

FILED
Superior Court of California
County of Los Angeles

NOV 17 2023

David W. Slayton, Executive Officer/Clerk of Court

By: P. Herrera, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ALEX DE LA CRUZ, individually, and as a
representative of other aggrieved employees,

Plaintiff,

v.

GANAHL LUMBER COMPANY, a
California Corporation, and DOES 1
through 250, inclusive,

Defendants.

Case No.: 20STCV28069

~~TENTATIVE~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITION

Date: November 17, 2023

Time: 10:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiff Alex De La Cruz sues his employer, Defendant Ganahl Lumber Company, for alleged wage and hour violations. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

1 On July 23, 2020, Plaintiff filed a complaint alleging causes of action for: (1)
2 unpaid overtime and minimum wages (Labor Code §§ 510, 1194, 1198); (2) non-
3 compliant wage statements (Labor Code §§ 226(a), 1174); (3) failure to pay all wages
4 and on a timely basis (Labor Code §§ 201-203); (4) unpaid meal period premiums
5 (Labor Code §§ 226.7, 512(a)); (5) unpaid rest period premiums (Labor Code § 226.7);
6 and (6) violation of Business & Professions Code §§ 17200, et seq.

7 On June 12, 2023, Plaintiff filed a First Amended Complaint adding a seventh
8 cause of action for civil penalties under the Private Attorneys General Act (Labor Code
9 §§ 2698, et seq.) (“PAGA”).

10 The parties began settlement discussions in September 2021, which ultimately
11 resulted in settlement on December 6, 2022. The terms were finalized in the Class
12 Action and PAGA Settlement Agreement, a copy of which was filed late with the Court
13 on May 30, 2023.

14 On June 9, 2023, the Court issued a “checklist” to the parties pertaining to
15 deficiencies with Plaintiff’s motion and the proposed settlement. In response, on July
16 26, 2023, the parties filed further briefing, including the First Amended Class Action
17 and PAGA Settlement Agreement.

18 On August 14, 2023, the Court issued another checklist listing further
19 deficiencies with the proposed settlement and called the matter of Plaintiff’s motion for
20 preliminary approval of the settlement for hearing, discussing the issues raised. In
21 response, the parties filed additional briefing including a further revised First Amended
22 Class Action and PAGA Settlement Agreement on October 2, 2023.

23 On October 20, 2023, the Court again called the matter for hearing and discussed
24 with counsel further issues with respect to preliminary approval. The Court issued an
25 additional checklist on October 27, 2023. In response, Plaintiff’s counsel filed the

1 Second Amended Class Action and PAGA Settlement Agreement, attached to the
2 Amended Declaration of Brent S. Buchsbaum filed November 15, 2023. A copy
3 executed by counsel, but not the parties, was filed November 16, 2023. All references
4 below are to that agreement.

5 Now before the Court is Plaintiff's motion for preliminary approval of the
6 settlement. For the reasons set forth below, the Court preliminarily grants approval for
7 the settlement on condition that the settlement agreement, *executed by the parties*, is
8 filed before the close of business on November 22, 2023. Failure of the parties to
9 comply with this condition will result in denial of the motion.

10 **II. THE TERMS OF THE SETTLEMENT**

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

12 "Class" means all non-exempt workers who have not signed arbitration
13 agreements employed by Ganahl in California during the period between July 23, 2016
14 to the date the Court grants preliminary approval of the settlement. (§1.5)

15 "Class Period" means the period from July 23, 2016 to the date of preliminary
16 approval of the settlement. (§1.13)

17 "Aggrieved Employee" means a non-exempt worker who have not signed
18 arbitration agreements employed by Ganahl in California during the PAGA Period.
19 (§1.4)

20 "PAGA Period" means the period from July 24, 2019 to the date the Court grants
21 preliminary approval of the settlement. (§1.32)

22 "Participating Class Member" means a Class Member who does not submit a
23 valid and timely Request for Exclusion. (§1.35)
24
25

B. THE MONETARY TERMS OF SETTLEMENT

The essential monetary terms are as follows:

- The Gross Settlement Amount (“GSA”) is **\$175,000** (¶3.1). This includes payment of a PAGA penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000) and 25% to the Aggrieved Employees (\$5,000) (¶3.2.5).
- The Net Settlement Amount (“Net”) (**\$74,475**) is the GSA less:
 - Up to **\$58,275** (33.3%) for attorney fees (¶3.2.2);
 - Up to **\$5,000** for attorney costs (*Ibid.*);
 - Up to **\$7,500** for a service award to the proposed class representative (¶3.2.1); and
 - Up to **\$9,750** for settlement administration costs (¶3.2.3).
- Defendant will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments (¶3.1).
- Assuming the Court approves all maximum requested deductions, approximately \$74,475 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$120.31. ($\$74,475 \text{ Net} \div 619 \text{ class members} = \120.31). In addition, each Aggrieved Employee will receive a portion of the PAGA penalty (\$5,000 or 25% of \$20,000 PAGA penalty).
- There is no Claim Requirement (¶3.1).
- The settlement is not reversionary (¶3.1).
- Individual Settlement Share Calculation: Each Participating Class Member’s Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each

1 Participating Class Member's Workweeks. (§3.2.4) Non-Participating Class
2 Members will not receive any Individual Class Payments. The Administrator
3 will retain amounts equal to their Individual Class Payments in the Net
4 Settlement Amount for distribution to Participating Class Members on a pro rata
5 basis. (§3.2.4.2)

- 6 • PAGA Payment Calculation: The Administrator will calculate each Individual
7 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25%
8 share of PAGA Penalties by the total number of PAGA Pay Periods worked by
9 all Aggrieved Employees during the PAGA Period and (b) multiplying the result
10 by each Aggrieved Employee's PAGA Pay Periods. (§3.2.5.1)
- 11 • Tax Withholdings: Each Participating Class Member's Individual Class Payment
12 will be allocated as 15% to wages; 85% to interest and penalties (§3.2.4.1). The
13 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
14 (§3.2.5.2)
- 15 • Funding of Settlement: Ganahl shall fully fund the Gross Settlement Amount,
16 and also fund the amounts necessary to fully pay Ganahl's share of payroll taxes
17 by transmitting the funds to the Administrator no later than 14 days after the
18 Effective Date. (§4.3)
- 19 • Distribution: Within 14 days after Ganahl funds the Gross Settlement Amount,
20 the Administrator will mail checks for all Individual Class Payments, all
21 Individual PAGA Payments, the LWDA PAGA Payment, the Administration
22 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
23 Litigation Expenses Payment, and the Class Representative Service Payment.
24 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
25 Expenses Payment and the Class Representative Service Payment shall not

1 precede disbursement of Individual Class Payments and Individual PAGA
2 Payments. (§4.4)

- 3 • Uncashed Settlement Payment Checks: The face of each check shall prominently
4 state the date (not less than 180 days after the date of mailing) when the check
5 will be voided. (§4.5) For any Class Member whose Individual Class Payment
6 check or Individual PAGA Payment check is uncashed and cancelled after the
7 void date, the Administrator shall transmit the funds represented by such checks
8 to the California Controller's Unclaimed Property Fund in the name of the Class
9 Member thereby leaving no "unpaid residue" subject to the requirements of
10 California Code of Civil Procedure Section 384, subd. (b). (§4.6.1)

11 12 **C. TERMS OF RELEASES**

- 13 • Releases of Claims: Effective on the date when Ganahl fully funds the entire
14 Gross Settlement Amount and funds all employer payroll taxes owed on the
15 Wage Portion of the Individual Class Payments, Plaintiff, Class Members,
16 Aggrieved Employees, and Class Counsel will release claims against all
17 Released Parties as follows: (§5)
 - 18 • Participating Class Members' Release: Participating Class Members release all
19 causes of action, claims, and/or legal theories that were alleged in the operative
20 Complaint in this action, or that could have been alleged based on the facts
21 alleged in the operative Complaint. The Final Judgment shall cover and bar each
22 and every Participating Class Member from asserting any Released Claims in the
23 future. (§5.2)
 - 24 ○ "Released Claims" by the Participating Class Members means all causes
25 of action, claims, and/or legal theories that were alleged in the operative

1 Complaint in this action, or that could have been alleged based on the
2 facts alleged in the operative Complaint. The Final Judgment shall cover
3 and bar each and every Participating Class Member from asserting any
4 Released Claims in the future. (§1.39)

- 5 • Aggrieved Employees' Release: Aggrieved Employees release all claims for
6 PAGA penalties that were alleged in the operative Complaint and PAGA Notice
7 or reasonably could have been alleged based on the PAGA period facts stated in
8 the Operative Complaint and the PAGA Notice. Released PAGA claims —
9 including the underlying claims alleged in the PAGA Notice letter and Plaintiff's
10 Operative Complaint - will be released. Aggrieved Employees will be entitled to
11 their portion of the PAGA Payment, regardless of whether or not the
12 Participating Class Member opts-out or excludes him or herself from the Class.

13 (§5.3)

- 14 ○ "Released PAGA Claims" by the Aggrieved Employees means all claims
15 for PAGA penalties that were alleged in the operative Complaint and
16 PAGA Notice or reasonably could have been alleged based on the PAGA
17 period facts stated in the Operative Complaint and the PAGA Notice.
18 Released PAGA claims — including the underlying claims alleged in the
19 PAGA Notice letter and Plaintiff's Operative Complaint - will be
20 released. Aggrieved Employees will be entitled to their portion of the
21 PAGA Payment, regardless of whether or not the Participating Class
22 Member opts-out or excludes him or herself from the Class. (§1.40)

- 23 ○ "PAGA Notice" means Plaintiff's July 24, 2020 letter to Ganahl and the
24 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

25 (§1.34)

- Non-Participating Class Members' Release: Non-Participating Class Members who are Aggrieved Employees will still release Released PAGA Claims and penalties that arise out of and are based on the facts in plaintiff's operative complaint in the Action. No individual, non-PAGA claims will be released.

(¶5.4)

- Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

(¶7.5.4)

- "Released Parties" means: Ganahl and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates. (¶1.41)
- The named Plaintiff will also provide a general release and a waiver of the protections of Cal. Civ. Code §1542. (¶5.1)
- The releases are effective on the date when Defendant fully funds the entire Gross Settlement Amount, which will occur no later than 14 days after the Effective Date. (¶4.3)

D. SETTLEMENT ADMINISTRATION

- The proposed Settlement Administrator is Simpluris, Inc. (¶1.2), which has provided evidence that no counsel are affiliated with it and that it has adequate procedures in place to safeguard the data and funds to be entrusted to it. (See Declaration of Eric Springer.)
- Settlement administration costs are estimated to be \$9,750 (Springer Decl. ¶13).

- 1 • Notice: The manner of giving notice is described below.
- 2 • Opt Out/Objection Dates: "Response Deadline" means 60 days after the
3 Administrator mails Notice to Class Members and Aggrieved Employees, and
4 shall be the last date on which Class Members may: (a) fax, email, or mail
5 Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her
6 Objection to the Settlement. Class Members to whom Class Notice Packets are
7 resent after having been returned undeliverable to the Administrator shall have an
8 additional 14 calendar days beyond the Response Deadline has expired. (§1.43)
9 The same deadline applies to the submission of workweek disputes. (§7.6)
 - 10 ○ If the number of valid Requests for Exclusion identified in the Exclusion
11 List exceeds 7% of the total of all Class Members, Ganahl may, but is not
12 obligated, elect to withdraw from the Settlement. (§8)
- 13 • Notice of Final Judgment will be posted on the Settlement Administrator's website
14 (§7.8.1).

16 **III. SETTLEMENT STANDARDS AND PROCEDURE**

17 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
18 of an entire class action, or of a cause of action in a class action, or as to a party,
19 requires the approval of the court after hearing." "Any party to a settlement agreement
20 may serve and file a written notice of motion for preliminary approval of the settlement.
21 The settlement agreement and proposed notice to class members must be filed with the
22 motion, and the proposed order must be lodged with the motion." See Cal. Rules of
23 Court, rule 3.769(c).

24 "In a class action lawsuit, the court undertakes the responsibility to assess
25 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or

1 dismissal of a class action. The purpose of the requirement [of court review] is the
2 protection of those class members, including the named plaintiffs, whose rights may not
3 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
4 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
5 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
6 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
7 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
8 agreement to the extent necessary to reach a reasoned judgment that the agreement is
9 not the product of fraud or overreaching by, or collusion between, the negotiating
10 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
11 concerned.”] [internal quotation marks omitted].

12 “The burden is on the proponent of the settlement to show that it is fair and
13 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
14 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
15 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
16 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
17 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

18 Notwithstanding an initial presumption of fairness, “the court should not give
19 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
20 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
21 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
22 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
23 members, the court must independently and objectively analyze the evidence and
24 circumstances before it in order to determine whether the settlement is in the best
25 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.

1 In that determination, the court should consider factors such as “the strength of
2 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
3 the risk of maintaining class action status through trial, the amount offered in
4 settlement, the extent of discovery completed and stage of the proceedings, the
5 experience and views of counsel, the presence of a governmental participant, and the
6 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
7 factors is not exclusive and the court is free to engage in a balancing and weighing of
8 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
9 245.

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

17 18 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

19 20 **A. THERE IS A PRESUMPTION OF FAIRNESS**

21 The settlement is entitled to a presumption of fairness for the following reasons:

22 23 **1. The settlement was reached through arm’s-length bargaining**

24 Class Counsel represents that the parties began settlement discussions in
25 September 2021, which ultimately resulted in settlement on December 6, 2022.

1 (Supplemental Declaration of Brent S. Buchsbaum ¶¶3-4.) The parties agreed that a
2 mediator was not necessary. (*Id.* at ¶5.)

3
4 **2. The investigation and discovery were sufficient**

5 Plaintiff's counsel represents that their investigation included the exchange of
6 documents and statistical information with Defendant, as well as interviews with
7 Plaintiff regarding the pay practices at issue. Plaintiff received, among other things, the
8 following information: (1) data and documents relevant to class-wide liability in
9 support of our investigation and evaluation of class claims; (2) employee handbooks,
10 procedure manuals, and operations manuals addressing Defendant's wage and hour
11 practices, e.g., (i) timekeeping and payroll policies, (ii) meal and rest periods records,
12 (iii) wage statements; (3) employee time and payroll records; and (4) employee time
13 audit records. Plaintiff's counsel also retained a statistical expert to analyze a 10%
14 sampling of pay data. (Declaration of Brent S. Buchsbaum ("Buchsbaum Decl.") ¶24.)
15 Counsel's expert, Jarrett Gorlick of Berger Consulting Group, represents that the 10%
16 sample, which included 61 individuals from the class, has a margin of error of 11.9%
17 based on a 95% confidence level. (Decl. of Jarrett Gorlick ¶¶6-7.)

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

19
20 **3. Counsel is experienced in similar litigation**

21 Class Counsel represent that they are experienced in class action litigation,
22 including wage and hour class actions. (Buchsbaum Decl. ¶7.)

23 //

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25 //

1 **4. Percentage of the class objecting**

2 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
3 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
4 the court receive objections to the proposed settlement, it will consider and either sustain
5 or overrule them at the fairness hearing.”].
6

7 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
8 **FAIR, ADEQUATE, AND REASONABLE**

9 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
10 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
11 does when it approves a settlement as in good faith under Code of Civil Procedure
12 section 877.6, the court must at least satisfy itself that the class settlement is within the
13 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
14 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
15 consider and weigh the nature of the claim, the possible defenses, the situation of the
16 parties, and *the exercise of business judgment* in determining whether the proposed
17 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
18 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).
19

20 **1. Amount Offered in Settlement**

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

23 Class Counsel estimated Defendant’s maximum exposure at \$1,383,577, based on
24 the following analysis:
25

Violation	Maximum Exposure
Meal Period Violations	\$242,576.00
Rest Period Violations	\$242,576.00
Unpaid Overtime	None
Waiting Time Penalties	\$264,125.00
Wage Statement Penalties	\$384,600.00
PAGA Penalties	\$249,700.00
Total	\$1,383,577.00

(Buchsbaum Decl. ¶¶10-23.)

Class Counsel obtained a gross settlement valued at \$175,000. This is approximately 12.6% of Defendant's maximum exposure and approximately 36% of the maximum amount recoverable before penalties.

2. The Risks of Future Litigation

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. Even if a class is certified, there is always a risk of decertification. *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."].) Further, the settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing

1 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
2 adequate. (Buchsbaum Decl. ¶31.)

3 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
4 which was sent a copy of the Settlement Agreement on September 27, 2023 and has not
5 yet objected. (Exhibit C to Updated Declaration of Buchsbaum filed October 2, 2023.)
6 Any objection by it will be considered at the final fairness hearing.

7 8 **3. The Releases Are Limited**

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

14 15 **4. Conclusion**

16 Class Counsel estimated Defendant's maximum exposure at \$1,383,577. Class
17 Counsel obtained a gross settlement valued at \$175,000. This is approximately 12.6% of
18 Defendant's maximum exposure, and 36% of the maximum before penalties. Given the
19 uncertain outcomes, including the potential that the class might not be certified, that
20 liability is a contested issue, and that the full amount of penalties would not necessarily
21 be assessed even if the class is certified and liability found, the settlement is within the
22 "ballpark of reasonableness."

23 //

24 //

25 //

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 619 putative Class Members. (Buchsbaum Decl. ¶40.)
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 records. (Buchsbaum Decl. ¶40.)

24 //

25 //

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

2 “The community of interest requirement involves three factors: ‘(1) predominant
3 common questions of law or fact; (2) class representatives with claims or defenses typical
4 of the class; and (3) class representatives who can adequately represent the class.’”
5 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

6 As to predominant questions of law or fact, Plaintiff contends that the California
7 statutes relating to each of Plaintiffs' claims apply with equal force and effect to all Class
8 Members, and that factually, Plaintiff claims that Defendants' policies and practices apply
9 class-wide and Defendants' liability can be determined by facts common to all members
10 of the class. (Buchsbaum Decl. ¶41.)

11 As to typicality, Plaintiff asserts that his wage and hour claims are typical of the
12 proposed Settlement Class because they arise from the same factual basis and are based
13 on the same legal theories applicable to the other Class Members. (*Id.* at ¶42.)

14 As to adequacy, Plaintiff represents that he has participated in the litigation and is
15 aware of responsibility of serving as class representative. (Declaration of Alex De La
16 Cruz ¶2.) As previously stated, Class Counsel have experience in class action litigation.

17
18 **4. Substantial Benefits Exist**

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

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

24 The purpose of notice is to provide due process to absent class members. A practical
25 approach is required, in which the circumstances of the case determine what forms of

1 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
2 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
3 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
4 stake of the individual class members; (4) the cost of notifying class members; (5) the
5 resources of the parties; (6) the possible prejudice to class members who do not receive
6 notice; and (7) the res judicata effect on class members.

7 8 **1. Method of class notice**

9 Not later than 20 days after the Court grants Preliminary Approval of the
10 Settlement, Ganahl will simultaneously deliver the Class Data to the Administrator, in
11 the form of a Microsoft Excel spreadsheet. (§4.2) Using best efforts to perform as soon
12 as possible, and in no event later than 14 days after receiving the Class Data, the
13 Administrator will send to all Class Members identified in the Class Data, via first-class
14 United States Postal Service ("USPS") mail, the Class Notice [with Spanish translation,
15 if applicable]. Before mailing Class Notices, the Administrator shall update Class
16 Member addresses using the National Change of Address database. (§7.4.2)

17 Not later than 3 business days after the Administrator's receipt of any Class
18 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
19 Notice using any forwarding address provided by the USPS. If the USPS does not
20 provide a forwarding address, the Administrator shall conduct a Class Member Address
21 Search, and re-mail the Class Notice to the most current address obtained. The
22 Administrator has no obligation to make further attempts to locate or send Class Notice
23 to Class Members whose Class Notice is returned by the USPS a second time. (§7.4.3)

24 The deadlines for Class Members' written objections, Challenges to Workweeks
25 and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional

1 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
2 Members whose notice is re-mailed. The Administrator will inform the Class Member
3 of the extended deadline with the re-mailed Class Notice. (§7.4.4)

4 **2. Content of class notice**

5 A copy of the proposed class notice is attached to the Settlement Agreement.
6 The notice includes information such as: a summary of the litigation; the nature of the
7 settlement; the terms of the settlement agreement; the maximum deductions to be made
8 from the gross settlement amount (i.e., attorney fees and costs, the enhancement award,
9 and claims administration costs); the procedures and deadlines for participating in,
10 opting out of, or objecting to, the settlement; the consequences of participating in,
11 opting out of, or objecting to, the settlement; and the date, time, and place of the final
12 approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be given in both
13 English and Spanish. (Supp. Decl. of Buchsbaum ¶11).

14 **3. Settlement Administration Costs**

15 Settlement administration costs are capped at \$9,750, including the cost of notice
16 (§3.2.3). Prior to the time of the final fairness hearing, the settlement administrator
17 must submit a declaration attesting to the total costs incurred and anticipated to be
18 incurred to finalize the settlement for approval by the Court.

20 **E. ATTORNEY FEES AND COSTS**

21 California Rule of Court, rule 3.769(b) states: "Any agreement, express or
22 implied, that has been entered into with respect to the payment of attorney fees or the
23 submission of an application for the approval of attorney fees must be set forth in full in
24 any application for approval of the dismissal or settlement of an action that has been
25 certified as a class action."

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

12 The question of class counsel’s entitlement to **\$58,275** (33.3%) in attorney fees
13 will be addressed at the final fairness hearing when class counsel brings a noticed
14 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
15 the court with current market tested hourly rate information and billing information so
16 that it can properly apply the lodestar method and must indicate what multiplier (if
17 applicable) is being sought.

18 Class counsel should also be prepared to justify the costs sought (capped at
19 **\$5,000**) by detailing how they were incurred.

20 21 **F. SERVICE AWARD**

22 The Settlement Agreement provides for a service award of up to **\$7,500** for the
23 class representative (§3.2.1). Trial courts should not sanction enhancement awards of
24 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
25 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the

1 form of quantification of time and effort expended on the litigation, and in the form of
2 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
3 required in order for the trial court to conclude that an enhancement was ‘necessary to
4 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
5 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
6 original.

7 In connection with the final fairness hearing, named Plaintiffs must submit a
8 declaration attesting to why they should be compensated for the expense or risk they
9 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

10 The Court will decide the issue of the enhancement award at the time of final
11 approval.

12 13 **V. CONCLUSION AND ORDER**

14 On condition that the parties file a copy of the settlement agreement signed by
15 the parties before the close of business on November 22, 2023, the Court hereby:

- 16 (1) Grants preliminary approval of the settlement as fair, adequate, and
17 reasonable;
18 (2) Grants conditional class certification;
19 (3) Appoints Alex De La Cruz as Class Representative;
20 (4) Appoints Law Offices of Buchsbaum & Haag, LLP as Class Counsel;
21 (5) Appoints Simpluris, Inc. as Settlement Administrator;
22 (6) Approves the proposed notice plan; and
23 (7) Approves the proposed schedule of settlement proceedings as follows:
24 • Preliminary approval hearing: November 17, 2023
25

- Deadline for Defendant to provide class list to settlement administrator:
December 7, 2023 (within 20 days from preliminary approval)
- Deadline for settlement administrator to mail notices: December 21, 2023
(within 14 days after receiving the Class Data)
- Deadline for class members to opt out: February 19, 2024 (60 calendar days
from the initial mailing of the Notice Packets)
- Deadline for class members to object: February 19, 2024 (60 calendar days from
the initial mailing of the Notice Packets)
- Deadline for class counsel to file motion for final approval:
3/6, 2024 (16 court days prior to final fairness hearing)
- Final fairness hearing: 3/27/24, 2024, at 9:00 am

Failure to comply with the condition will result in denial of the motion.

Dated: 11/17/23

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court