

11/22/2023

David W. Slayton, Executive Officer / Clerk of Court

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

B. Araiga Deputy

Kenarki v. Getaround, Inc., Case No.: 20STCV25485

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 \$300,000. [Escalator Clause: Defendant estimated that, as of the date of the Parties' second mediation session, (1) there are 257 Class Members and 10,200 Total Workweeks during the Class period and (2) there were 168 Aggrieved Employees who worked 2,175 Pay Periods during the PAGA Period. If the number of applicable workweeks is more than 10 percent higher than this number (i.e., more than 11,220), the amount of the settlement will increase in proportion to the increase above 10 percent. In other words, a 12% increase in the number of workweeks will result in a 2% increase in the gross settlement amount. (§8)]

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

- Up to \$100,000 (33 1/3%) for attorney fees (§3.2.2);
- Up to \$25,000 for litigation costs (See supplemental declaration filed on November 15, 2023, containing corrected litigation costs in Settlement Agreement);
- Up to \$10,000 for a Service Payment to the Named Plaintiff (§3.2.1);
- Up to \$10,000 for settlement administration costs (§3.2.3);
- \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA. (§3.2.5)

C. Employer share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **April 26, 2024**. Plaintiff must call

the Court prior to filing and serving to get a hearing date and briefing schedule.

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 email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Non-Appearance Case Review is set for May 3, 2024, 8:30 a.m., Department 9.

I.
BACKGROUND

Plaintiff Andy Kenareki sues his former employer, Defendant Getaround, Inc., for alleged wage and hour violations. Defendant operates a peer-to-peer car sharing service that enables vehicle owners to rent their cars directly to users using a mobile application. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On June 7, 2020, Plaintiff filed a class action complaint against Defendants Getaround, Inc. and James Correa alleging causes of action for alleged misclassification of Plaintiff and others similarly situated, and for Defendants alleged failure to pay all wages due including overtime wages for all hours worked, failure to pay the required minimum wage for all hours worked, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay all wages on termination/resignation, failure to reimburse necessary business expenses and unfair business practices.

On June 4, 2021, Defendant James Correa was dismissed, without prejudice.

On October 8, 2020, Plaintiff, pursuant to the Private Attorneys General Act, California Labor Code Section 2698, et seq., filed a representative action complaint in the Los Angeles Superior Court (Case No. 20SMCV01470) seeking penalties against Defendants for several alleged violations of the Labor Code and IWC Wage Orders.

On April 16, 2021, the parties attended mediation before Jeffrey Krivis, Esq., which did not result in settlement. After

the parties continued formal discovery in both the PAGA and Class Action, the parties mediated again before Michael Young, Esq. on January 6, 2023, which resulted in settlement.

On April 12, 2023, pursuant to the Parties' stipulation and the Court's order thereon, Plaintiff filed a First Amended Complaint ("FAC") adding the claims that were previously pending in the PAGA Complaint. The FAC alleges claims against Defendant Getaround, Inc. for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods in violation of Labor Code § 226.7, 512, 1198; (4) failure to provide rest periods in violation of Labor Code § 226.7 and the I.W.C. wage orders; (5) failure to keep accurate and provide itemized wage statements in violation of Labor Code § 226, 1198, and the I.W.C. wage orders; (6) failure to pay waiting time penalties in violation of Labor Code §§ 203; (7) failure to reimburse business expenses in violation of Labor Code § 2800 and 2802; (8) unlawful business practices in violation of Bus. & Prof. Code § 17200, et seq.; and (9) violation of California Private Attorneys General Act ("PAGA") Labor Code § 2698, et seq.

Plaintiff dismissed his PAGA action on April 21, 2023.

The terms of settlement are finalized in the long-form Class Action and PAGA Settlement Agreement ("Settlement Agreement"), a copy of which is attached to the Declaration of Haig B. Kazandjian ("Kazandjian Decl.") as Exhibit 1. See also supplemental declaration filed on November 15, 2023, containing (previously missing) Defendant and Defendant's counsel signatures on Settlement Agreement.

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

II.

SETTLEMENT AGREEMENT

A. Definitions.

"Class": all persons who performed services for Defendant in California during the Class Period and who were classified by Defendant as non-exempt employees or independent contractors. (¶1.5)

"Class Period": July 7, 2016 to the date of Preliminary Approval. (¶1.12)

"Aggrieved Employee": a person who performed services for Defendant in California during the PAGA Period and was classified by Defendant as a non-exempt employee or independent contractor. (§1.4)

"PAGA Period": July 10, 2019 to the date of Preliminary Approval. (§1.31)

"Participating Class Member": a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (§1.35)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$300,000, non-reversionary. (§3.1)
 - Escalator Clause: Based on its records, Defendant estimated that, as of the date of the Parties' second mediation session, (1) there are 257 Class Members and 10,200 Total Workweeks during the Class period and (2) there were 168 Aggrieved Employees who worked 2,175 Pay Periods during the PAGA Period. Should the actual number of applicable workweeks be more than 10 percent higher than this number (i.e., more than 11,220), the amount of the settlement will increase in proportion to the increase above 10 percent. In other words, a 12% increase in the number of workweeks will result in a 2% increase in the gross settlement amount. (§8)
- The Net Settlement Amount ("Net") (\$142,500) is the GSA minus the following:
 - Up to \$100,000 (33 1/3%) for attorney fees (§3.2.2);
 - Up to \$25,000 for litigation costs (See supplemental declaration filed on November 15, 2023, containing corrected litigation costs in Settlement Agreement);
 - Up to \$10,000 for a Service Payment to the Named Plaintiff (§3.2.1);
 - Up to \$10,000 for settlement administration costs (§3.2.3); and
 - Payment of \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA. (§3.2.5)
- Defendant will separately pay all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (§3.1)
- There is no claim form requirement. (§3.1)

- Individual Settlement Payment Calculation: Each Participating Class Member will receive an Individual Class Payment 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 Participating Class Member's Workweeks. (§3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (§3.2.4.b)
 - o PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (§3.2.5.a)
 - o Tax Allocation: Participating Class Member's Individual Class Payments will be allocated as follows: 35% as wages, 65% as interest and penalties. (§3.2.4.a) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (§3.2.5.b)
- Response Deadline: "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 days beyond the Response Deadline has expired. (§1.44)
 - o If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. (§9)
- Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount and fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. The Administrator shall calculate Defendant's share of payroll taxes and provide the calculations to Defense Counsel no later than 5 days after the date the Court signs its Order Granting Final Approval of the Settlement. (§4.3)
- Disbursement: Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the

Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (§4.4)

- **Uncashed Settlement Checks:** The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. (§4.4.1) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (§4.4.3)
- The settlement administrator will be Simpluris, Inc. (§1.2)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (§7.8.1)
- The proposed Settlement Agreement was submitted to the LWDA on June 5, 2023. (Kazandjian Decl., Exhibit 4.)
- Participating class members and the named Plaintiff will release certain claims against Defendant. (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 April 16, 2021, the parties attended mediation before Jeffrey Krivis, Esq., which did not result in settlement. After the parties continued formal discovery in both the PAGA and Class Action, the parties mediated again before Michael Young, Esq. on January 6, 2023, which resulted in settlement. (Kazandjian Decl. ¶9).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represent that after the complaint was filed, the parties engaged in informal discovery to facilitate an exchange of information necessary to engage in meaningful mediation. Plaintiff's counsel reviewed payroll records for Plaintiff along

with Plaintiff's personnel files, and a representative sampling of payroll records produced by Defendant. Defendant also provided documents and information reflecting the estimated total number of workweeks and pay periods the class members worked, and the approximate number of employees at issue, among other relevant data. Plaintiff had this information reviewed and analyzed by consulting expert Berger Consulting Group to assist with, inter alia, determining potential meal/rest period violation rates, the amount of potential "off the clock" work, etc., and formulating a damages model. (Id. at ¶8).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶39).

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (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 estimated exposure for each of the claims alleged:

Violation	Maximum Exposure
Unpaid Minimum Wages	\$59,160.00
Unpaid Overtime Wages	\$56,060.40
Unpaid Overtime (Regular Rate)	\$7,547.20
Meal Period Violations	\$91,902.00
Rest Period Violations	\$91,902.00
Unreimbursed Business Expenses	\$76,500.00
Wage Statement Violations	\$402,860.00

Waiting Time Penalties	\$376,906.40
PAGA Penalties	\$1,276,350.00
Total	\$2,439,188.00

(Kazandjian Decl. ¶¶25-35.)

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. (*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 damages at \$2,439,188. Plaintiff's counsel obtained a \$300,000 non-reversionary settlement. This is approximately 12.3% of Plaintiff's estimated maximum recovery which, given the uncertain outcomes, is within the "ballpark" of reasonableness.

The \$300,000 settlement amount, after reduced by the requested deductions, leaves approximately \$142,500 to be divided among approximately 257 class members. Assuming full participation, the resulting payments will average approximately \$554.47 per class member.

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.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows: (¶5)

- Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the allegations stated in the Operative Complaints for the time period of July 7, 2016 to the date of Preliminary Approval, including, (a) any and all claims involving any alleged misclassification, (b) any and all claims involving any alleged failure to pay overtime wages; (c) any and all claims involving any alleged failure to pay minimum wages; (d) any and all claims involving any alleged failure to provide meal periods, (e) any and all claims involving any alleged failure to provide rest periods, (f) any and all claims involving any alleged failure to keep accurate and provide itemized wage statements, (g) any and all claims involving any alleged failure to pay waiting time penalties, (h) any and all claims involving any alleged failure to reimburse business expenses, and (i) any and all claims involving any alleged unlawful business practices in violation of Business & Professions Code § 17200, et seq. The release shall include release of claims pursuant to (a) California Labor Code sections 200 et seq. (including sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 246, 500 et seq. (including sections 510, 512, 558,)), 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, et seq. (including 2699, 2699.3, 2699.5), 2800, 2802, 2804, 2810.5, 3287; California Business & Professions Code section 17200 et seq. (including sections 17200, 17201, 17202, 17203); and

California Code of Regulations title 8, section 11010, et seq. based on the alleged violations of the Labor Code sections, (b) the relevant Wage Orders issued by the Industrial Welfare Commission, and (c) any other claims which reasonably could have been alleged based on the allegations in the Operative Complaint. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims accruing outside the Class Period. (§5.2)

- Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the allegations stated in the Operative Complaint or Plaintiff's PAGA Notice, for the time period of July 10, 2019 to the date of Preliminary Approval, including claims pursuant to (a) California Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2699, 2699.2, 2699.5, 2800, 2802, 2810.5; and California Code of Regulations title 8, section 11010, et seq., (b) based on the alleged violations of the relevant Wage Orders issued by the Industrial Welfare Commission, and (c) any other claims which reasonably could have been alleged based on the allegations in the Operative Complaint or Plaintiff's PAGA Notice. (§5.3)

"PAGA Notice" means Plaintiff's July 10, 2020 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a). (§1.33)

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: Defendant Getaround, Inc., and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. (§1.42)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶5.1)

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. Winsor (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 257 class members. (Kazandjian Decl. ¶20.) 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. (Kazandjian Decl. ¶20.)

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.)

As to commonality, Plaintiff contends that common questions of law and fact predominate - particularly for purposes of a settlement class - as the Class Members all were subject to the same break policy, were subject to same rounding and auto deduct policies, and received the same type of wage statements. Since the focus of the claims against Defendant concerns the legality of common policies applied uniformly to both Defendant's non-exempt employees and to Defendant's employees classified as independent contractors, class, common issues predominate over individualized inquiries concerning liability. Regardless of the outcome, determining these questions will decide liability for

all class members one way or another. Similarly, whether Defendant properly tracked and paid for all documented meal violations raises questions common to all class members. (Kazandjian Decl. ¶22.)

As to typicality, Plaintiff alleges that his claims are typical given he is a member of the class and his claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members. (Id. at ¶21.)

As to adequacy, Plaintiff represents that he is aware of the duties and risks of serving as class representative and has participated in the litigation. (Declaration of Andy Kenareki.)

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. The proposed notice is attached to the Settlement Agreement. 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 revised costs, enhancement awards, and 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.

Notice will be given in English. (¶1.11)

2. Method of class notice. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as possible, and in

no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (§7.4.2)

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

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice. (§7.4.4)

3. Cost of class notice. As indicated above, settlement administration costs are estimated not to exceed \$10,000. Prior to the time of the final fairness hearing, the claims 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 \$100,000 (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 to the named Plaintiff.

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 \$300,000. [Escalator Clause: Defendant estimated that, as of the date of the Parties' second mediation session, (1) there are 257 Class Members and 10,200 Total Workweeks during the Class period and (2) there were 168 Aggrieved Employees who worked 2,175 Pay Periods during the PAGA Period. If the number of applicable workweeks is more than 10 percent higher than this number (i.e., more than 11,220), the amount of the settlement will increase in proportion to the increase above 10 percent. In other words, a 12% increase in the number of workweeks will result in a 2% increase in the gross settlement amount. (§8)]

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

Up to \$100,000 (33 1/3%) for attorney fees (§3.2.2);
Up to \$25,000 for litigation costs (See supplemental declaration filed on November 15, 2023, containing corrected litigation costs in Settlement Agreement);
Up to \$10,000 for a Service Payment to the Named Plaintiff (§3.2.1);
Up to \$10,000 for settlement administration costs (§3.2.3);
\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA. (§3.2.5)

C. Employer share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.

D. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by April 26, 2024. Plaintiff must call the Court prior to filing and serving to get a hearing date and briefing schedule.

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 email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Non-Appearance Case Review is set for May 3, 2024, 8:30 a.m., Department 9.

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

IT IS SO ORDERED.

DATED: November 22, 2023




YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge