the PAGA Total Weeks Worked to determine a per workweek value ("PAGA Workweek Value"). The PAGA Workweek Value will be multiplied by the number of PAGA Weeks Worked by each Aggrieved Employee during the PAGA Period to determine the distribution, prior to legal deductions, for each Aggrieved Employee. (§44.e)

o Tax Allocation. Each individual settlement payment will be allocated as 20% to wages, 80% to penalties and interest.

(§44.d) All amounts paid to Aggrieved Employees will be considered 100% penalties and will be reported on a Form 1099. (§44.e)

• Funding and Distribution of Settlement. Defendant shall make a one-time deposit into the QSF of the Gross Settlement Amount, as described in Paragraph 44(a) that is necessary to make all payments required under this Settlement, within ten (10) days after the Effective Date, plus shall separately pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator. (§66) No later than ten (10) calendar days after the deposit of the Gross Settlement Amount into the QSF, the Settlement Administrator will mail the payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs. (§67)

• Uncashed Checks. Participating Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office, Unclaimed Property Division, in the name of the Class Member, unless the Court directs the Parties to issue unpaid residue to other fund. (§68)

- Phoenix Class Action Administration Solutions will perform notice and settlement administration. (¶34)
- The Settlement Agreement was submitted to the LWDA on January 25, 2023. (Supp. Rosenthal Decl., Exhibit D.)
- Notice of Entry of Judgment will be posted on the administrator's website. (¶56.n)
- 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 March 22, 2021, the parties mediated before Steven J. Serratore, Esq., which did not result in settlement. The parties continued negotiations over the course of several months, and ultimately reached an agreement with the aid of the mediator. (Rosenthal Decl. ¶¶4-6.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that they propounded special interrogatories and requests for production of documents, obtained and reviewed discovery responses and Defendant's document production, and took the depositions of Defendant's FRCP 30(b)(6) witnesses regarding its meal and rest break and payroll policies and procedures. Plaintiff's counsel also communicated with various class members regarding the claims in this lawsuit. (Declaration of Larry W. Lee ¶7.) Class Counsel also represents that prior to mediation, Defendant produced data for the entire class, which allowed Class Counsel to conduct damage analysis. Counsel also performed damages calculations prior to mediation and retained an expert statistician to assist in performing those calculations. (Id. at ¶4).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Rosenthal Decl. ¶14.)

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
Meal Break Violations	\$1,559,572
Rest Break Violations	\$3,602,033
Waiting Time Penalties	\$174,567
Wage Statement Penalties	\$248,600
PAGA Penalties	\$2,364,500
Total	\$7,949,272

(MPA at pp. 15-17; Rosenthal Decl. ¶12.)

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 estimated Defendant's maximum exposure at \$7,949,272. The

\$465,000 settlement amount represents approximately 5.8% of Defendant's total maximum exposure and 8.3% of Defendant's exposure excluding PAGA penalties which, given the uncertain outcomes, is within the "ballpark of reasonableness."

The \$465,000 settlement amount, after reduced by the requested deductions, leaves approximately \$234,000 to be divided among approximately 339 putative class members. Assuming full participation, the resulting payments will average approximately \$690.26 per class member. [$\$234,000 \text{ Net} / 339 = \690.26]

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

Release by the Settlement Class. Upon payment of the Gross Settlement Amount by Defendant, and except as to such rights or claims as may be created by this Stipulation of Settlement, each Participating Class Member will forever completely release and discharge the Released Parties from the Released Claims for the Release Period. Each Participating Class Member will be deemed to have made the foregoing release as if by manually signing it. (§47)

"Released Claims" by the Participating Class Members means: (§29)

- o All claims, including penalties, costs and attorneys' fees related thereto, that were or could have been brought under the facts and allegations made in the operative Complaint for violation of Labor Code sections 226.7 and 512, that accrued during the Class Period; (§29.b)
- o All claims, including penalties, costs and attorneys' fees related thereto, that were or could have been brought under the facts and allegations made in the operative Complaint for violation of Labor Code section 226, that accrued during the period of April 6, 2019 through October 4, 2021; (§29.c)
- o All claims, including penalties, costs and attorneys' fees related thereto, that were or could have been brought under the facts and allegations made in the operative Complaint for violation of Labor Code sections 201, 202 and 203, that accrued during the period of June 26, 2018 through October 4, 2021; (§29.d)
- o All claims for penalties under the California Private Attorneys' General Act, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code sections 201, 202, 203, 212, 213, 226(a), 226.3, 226.7 and 512, that accrued during the PAGA Period. Plaintiff administratively exhausted these claims in his letter to the LWDA dated May 20, 2020. (§26.e)
- o The Parties expressly acknowledge that the Released Claims encompass all claims alleging that Defendant improperly rounded meal periods, that Defendant improperly rounded time generally, that employees were not permitted to leave the work site during their rest periods, and that separated employees received their final wages on a pay card that necessitated them paying a fee in order to retrieve their wages. (§29)

Release by the Aggrieved Employees: Upon payment of the Gross Settlement Amount by Defendant, and except as to such rights or claims as may be created by this Stipulation of Settlement, each Aggrieved Employee and the LWDA will forever completely release and discharge the Released Parties from the PAGA Released Claims for the PAGA Period. Each Aggrieved Employee will be deemed to have made the foregoing release as if by manually signing it. (§50) Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by the LWDA and each and all of the Aggrieved Employees to obtain a recovery for any and all of the PAGA Released Claims. The Aggrieved Employees shall be so notified in the Notice. (§51)

"PAGA Released Claims" by the Aggrieved Employees means: All claims for penalties under the California Private Attorneys' General Act, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code sections 201, 202, 203, 212, 213, 226(a), 226.3, 226.7 and 512, that accrued during the PAGA Period. Plaintiff administratively exhausted these claims in his letter to the LWDA dated May 20, 2020. (§23)

Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery for any and all of the Released Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement. (§48)

"Released Parties" means Defendant and their present and former officers, directors, members, managers, shareholders, agents, subsidiaries, insurers, operators, partners, professional employment organizations, successors and assignees. (§30)

Named Plaintiff will additionally provide a general release and §1542 waiver. (§§52-54)

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. Windsor (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 339 Class Members. (Rosenthal Decl. ¶5.) 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 records. (Rosenthal Decl. ¶5.)

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 he obtained evidence for each of these claims to support the existence of a class subject to a common policy. On the meal period claim, Plaintiff obtained evidence in the form of payroll and time records that there was a policy of rounding time in such a manner that late or short meal breaks were "rounded" into compliance and no meal period penalties were paid. Defendant testified at deposition that meal period premiums were not paid. On the rest break claim, Plaintiff testified that he was told it was company policy that employees were not to leave the work site during rest breaks. On the pay card claim, Defendant testified that final wages were paid to the putative class on a pay card that charged fees to withdraw money in certain instances. Plaintiff further contends that his wage statement claims are aptly suited for class treatment. (MPA at 13:3-22.)

Regarding typicality, Plaintiff submits that his claims are typical of those of other class members because he alleges that he was subjected to the same meal and rest break procedures and received the same wage statements that failed to identify the rates of pay and number of hours worked for overtime and shift differential wages as received by members of the class. Plaintiff also alleges that he received his final wages in the form of a pay card. (MPA at 12:19-28.)

Finally, as to adequacy, Plaintiff represents that he is aware of his duties and responsibilities to the class, has participated in the litigation, and does not have conflicts of interest with the class. (Declaration of Ernesto Delgado ¶¶ 7-10.)

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 revised proposed notice to class members is attached to the Settlement Agreement as Exhibit A. 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 Settlement Administrator shall provide Notice in English only, as counsel represents that Class Members are required to speak English to perform their job duties. (Supp. Rosenthal Decl. ¶3.)

2. Method of class notice. Within fifteen (15) days after entry of the Preliminary Approval Order; Defendant shall provide the Class List and Data, to the Settlement Administrator. Pursuant to the Stipulated Protective Order, the Class List and Data provided to the Settlement Administrator will remain confidential and will not be used or disclosed to anyone, except as required by applicable tax authorities or by order of the Court, or pursuant to Defendant's express written consent. However, should Class Counsel request Class List and Data from the Settlement Administrator, the Settlement Administrator shall provide it. (¶58)

The Notice as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class List and Data. The Settlement Administrator shall use standard

devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned. (§59)

The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if necessary, update a mailing address. Notices will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Response Deadline or fifteen (15) days after the re-mailing of the Notice. (§60)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$11,000. Prior to the time of the final fairness hearing, the settlement 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.

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 \$155,000 (33 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.

Class Counsel should also be prepared to justify the costs sought (capped at \$25,000) by detailing how they were incurred.

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$10,000 for the class representative, Ernesto Delgado.

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:

A. The Gross Settlement Amount ("GSA") is \$465,000, non-reversionary. (§15) [Escalator Clause: Defendant represents that, as of August 6, 2021, there were approximately 339 Settlement Class Members. If, as of the end of the Class Period, the number of Settlement Class Members increases by more than ten percent (10%), Defendant shall increase the Gross Settlement Amount proportionally (i.e., for an increase of eleven percent (11%) in the number of Class Members, Defendant shall add an extra one percent (1%) to the Gross Settlement Amount; for a fifteen percent (15%) increase in the number of Class Members, Defendant shall add an extra five percent (5%) to the Gross Settlement Amount). (§65)]

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Plaintiff (§44.f);
Up to \$11,000 for settlement administration costs
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\$30,000 (75% of \$40,000 PAGA penalty) to the LWDA
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D. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by August 15, 2023. The parties are ordered to 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) Non-Appearance Case Review is set for August 22, 2023, 8:30 a.m., Department 9.

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CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE
NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: February 15, 2023


YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT