

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Enzo Nabiev (SBN 332118)
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kane.moon@moonyanglaw.com
E-mail: allen.feghali@moonyanglaw.com
E-mail: enzo.nabiev@moonyanglaw.com

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
Matthew Crawford, Esq. (310230)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 205
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Joseph Lavi, Esq. (State Bar No. 209776)
Lavi & Ebrahimian, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

*Attorneys for Plaintiffs Leila Garcia, Jesus
Moreno, and Jason Casas*

FILED
Superior Court of California
County of Los Angeles

SEP 20 2021

Sherri R. Carter, Executive Officer/Clerk
By Stephanie Chung Deputy

RECEIVED
LOS ANGELES SUPERIOR COURT

SEP 16 2021
S. DREW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO MEJIA CALDERON, LEILA
GARCIA, JESUS MORENO, and JASON
CASAS, on behalf of themselves, all others
similarly situated, and on behalf of the general
public,

Plaintiffs,

v.

TAPIA ENTERPRISES, INC. a California
corporation dba TAPIA BROTHERS CO.,
KITCHEN CUTS, LLC, and DOES 1-100,

Defendants.

And All Related Cross-Complaints

Case No.: BC709635

[Hon. Daniel J. Buckley]

~~[SECOND-CORRECTED PROPOSED]~~
**ORDER AND JUDGMENT GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

FINAL APPROVAL HEARING

Date: September 17, 2021

Time: 10:30 a.m.

Dept: 1

~~[PROPOSED]~~ ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT

1 On May 10, 2021, this Court issued an Order Granting Preliminary Approval of Class
2 Action Settlement. Plaintiffs Leila Garcia, Jesus Moreno, and Jason Casas now seek an order
3 granting final approval of the Class Action Settlement (collectively the "Settlement"),
4 attached to the Declaration of Kane Moon in Support of Plaintiff's Motion for Final Approval
5 of Class Action Settlement as Exhibit 1.

6 Due and adequate notice having been given to the Settlement Class Members, as
7 defined below, and the Court having considered Plaintiffs' Notice of Motion and Motion for
8 Final Approval of Class Action Settlement ("Motion"), the supporting declarations and
9 exhibits thereto, all papers filed and proceedings had herein, and the absence of any written
10 objections received regarding the proposed settlement, and having reviewed the record in the
11 Action, and good cause appearing,

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

13 The Court, for purposes of this Final Order and Judgment, refers to all defined terms as
14 set forth in the Settlement.

15 The Court has jurisdiction over all claims asserted in the Action, Plaintiff, the
16 Settlement Class Members, and Defendants Tapia Enterprises, Inc. dba Tapia Brothers Co. and
17 Kitchen Cuts, LLC ("Defendants").

18 The Court finds that the Settlement appears to have been made and entered into in
19 good faith and hereby approves the settlement subject to the limitations on the requested fees
20 and enhancements as set forth below.

21 Plaintiffs and all Settlement Class Members, shall have, by operation of this Final
22 Order and Judgment, fully, finally, and forever released, relinquished, and discharged
23 Defendants from all Released Claims as stated in the Settlement and reproduced here:

24 The Parties shall bear their own respective attorneys' fees and costs, except as
25 otherwise provided for in the Settlement and approved by the Court.

26 Solely for purposes of effectuating the settlement, the Court finally certified the
27 following Class: All persons who are employed or have been employed by Tapia or Kitchen
28 Cuts and performed work for Tapia or Kitchen Cuts in the State of California as hourly non-

1 exempt employees, hourly non-exempt driver employees, or salaried driver employees at any
2 time from June 14, 2014 through September 30, 2020.

3 No Class Members have objected to the terms of the Settlement, and no Class Members
4 have requested exclusion from the Settlement.

5 Class Members make the following release:

6
7 **Released Class Claims:** Class Members who do not opt out of the settlement
8 will release all claims alleged in the Third Amended Complaint, including
9 unpaid wages, overtime, missed meal and rest periods, reimbursement claims,
10 waiting time penalties, payroll stub violations, recovery periods, Business and
Professions Code §§17200, restitution, labor code penalties, interest, attorney's
fees, and costs and expenses through September 30, 2020. The release as to
these claims will be deemed effective when Defendants fund the settlement.

11 **Released PAGA Claims:** Aggrieved Employees, regardless of whether they
12 requested exclusion from/opted-out of the Class Settlement, will release all
13 PAGA claims alleged in the Notices of Labor Code Violations and the Third
14 Amended Complaint, including unpaid wages, overtime, missed meal and rest
15 periods, reimbursement claims, waiting time penalties, payroll stub violations,
16 recovery periods, all claims that could have been premised on the facts alleged
in the Third Amended Complaint, labor code penalties, PAGA penalties,
interest, attorney's fees, and costs and expenses against Released Parties
through September 30, 2020. Aggrieved Employees will release the Released
PAGA Claims even if they opted-out/requested exclusion from the Class
Settlement. The release as to these claims will be deemed effective when
Defendants fund the settlement.

17 **Released Parties:** Defendants and all related companies, subsidiaries, owners,
18 shareholders, members, agents (including, without limitation, any investment
19 bankers, accountants, insurers, reinsurers, attorneys and any past, present or
20 future officers, directors and employees) predecessors, successors, and assigns,
Raul Tapia, Sr., Frank Tapia, Ramon Tapia, Monica Tapia, Erik Tapia, Raul
Tapia, Jr., and all related entities, and Cross-Defendants and all related entities.

21 The Notice provided to the Class conforms with the requirements of California Rules
22 of Court 3.766 and 3.769, and constitutes the best notice practicable under the circumstances,
23 by providing individual notice to all Class Members who could be identified through
24 reasonable effort, and by providing due and adequate notice of the proceedings and of the
25 matters set forth therein to the Class Members. The Notice fully satisfies the requirements of
26 due process.

27 The Court finds the Gross Settlement Fund, the Net Settlement Fund, and the
28 methodology used to calculate and pay each Settlement Class Member's Allocation Amount

are fair and reasonable, and authorizes the Settlement Administrator to pay the Settlement Shares to the Settlement Class Members in accordance with the terms of the Settlement.

Defendants shall pay the total of \$2,137,651.00 to resolve this litigation. Defendants shall wire to the Settlement Administrator the Gross Settlement Amount within fourteen (14) days of the Effective Final Settlement Date.

Twenty-one (21) days after the Effective Final Settlement Date, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.

From the Gross Settlement Fund Value, \$150,000.00 shall be paid to the California Labor and Workforce Development Agency, representing 75% of the penalties awarded under the terms of the Settlement and Amendment pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, et seq.

The Court hereby approves incentive payments in the amount of \$10,000.00 each to Leila Garcia, Jesus Moreno, and Jason Casas for their service as class representatives and for their agreement to release claims. Specifically, Plaintiffs make the following release:

Plaintiffs' Release of Claims and General Release. As of the Effective Final Settlement Date, Plaintiffs shall give the following general release of claims for themselves and their respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of his, her, or their signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to his employment with Defendants or the remuneration for, or termination of, such employment. Plaintiffs' Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
2 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
3 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
4 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD**
5 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
6 **THE DEBTOR OR RELEASED PARTY.**

7 This release excludes any release of any claims not permitted to be released by law.

8 The Court hereby confirms Kane Moon, Allen Feghali, and Enzo Nabiev of Moon &
9 Yang, APC, MARA LAW FIRM, PC, and Lavi & Ebrahimian, LLP as Class Counsel.

10 From the Gross Settlement Fund, Class Counsel is awarded \$748,177.00 for their
11 reasonable attorneys' fees and \$27,305.23 for their reasonable costs incurred in the Action.
12 The fees and costs shall be distributed to Class Counsel as set forth in the Settlement. The
13 Court finds that the fees are reasonable in light of the benefit provided to the Class.

14 The Court approves Settlement Administration Costs in the amount of \$12,700.00.
15 Such costs shall be paid from the Gross Settlement Fund to Simpluris, Inc.

16 The Parties are ordered to have notice of this Order and Judgment sent to all Class
17 Members in accordance with CRC 3.771 (b) along with settlement payments issued via first
18 class mail to all participating Class Members at their last known addresses, and to the LWDA
19 pursuant to Labor Code § 2699(1)(3);

20 This Judgment is intended to be a final disposition of the above captioned action in its
21 entirety and is intended to be immediately appealable.

22 This Court shall retain jurisdiction with respect to all matters related to the
23 administration and consummation of the Settlement, and any and all claims, asserted in,
24 arising out of, or related to the subject matter of the lawsuit, including but not limited to all
25 matters related to the Settlement and the determination of all controversies relating thereto.

26 Plaintiff's Motion for Final Approval of Class Action Settlement is hereby granted, and
27 the Court directs that Judgment shall be entered in accordance with the terms of this Order.

28 The Settlement is finally approved but are not an admission by Defendants of the
 validity of any claims in this class action, or of any wrongdoing by Defendants or of any
 violation of law. Neither the Settlement nor any related document shall be offered or received

1 in evidence in any civil, criminal, or administrative action or proceeding other than such
2 proceedings as may be necessary to consummate or enforce the Settlement. The obligations
3 set forth in the Settlement are deemed part of this Order.

4 The Court sets a Non-Appearence Hearing (Case Review) Re: Distribution on
5 9/23, 2022 at 4pm in Department 1. Class Counsel is ordered to file a final report
6 and declaration regarding distribution no later than 9/16/22. Class Counsel is further
7 ordered to submit an amended judgment with respect to the amount of uncashed checks to the
8 State of California's Unclaimed Property Fund in the names of the Settlement Class members
9 who failed to cash their checks.

10
11 **IT IS SO ADJUDGED.**

12
13 DATE: 9/20/21

DANIEL J. BUCKLEY

Hon. Daniel Buckley

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not
4 a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los
5 Angeles, California 90017. On **September 16, 2021**, I served the foregoing document described
as:

6 **[SECOND CORRECTED PROPOSED] ORDER AND JUDGMENT GRANTING
PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

7 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
8 addressed as follows:

9 Keith A. Fink, Bar No. 146841
10 Sarah E. Hernandez, Bar No. 206305
11 KEITH A. FINK & ASSOCIATES
12 1990 Bundy Drive, Suite 620
Los Angeles, California 90025
**Attorneys for Defendants Tapia
Enterprises, Inc. and Kitchen Cuts, LLC**

13 **[X] BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the
14 parties to accept electronic service, I caused the documents to be sent to the persons at
15 the electronic service addresses listed above via third-party cloud service **CASE
ANYWHERE**. I did not receive an error message.

16 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

17 Executed this **September 16, 2021** at Los Angeles, California.

18
19 Ximena Reyes
20 Type or Print Name

21 */s/ Ximena Reyes*
22 Signature
23
24
25
26
27
28



MOON & YANG, APC
ATTORNEYS AT LAW
1055 W. SEVENTH STREET, SUITE 1880, LOS ANGELES, CA 90017

MOON & YANG, APC
1055 W. 7th Street, Suite 1880
Los Angeles, CA 90017



PITNEY BOWES
\$0.730
US POSTAGE
FIRST-CLASS
026W0004897235
2000164320
ZIP 90017
SEP 16 2021

9001732529 0002