

FILED
Superior Court of California
County of Los Angeles

APR 18 2023

David W. Slayton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

VANESSA GONZALEZ, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

SEVEN FORTY ONE COMPANY, INC.,
MR. STAX, INC., and DOES 1 through
100, inclusive,

Defendants.

Case No.: 20STCV30761


~~PROPOSED~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: April 18, 2023
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

Plaintiff Vanessa Gonzalez sues her former employers, Defendants Seven Forty One Company, Inc. and Mr. Stax, Inc. (collectively, "Defendants") for alleged wage and hour violations. Defendants operate International house of Pancakes (IHOP)

1 restaurants throughout California. Plaintiff seeks to represent a class of Defendants'
2 current and former non-exempt employees.

3 On August 12, 2020, Plaintiff filed her initial class action complaint. On
4 October 29, 2020, Plaintiff filed the operative First Amended Complaint ("FAC"),
5 alleging causes of action for: (1) unlawful failure to pay wages (Labor Code §§ 201-
6 204, 510, 558, 1194, 1198; IWC Wage Order); (2) failure to provide meal and rest
7 periods (Labor Code §§ 226.7, 512); (3) failure to provide accurate itemized wage
8 statements (Labor Code §§ 226, 1174); (4) failure to pay wages on termination (Labor
9 Code § 203); (5) unfair business practices under the Unfair Competition Act (Bus. &
10 Prof. Code §§ 17200-17208); and (6) Private Attorneys General Act claim (Labor Code
11 § 2699) ("PAGA").

12 On March 5, 2021, the parties participated in a mediation before mediator Eve
13 Wagner. Following mediation, on April 7, 2021, the parties reached a settlement of the
14 action with the assistance of the mediator's evaluation. The terms are finalized in the
15 Joint Stipulation and Agreement for Class and Representative Action Settlement and
16 Release, a copy of which was filed with the Court.

17 On December 15, 2021, the Court issued a "checklist" to the parties pertaining to
18 deficiencies in Plaintiff's motion and the settlement. In response, the parties filed
19 further briefing, including the revised Settlement Agreement attached to the Declaration
20 of Scott Edward Cole filed April 29, 2022 as Exhibit 1.

21 On May 20, 2022, the Court issued another checklist regarding additional
22 deficiencies with Plaintiff's motion and the settlement. In response, the parties filed
23 additional briefing, including the further revised Settlement Agreement attached to the
24 Supplemental Declaration of Ryan C. McKim filed August 31, 2022 as Exhibit A.

1 On September 26, 2022, the Court issued an additional checklist and on
2 September 29, 2022, called the matter for hearing to confer with counsel regarding
3 issues set forth in the checklist. In response, Plaintiff's counsel filed additional briefing
4 (see Supplemental Declaration of Scott Edward Cole filed December 16, 2022).

5 The settlement was preliminarily approved on December 29, 2022, subject to
6 certain conditions with which there has been compliance, including the re-filing of the
7 Settlement Agreement with each party's counsel's signatures. All references below are
8 to the Settlement Agreement attached as Exhibit 1 to the Declaration of Ryan C.
9 McKim filed January 13, 2023.

10 Notice was given to the Class Members as ordered (see Declaration of Jennifer
11 Beliveau ("Beliveau Decl.")). Now before the Court is Plaintiff's motion for final
12 approval of the Settlement Agreement, including for payment of fees, costs, and a
13 service award to the named plaintiff. For the reasons set forth below, the Court grants
14 final approval of the settlement and sets attorneys' fees and costs.

15 16 **II. THE TERMS OF THE SETTLEMENT**

17 18 **A. SETTLEMENT CLASS DEFINITION**

19 "Class" or "Class Members" means all current and former hourly or non-exempt
20 employees of Defendants who performed work at 880 S. Arroyo Pkwy, Pasadena, CA
21 91105 and/or 25060 Avenue Stanford, Suite 200, Valencia, CA 91355, at any time from
22 August 12, 2016 up to and including August 23, 2021, of which there are an estimated
23 170 total. (§1.4)

24 "Class Period" means the time period from August 12, 2016 up to and including
25 August 23, 2021. (§1.7)

1 "Settlement Class" or "Settlement Class Member(s)" or "Members of the
2 Settlement Class" means any, or collectively all Class Members who do not submit
3 timely and valid Requests for Exclusion to Opt Out of the Settlement. (§1.40)

4 The "PAGA Group Member(s)" is defined as all allegedly aggrieved non-
5 exempt and/or hourly-paid, current and former employees, who performed work at 880
6 S. Arroyo Pkwy, Pasadena, CA 91105 and/or 25060 Avenue Stanford, Suite 200,
7 Valencia, CA 91355, at any time during the PAGA Period. (§1.8)

8 "PAGA Period" means the time period from June 9, 2019 through January 14,
9 2021. (§1.9)

10 11 **B. THE MONETARY TERMS OF SETTLEMENT**

12 The essential monetary terms are as follows:

- 13 • The Gross Settlement Amount ("GSA") is **\$190,000** (§1.17). This includes
14 payment of a PAGA penalty of **\$5,000** to be paid 75% to the LWDA (\$3,750)
15 and 25% to the PAGA Group Members (\$1,250) (§§1.27, 6.1.d).
- 16 • The Settlement Amount ("Net") (**\$81,649**) is the GSA less:
 - 17 ○ Up to **\$66,500** (35%) for attorney fees (§4.4);
 - 18 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
 - 19 ○ Up to **\$7,500** for a service award to the proposed class representative
20 (§4.1); and
 - 21 ○ Estimated **\$9,351** for settlement administration costs (§4.5).
- 22 • Employer-side payroll taxes will be paid from the GSA (§1.29).
- 23 • Assuming the Court approves all maximum requested deductions, approximately
24 \$91,421.58 will be available for automatic distribution to 170 participating class
25 members. The average settlement share will be approximately \$537.77.

1 (\$91,421.58 Net ÷ 170 class members = \$537.77). In addition, each PAGA
2 Group Member will receive a portion of the PAGA penalty. (\$1,250 or 25% of
3 \$5,000 PAGA penalty).

- 4 • There is no Claim Requirement (Notice pg. 1).
- 5 • The settlement is not reversionary (§6.5).
- 6 • Individual Settlement Share Calculation: The portion of the Net Settlement
7 Amount payable to each Settlement Class Member will be calculated as follows:
8 (§6.2)

- 9 ○ The Settlement Administrator will determine the total "Workweeks" for
10 each Class Member. Workweeks are to be calculated by determining the
11 number of days between the Class Member's start and end dates of
12 employment during the Class Period (and only for work performed at 880
13 S. Arroyo Pkwy, Pasadena, CA 91 105 and/or 25060 Avenue Stanford,
14 Suite 200, Valencia, CA 91355) and then dividing by seven (7). If a Class
15 Member was hired prior to August 12, 2016, then his or her "start date"
16 will be August 12, 2016. (§6.2.a) The Settlement Administrator shall
17 divide the Net Settlement Amount by the total number of Workweeks of
18 all Settlement Class Members, (and only for work performed at 880 S.
19 Arroyo Pkwy, Pasadena, CA 91 105 and/or 25060 Avenue Stanford, Suite
20 200, Valencia, CA 91355) in order to determine the amount that each
21 Settlement Class Member is entitled to for each Workweek (the "Weekly
22 Amount"). (§6.2.b) The Settlement Administrator will multiply the
23 Weekly Amount by the total number of Workweeks that each Settlement
24 Class Member is credited with to arrive at his or her Individual Settlement
25 Amount. (§6.2.c)

1 ○ PAGA Payments: Each PAGA Group Member shall receive a portion of
2 the PAGA Group Payment on a pro-rata basis by multiplying the PAGA
3 Group Payment by the ratio of (i) the number of pay periods worked by
4 the PAGA Group Member any time during the PAGA Period to (ii) the
5 total number of pay periods worked by all PAGA Group Members during
6 the PAGA Period. (§6.2.2)

- 7 ● Tax Withholdings: Each Individual Settlement Amount will be allocated as 20%
8 as wages, 80% as interest and penalties (§6.3). Each PAGA Group Member shall
9 be solely responsible for any and all his or her share of tax obligations associated
10 with his or her respective of a portion of the PAGA Group Payment. (§6.2.2)
- 11 ● Funding and Distribution of Settlement: Within fifteen (15) calendar days after
12 the Effective Date, Seven Forty One Company, Inc. shall provide the Settlement
13 Administrator with the Gross Settlement Amount and the Settlement
14 Administrator shall promptly deposit the Gross Settlement Amount into a
15 qualified settlement account established by the Settlement Administrator. No
16 later than five (5) calendar days after the Settlement Administrator deposits the
17 Gross Settlement Amount into the qualified settlement account, the Settlement
18 Administrator shall distribute the following payments: Individual Settlement
19 Payments to Settlement Class Member, Attorneys' Fees and Expenses to Class
20 Counsel, Service Award to Class Representative, LWDA Payment to the
21 LWDA, and PAGA Group Members' respective shares of the PAGA Group
22 Payment, all in the Court-approved amounts. (§6.4)
- 23 ● Uncashed Settlement Payment Checks: Individual Settlement Payment checks
24 and checks for PAGA Group Members' respective shares of the PAGA Group
25 Payment shall be valid for a period of one hundred and eighty (180) calendar

1 days after they are mailed, and thereafter, will be cancelled. Funds associated
2 with cancelled checks will be donated to Bet Tzedek. (¶6.5) The parties and their
3 respective counsel represent that they have no interest or involvement in the
4 governance or work of Bet Tzedek. (Decl. of Scott Edward Cole ISO Prelim
5 ¶32; Supp. Decl. of Vanessa Gonzalez ISO Prelim ¶2; Decl. of Ryan C. McKim
6 ISO Prelim ¶¶ 2-3; Decl. of Mark Justice ISO Prelim ¶2; Decl. of Maria Wren
7 ISO Prelim ¶2.)

8 9 **C. TERMS OF RELEASES**

- 10 • Release of Claims by Settlement Class Members, PAGA Group Members, and
11 Plaintiff. Upon the Effective Date, each Settlement Class Member and Plaintiff,
12 each release, discharge, and agree to hold harmless the Released Parties, and
13 each of them, of and from any and all Released Claims. Upon the Effective Date,
14 each PAGA Group Member and Plaintiff, each release, discharge, and agree to
15 hold harmless the Defendants, and each of them, of and from any and all
16 Released PAGA Claims. (¶9.1)
 - 17 ○ Plaintiff and each Class Member (except those who submit a timely and
18 valid Request for Exclusion), will be bound to the release of Released
19 Claims as a result of the Settlement and to the terms of the judgment.
20 However, to the extent that a Class Member is also a PAGA Group
21 Member, he or she will be bound by the release of Released PAGA
22 Claims and will receive a portion of the PAGA settlement,
23 notwithstanding his or her Request for Exclusion. (*Ibid.*)
 - 24 ○ No release in this Settlement shall be effective until the Gross Settlement
25 Amount is fully funded. (*Ibid.*)

- "Released Claims" means any and all federal and California state law wage-and-hour claims, rights, demands, liabilities, and/or causes of action of every nature and description arising from any and all claims that were alleged or could have been alleged in the Complaint based on the facts contained therein only, arising during the Class Period, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, reimbursements, damages, unpaid costs, penalties (including penalties under the California Labor Code's Private Attorneys General Act of 2004, as amended, California Labor Code §§ 2698, et seq.), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, including without limitation, California Labor Code §§ 200, 201, 202, 203, 204, 218, et seq., 218.5, 226, et seq., 226.7, 510, 512, 558, 1174, 1174(d), 1174.5, 1182.12, 1194, et. seq., 1197, et seq., 1197.1, 1198, 2698, et seq., 2699, 2699.3, and any federal counterparts, California Business and Professions Code §§ 17200-17208, any IWC Wage Orders, California Code of Civil Procedure § 1021.5, any claims for meal and rest period violations; unpaid minimum wages or overtime wages; untimely pay during and at termination of employment, unreimbursed business expenses, record-keeping violations, and/or inaccurate pay stubs arising under Labor Code section 226; and any unlawful deductions; and causes of action for (i) unlawful failure to pay wages (Labor Code §§ 200-204, 510, 558, 1194; IWC Wage Order); (ii) Failure to provide meal and rest periods (Labor Code §§ 226.7, 512); (iii) Failure to provide itemized wage statements (Labor Code §§ 226, 1174); (iv) Failure to timely pay wages on termination (Labor Code § 203); (v) Unfair business practices under the Unfair Competition Act (Bus. & Prof. Code §§

1 17200-17208); and (vi) Private Attorneys General Act of 2004 (Labor Code §§
2 2698, et seq.). (§1.32)

3 ○ "Released Claims" shall only refer to employment claims (as enumerated
4 above) arising out of labor performed at 880 S. Arroyo Pkwy, Pasadena,
5 CA 91105 and/or 25060 Avenue Stanford, Suite 200, Valencia, CA
6 91355. (*Ibid.*)

7 ○ "Complaint" shall mean the First Amended Class Action Complaint for
8 Damages and Enforcement Under the Private Attorneys General Act, Cat.
9 Labor Code §§ 2698, et seq., filed on October 29, 2020. (§1.11)

10 ● "Released PAGA Claims" means any and all claims, demands, rights, liabilities,
11 and/or causes of action for penalties under the California Private Attorneys'
12 General Act that accrued during the PAGA Period and that were asserted in
13 Plaintiff's LWDA notice letter dated August 12, 2020, a copy of which is
14 attached as Exhibit 3 [to the Declaration of Scott Edward Cole filed April 29,
15 2022], or the Complaint as well as those that could have been alleged in the
16 Complaint based on the facts contained therein, including, without limitation,
17 Labor Code sections 200, 201, 202, 203, 204, 218, et seq., 218.5, 226, et seq.,
18 226.7, 510, 512, 558, 1174, 1174(d), 1174.5, 1182.12, 1194, et. seq., 1194.2,
19 1197, et seq., 1197.1, 1198, 2698, et seq., 2699, 2699.3, and 2802. (§1.33)

20 ● "Released Parties" shall mean Defendants and all of their respective current and
21 former parents, subsidiaries, predecessors, successors, and their affiliated
22 entities, and each of their respective owners, officers, directors, partners,
23 shareholders, agents, and any other successors, heirs, assigns, or legal
24 representatives, any attorneys, insurers, claims representatives, members,
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managers, dba's, and representatives, and any of their, direct or indirect, parent or subsidiary entities. (§1.34)

- The named Plaintiff will also provide a general release and a waiver of the protections of Cal. Civ. Code §1542. (§9.2)
- The releases are effective upon the Effective Date, which encompasses the date that the GSA is fully funded. (§1.14) No release in this Settlement shall be effective until the Gross Settlement Amount is fully funded. (§9.1) Funding will occur within fifteen (15) calendar days after the Effective Date. (§6.4)

III. ANALYSIS OF SETTLEMENT AGREEMENT

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” Cal. Rules of Court, rule 3.769(h).

As discussed more fully in the Order conditionally approving the settlement, “[i]n a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245

1 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
2 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
3 extent necessary to reach a reasoned judgment that the agreement is not the product of
4 fraud or overreaching by, or collusion between, the negotiating parties, and that the
5 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
6 quotation marks omitted].

7 “The burden is on the proponent of the settlement to show that it is fair and
8 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
9 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
10 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
12 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
13 1802. Notwithstanding an initial presumption of fairness, “the court should not give
14 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
15 116, 130. “Rather, to protect the interests of absent class members, the court must
16 independently and objectively analyze the evidence and circumstances before it in order
17 to determine whether the settlement is in the best interests of those whose claims will be
18 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
19 that determination, the court should consider factors such as “the strength of plaintiffs’
20 case, the risk, expense, complexity and likely duration of further litigation, the risk of
21 maintaining class action status through trial, the amount offered in settlement, the extent
22 of discovery completed and stage of the proceedings, the experience and views of
23 counsel, the presence of a governmental participant, and the reaction of the class
24 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
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1 the court is free to engage in a balancing and weighing of factors depending on the
2 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

3 **A. A PRESUMPTION OF FAIRNESS EXISTS**

4 The Court preliminarily found in its Order of December 29, 2022 that the
5 presumption of fairness should be applied. No facts have come to the Court’s attention
6 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
7 presumption of fairness as set forth in the preliminary approval order.

8 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

9 The settlement was preliminarily found to be fair, adequate and reasonable.
10 Notice has now been given to the Class and the LWDA. The notice process resulted in
11 the following:

12 Number of class members: 170

13 Number of notices mailed: 170

14 Number of undeliverable notices: 4

15 Number of opt-outs: 0

16 Number of objections: 0

17 Number of participating class members: **170**

18 (Beliveau Decl. ¶¶3-13.)

19 The Court finds that the notice was given as directed and conforms to due process
20 requirements. Given the reactions of the Class Members and the LWDA to the proposed
21 settlement and for the reasons set for in the Preliminary Approval order, the settlement is
22 found to be fair, adequate, and reasonable.

23 **C. CLASS CERTIFICATION IS PROPER**

24 For the reasons set forth in the preliminary approval order, certification of the
25 Class for purposes of settlement is appropriate.

1 **D. ATTORNEY FEES AND COSTS**

2 Class Counsel requests **\$66,500** (35%) for attorney fees and **\$10,227.42** for costs.
3 (MFA 2:20-24.)

4 Courts have an independent responsibility to review an attorney fee provision and
5 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
6 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
7 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
8 503.

9 In the instant case, fees are sought pursuant to the percentage method. (MFA at
10 pp. 12-13.) The \$66,500 fee request is 35% of the Gross Settlement Amount, which is a
11 higher percentage than the average fee award in class actions. (*In re Consumer Privacy*
12 *Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [noting that whether the percentage
13 method or the lodestar method is used, fee awards average around one-third of the
14 recovery, and that 25% is the benchmark].) The notice expressly advised class members
15 of the fee request, and no one objected. (Beliveau Decl. ¶11, Exhibit A thereto.)

16 Attorney Cole contends that his firm's compensation in this action was wholly
17 contingent, with no guarantee of recovery of fees or reimbursement of costs.
18 (Declaration of Scott Edward Cole ISO Final ¶38.) However, he does not request a
19 lodestar crosscheck of his firm's fees nor provides any information regarding his hourly
20 rates, total lodestar, or whether his firm's rates were approved by other courts. Nor does
21 he provide a time sheet of his firm's tasks and hours spent on the case so that the Court
22 can make an informed decision as to how much time was spent on claims and the like.

23 In support, Cole attaches his firm's resume and summarizes his training as well as
24 the firm's experience in class certification and class action settlements and adjudications.
25 (*Id.* at ¶¶33-37, Exhibit B.) He also attaches a Compendium of Settlement Item Awards

1 (Exhibit D to Cole Decl. ISO Final), which lists a range of Class Representative Awards,
2 Attorney Fee Award percentages, and PAGA Awards that were approved in other class
3 actions throughout the state. This is of limited utility, as reliance on settlements in other
4 cases which may have justified a certain attorney fee percentage is misplaced. Each case
5 is dependent on its own facts.

6 Here, a 33 1/3% award sufficiently rewards counsel for any risk they took in this
7 case. There is nothing to suggest whether this case involved novel legal issues or
8 particularly difficult facts that would make a 35% fee award appropriate. Plaintiff's
9 counsel appears to be experienced in wage and hour cases (see Exhibit B to Cole Decl.
10 ISO Final) and do not show they took any risk in excess of that normally taken in any
11 other contingent fee case of this type.

12 In addition, despite reaching agreement in principle regarding settlement on
13 approximately April 7, 2021, the initial settlement agreement was not filed until
14 September 3, 2021 and no less than 3 checklists were issued before the settlement could
15 be preliminary approval could be granted. Some issues appeared because counsel did not
16 address all issues in the Court's initial checklist. See Checklists dated December 15,
17 2021, May 20, 2022, September 26, 2022. While there was some delay occasioned by
18 the Court's calendar and new counsel substituting in for defendant, Class Counsel did not
19 initially document a settlement that complied with the requirements of the Superior
20 Court's checklist for same, delaying payment to the class and does not show work
21 justifying any fee award above the average. Accordingly, the Court awards fees in the
22 amount of 33 1/3% of the settlement amount, or **\$63,333.33**.

23 Class Counsel requests **\$10,227.42** in costs. This is less than the \$20,000 cap
24 provided in the settlement agreement (§4.4). The amount was disclosed to Class
25 Members in the Notice, and no objections were received. (Beliveau Decl. ¶11, Exhibit

1 A thereto.) Costs include: Mediation (\$5,116.66), Filing and Service Fees (\$4,760.07),
2 and Research Services (\$269.21). (Cole Decl. ISO Final ¶40, Exhibit C.)

3 The costs appear to be reasonable and necessary to the litigation, are reasonable
4 in amount, and were not objected to by the class.

5 For all of the foregoing reasons, costs of **\$10,227.42** are approved.

6 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

7 “Service awards are established in California and the Ninth
8 Circuit. *See Cellphone Termination Fee Case (2010)*, 186 Cal.App.4th 1380,
9 1394 (noting the "scholarly debate about the propriety of individual awards to named
10 plaintiffs" and the "surprising dearth of California authority directly addressing this
11 question"); *Roes, 1-2 v. SFBSC Mgmt., LLC* (9th Cir. 2019) 944 F.3d 1035,
12 1057 (reasonable incentive awards are permitted to compensate class representatives for
13 work on behalf of the class and financial or reputational risk undertaken in bringing the
14 action). Their apparent purpose is, in part, to reimburse actual expenses or where the
15 market would not otherwise produce a plaintiff. *In Re Continental Securities Litigation*
16 (7th Cir. 1992) 962 F. 2d 566. There is some question as to their continuing viability.
17 *See Johnson v. NPAS Solutions* (11th Cir. 2020) 975 F.3d 1244. Nonetheless, under
18 existing California and Ninth Circuit authority they are permitted where there is a
19 showing of the time and effort expended by the individual and a reasoned explanation of
20 financial or other risks undertaken by the class representative. *See Clark v. American*
21 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone*
22 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may
23 consider in determining whether to make an incentive award include: (1) the risk to the
24 class representative in commencing suit, both financial and otherwise; (2) the notoriety
25 and personal difficulties encountered by the class representative; (3) the amount of time

1 and effort spent by the class representative; (4) the duration of the litigation and; (5) the
2 personal benefit (or lack thereof) enjoyed by the class representative as a result of the
3 litigation. (Citations.)”].

4 The average award to the class members is \$ 537.77. Class Representative
5 Vanessa Gonzalez requests an enhancement award of **\$7,500**. (Declaration of Vanessa
6 Gonzalez ISO Final ¶10.) Plaintiff represents that her contributions to this action
7 include: staying in contact with her attorneys, providing information about her
8 experiences with Defendant, identifying sources of further information such as co-
9 workers and other witnesses, answering written discovery, producing documents, and
10 providing her attorneys with information to use in the mediation. (*Id.* at ¶¶8-9.) She
11 asserts that she participated in the case for three years, though she does not provide a
12 specific estimate of how many hours she spent. (*Id.* at ¶10.) She further represents that
13 she put her livelihood in peril by filing the lawsuit and that she suffered reputational risk,
14 though she has not shown how this has occurred. (*Id.* at ¶¶6, 10.)

15 In light of the above-described contributions to this action, the risk undertaken by
16 plaintiff, and in acknowledgment of the benefits obtained on behalf of the class, including
17 the average class member award, a \$5,000 service award to Plaintiff is reasonable and
18 approved.

19 **F. SETTLEMENT ADMINISTRATION COSTS**

20 The Settlement Administrator, Simpluris, Inc., requests **\$9,351** in compensation
21 for its work in administrating this case. (Beliveau Decl. ¶16.) At the time of preliminary
22 approval, costs of settlement administration were estimated at \$9,351 (¶4.5). Class
23 Members were provided with notice of this amount and did not object. (Beliveau Decl.
24 ¶11, Exhibit A thereto.)
25

Accordingly, settlement administration costs are approved in the amount of
\$9,351.

IV. CONCLUSION AND ORDER

The Court hereby:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards **\$63,333.33** in attorney fees to Class Counsel, Cole & Van Note;
- (4) Awards **\$10,227.42** in litigation costs to Class Counsel;
- (5) Approves payment of **\$3,750** (75% of \$5,000 PAGA penalty) to the LWDA;
- (6) Awards **\$5,000** as a Class Representative Service Award to Vanessa Gonzalez;
- (7) Awards **\$9,351** in settlement administration costs to Simpluris, Inc.;
- (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, full release language, and a statement that no class members opted out by 5/2/23;
- (9) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor Code §2699 (1)(3); and
- (10) Sets a Non-Appeal Case Review re: Final Report re: Distribution of Settlement Funds for _____, 12/27/23, at 8:30 am
Final Report is to be filed by _____ 12/15/23. If there is unpaid residue or unclaimed or abandoned class member funds and/or interest thereon to be distributed to Bet Tzedek, Plaintiff's counsel shall also submit an Amended

1 Judgment pursuant to Cal. Code of Civ. Pro. § 384 and give notice of the
2 Judicial Council of California upon entry of the Amended Judgment, when
3 entered, pursuant to Cal. Code of Civ. Pro. §384.5.
4

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6 Dated:

4/18/23

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court
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