

(SIGNATURE)

EXHIBIT 1

05/03/2023

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

By: R. Arraiga Deputy

Osorio v. US Foods, Inc., Case No. 20STCV46858

The Parties' Motion for Final 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 \$1,900,000.
- B. The Net Settlement Amount is the GSA minus the following:
 - \$633,333.33 (1/3) for attorneys' fees to Class Counsel, LOYR, APC;
 - \$17,722.65 in attorney costs to Class Counsel;
 - \$10,750 for claims administration costs to Simpluris, Inc.;
 - \$5,000 to the class representative, Felipe Osorio, for an enhancement award;
 - \$75,000 (75% of \$100,000 PAGA penalty) payable to the LWDA.
- C. The employer's share of payroll taxes will be paid separately by Defendant in addition to the GSA.
- D. Plaintiffs release of Defendants from claims described herein.

By **May 31, 2023**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1) (3).

By **May 3, 2024**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

Court sets a **Non-Appearence Case Review for May 10, 2024, 8:30 AM, Department 9.**

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I.
INTRODUCTION

A. Background

This is a wage and hour class action. On December 7, 2020, Plaintiff filed a class and PAGA representative action against Defendant alleging causes of action for: 1. Failure To Compensate All Hours Worked In Violation Of Industrial Welfare Commission Order No. 4 And Cal. Labor Code §§ 200, 226, 500, 510, 1194, 1197, And 1198; 2. Failure To Pay Minimum Wages In Violation Of Labor Code §§ 1182.12, 1194, 1194.2, 1197; 3. Failure To Pay Overtime Compensation In Violation Of Cal. Labor Code § 1194, Et Seq.; 4. Failure To Provide Proper Wage Statement In Violation Of Cal. Labor Code § 226; 5. Violation Of Labor Code §§ 2698, Et Seq. ("PAGA"); And 6. Violations Of Cal. B&P Code §§ 17200, Et Seq.

On January 8, 2021, Defendant timely removed this matter to Federal Court. Subsequently, the Parties agreed to attempt a resolution of this matter through private mediation.

Counsel represents that prior to settlement, the parties conducted informal discovery and completed the Belaire-West opt-out process which resulted in the release of the names and contact information of approximately 1792 putative class members. It is represented that thereafter, Plaintiff propounded informal discovery requests for documents and information in order to obtain timecards and payroll records of the consenting putative class members. On August 6, 2021, in response to Plaintiff's informal discovery requests, Defendant produced more than 13,000 documents as well as timecard and payroll data, in Excel format. Both sides agreed to take a 25% sampling of Class Member records. Plaintiff's experts, Berger Consulting Group, analyzed the entire sample time records and payroll records thoroughly, which corroborated Plaintiff's claims of systematic unpaid wages and meal break violations.

On August 27, 2021, the parties participated in a full-day mediation before Eve Wagner, Esq, and were ultimately able to come to a settlement agreement. Thereafter, the parties agreed upon a long form settlement agreement, a fully executed copy of which is attached to the Declaration of Young W. Ryu ("Ryu Decl.") as Exhibit A.

On November 9, 2021, the Court issued a checklist of items for the parties to address and continued preliminary approval.

In response, on February 22, 2022, counsel filed an Amended Settlement Agreement attached to the Supplemental Declaration of Young W. Ryu ("Ryu Supp. Decl.") ISO Preliminary Approval as Exhibit B.

On April 14, 2022, the Court issued another checklist of items for the parties to address and again continued preliminary approval. In response, on June 29, 2022, counsel filed a Second Amended Settlement Agreement attached to the Second Supplemental Declaration of Young W. Ryu ("Ryu 2nd Supp. Decl.") ISO Preliminary Approval as Exhibit A.

On July 20, 2022, the Court again continued preliminary approval. In response, on August 22, 2022, counsel filed a Third Amended Settlement Agreement attached to the Supplemental Declaration of Young W. Ryu ("Ryu 3rd Supp. Decl.") ISO Preliminary Approval as Exhibit 1.

Preliminary Approval was granted October 26, 2022.

The Parties now move for final approval of the proposed class action settlement.

B. Definitions

"Class" or "Class Members" or "Aggrieved Employees" means (Settlement Agreement, ¶¶1.4, 1.5):

- o All current and former California non-exempt, non-driver employees based out of the Corona facility who completed at least one wellness check in California at any time between April 15, 2020 through July 12, 2020 (¶¶1.4.a, 1.5.a);
- o All current and former California non-exempt, driver employees based out of the Corona facility who completed at least one wellness check in California at any time between April 15, 2020 through June 28, 2021 (¶¶1.4.b, 1.5.b);
- o All current and former California non-exempt, non-driver employees based out of the Fontana facility who completed at least one wellness check in California at any time between April 15, 2020 through June 28, 2021 (¶¶1.4.c, 1.5.c);

- o All current and former California non-exempt, non-driver employees based out of La Mirada who completed at least one wellness check in California at any time between April 21, 2020 and January 29, 2021 (§§1.4.d, 1.5.d);
- o All current and former California non-exempt, non-driver employees based out of Livermore who completed at least one wellness check in California at any time between April 15, 2020 and June 25, 2020 (§§1.4.e, 1.5.e);
- o All current and former California non-exempt, non-driver employees based out of Hawthorne who completed at least one wellness check in California at any time between April 15, 2020 and June 25, 2020 (§§1.4.f, 1.5.f);
- o All current and former California non-exempt, non-driver employees based out of Tracy who completed at least one wellness check in California at any time between April 15, 2020 and June 26, 2020 (§§1.4.g, 1.5.g); and
- o All current and former California non-exempt, non-driver employees based out of Vista who completed at least one wellness check in California at any time between April 15, 2020 and June 27, 2020. (§§1.4.h, 1.5.h).

The Parties understand and agree that the Class definition does not involve subclasses but rather merely covers the respective time periods during which Defendant's California locations conducted COVID-19 related temperature checks, which are the subject of the Parties' dispute.

The Parties further note that, because the PAGA claim seeks penalties for the same underlying alleged Labor Code violations in the class action claims, and because of the limited time periods at issue in this Action, the Class Members and Aggrieved Employees include the same population of current and former employees. (§1.4, fn. 1.)

There are 835 Class Members. (Declaration of Lindsay Kline ("Kline Decl."), ¶6.)

Defendant represents that there are 15,514 eligible pay periods as of August 27, 2021. If the actual number of eligible pay periods increases by more than 10% from that figure, then US Foods shall increase the Gross Settlement Amount on a proportional basis (e.g., if there is a 11% increase in the number of eligible pay periods, US Foods will increase the Gross

Settlement Amount by 1%, if there is a 12% increase, the Gross Settlement Amount will increase by 2%, etc.) (§1.58.8)

For these 835 Class Members, the aggregate number of Pay Periods was 15,197 pay periods. (Supplemental Declaration of Lindsay Kline ("Kline Supp. Decl."), ¶4.)

The parties agree to certification for purposes of settlement. (§1.54)

C. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount is \$1,900,000, non-reversionary. (§1.11)
- The Net Settlement Amount (\$1,109,250) is the Gross Settlement Amount minus the following:
 - o Up to \$665,000 (35%) for attorney fees (§1.48.2.a);
 - o Up to \$20,000 for litigation costs (Ibid.);
 - o Up to \$20,000 for a service award (§1.48.2.b);
 - o Up to \$10,750 for claims administration (§1.48.2.c); and
 - o \$75,000 (75% of \$100,000 PAGA penalty) to the LWDA (§1.17).
- The Gross Settlement Amount excludes the employer's portion of payroll taxes, which will be paid separately by Defendant. (§1.11)
- Funding of the Settlement: Defendant shall deposit the total Gross Settlement Amount to the Settlement Administrator for disbursement consistent with this Stipulation within 15 business days of the Effective Date. (§1.47.1)
- There is no claims process. (§1.19)
- Individual Class Settlement Payments to Settlement Class Members: The Settlement Administrator will calculate the Individual Class Settlement Payments to Settlement Class Members. The Individual Class Settlement Payments to Settlement Class Members will be made pro rata based on the number of Workweeks that each Settlement Class Member worked during the Class Period. Individual Class Settlement Payments will be calculated as follows: [(Settlement Class Member's Workweeks) ÷ (total of all Settlement Class Members' Workweeks)] x [Net Settlement Amount]. (§1.56.1)
 - o Taxes: 50% to wages and 50% to interest and penalties. (§1.48.2.d)
- Individual PAGA Settlement Payments to Aggrieved Employees: The Individual PAGA Settlement Payments to Aggrieved Employees

will be made pro rata based on the number of Workweeks that each Aggrieved Employee worked during the PAGA Period. Individual PAGA Settlement Payments will be calculated as follows:

$$[(\text{Aggrieved Employee's Workweeks}) \div (\text{total of all Aggrieved Employees' Workweeks})] \times [\text{PAGA Aggrieved Employee Amount}].$$

(¶1.56.1)

o Tax Allocation: 100% to civil penalties. (¶1.13)

• "Objection Deadline" means the deadline for a Class Member to object to the settlement, which date shall be indicated on the Class Notices mailed by the Settlement Administrator and which shall be postmarked no later than 45 calendar days after the Notice Mailing Deadline. (¶1.22) In the event the Settlement Administrator must re-mail any Class Notice, the Opt Out and Objection Deadlines shall be the later of 15 calendar days from the date of the re-mailing of the Class Notice, or 45 days from the date of the initial mailing. (¶1.51.7)

• "Opt Out Deadline" means the deadline for a Class Member to Opt Out of the non-PAGA portion of the settlement, which date shall be indicated on the Class Notices mailed by the Settlement Administrator and which shall be postmarked no later than 45 calendar days after the Notice Mailing Deadline (or 15 days after the Settlement Administrator re-mails the Class Notice to the Class Member, whichever is later). (¶1.24)

o If the number of Class Members who submit valid Requests for Exclusion reaches 5%, Defendant may rescind this Joint Stipulation. (¶1.54)

• Uncashed Checks: Uncashed Settlement Checks: Any checks issued to Settlement Class Members and/or Aggrieved Employees shall be negotiable for at least 180 calendar days from the date the checks are mailed. Within 60 calendar days after the last day for Settlement Class Members to negotiate their respective settlement payments, any amounts allocated to Settlement Class Members that were not negotiated shall be directed to the State Controller's Office under the Unclaimed Property statutes. Settlement Class Members and Aggrieved Employees whose Individual Class Settlement Payment and/or Individual PAGA Settlement Payments checks are cancelled or remain uncashed shall, nevertheless, be bound by this Settlement. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount and PAGA Aggrieved Employee Amount will be paid out to Settlement Class Members and Aggrieved Employees, whether or not they all cash their settlement checks. Defendant will not be required to pay any interest on amounts directed to the State Controller's Office under the Unclaimed Property statutes. (¶1.56.2)

• The claims administrator will be Simpluris, Inc. (¶1.2)

- The Settlement was submitted to the LWDA on December 2, 2021 and the Amended Settlement was submitted to the LWDA on March 20, 2022. (Exhibit C to Ryu Supp. Decl. ISO Preliminary Approval) The Second Amended Settlement was submitted to the LWDA on June 29, 2022. (Exhibit D to Ryu 2nd Supp. Decl. ISO Preliminary Approval)
- Scope of the release: All Settlement Class Members will be bound by all terms of the Joint Stipulation (including the Class Released Claims) and the Court's Preliminary Approval and Final Approval orders and final Judgment, unless the Class Member submits a timely and valid Opt Out. However, any Class Member who submits an Opt Out will still remain bound by the PAGA portion of the Settlement Agreement, including the PAGA Released Claims, to the extent the Class Member also is an Aggrieved Employee. When the Final Approval Order and judgment become final, Aggrieved Employees will be deemed to have released the PAGA Released Claims. (§1.51.8)
 - o Upon Defendant fully funding of the settlement, Plaintiff and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of all Class Released Claims during the Class Period. As to any Settlement Class Member who cashes the check representing their Individual Class Settlement Payment, the signing and negotiation of that check shall serve as the Settlement Class Member's consent to join the action for purposes of releasing claims arising under the FLSA that are related to the claims stated in the Action, implicitly or explicitly. (§1.57.1)
- "Class Released Claims" shall mean all claims, demands, rights, liabilities, penalties, fees, and causes of action that were or could have been asserted by reason of or in connection with any matter or fact set forth or referred to in the complaint (whether in tort, contract, statute or otherwise) during the time periods listed in Section 1.4, including but not limited to any claims based on the following allegations under any theory: failure to pay minimum, regular, or hourly wages, and/or alleged off-the-clock work; failure to pay overtime wages or accurate separation; failure to provide accurate and/or complete wage statements; failure to maintain records; or violation of Cal. Bus. & Prof. Code section 17200 et seq. by engaging in the foregoing conduct. The Released Claims include any alleged violation of Labor Code sections 200, 201-204, 210, 218.5, 226, 500, 510, 558, 1174, 1182.2, 1182.12, 1194, 1194.2, 1197, or 1198. The Final Judgment shall cover and bar each and every Settlement Class Member from asserting any of the Released Claims in the future against Defendant and its past or present

officers, directors, shareholder, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, and their respective successors and predecessors in interest, assigns, subsidiaries, affiliates, and parents (the "Released Parties"). The Class Released Claims also include any claims that were or could have been asserted in the Action for unpaid wages, civil or statutory penalties, interest, attorneys' fees, costs, injunctive relief, restitution, and equitable relief under California or federal statute, ordinance, regulation, common law, or other source of law, including but not limited to the California Labor Code, California Business and Professions Code, and California Civil Code, California Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 et seq. All Class Members shall be bound by this release unless they formally request exclusion from this Settlement by submitting a valid and timely Request for Exclusion or comparable documentation.

However, Class Members that do not negotiate their Individual Settlement Payment checks do not release any claims under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 et seq. Class Released Claims" shall not include claims alleged in LASC Case Number 21STCV32573, entitled IVAN MAGANA et al v. US FOODS, INC., et al., for alleged meal period violations under Labor Code sections 226.7, 512, or 558; violations of the Cal. Bus. & Prof. Code section 17200 et seq. predicated on meal period violations under Labor Code sections 226.7, 512, or 558; nor PAGA penalties for alleged meal period violations under Labor Code sections 226.7, 512, or 558. (§1.33)

o All Aggrieved Employees and the State of California, whether electing to Opt Out from the Settlement or not, will be deemed to have fully released and discharged the Released Parties of the PAGA Released Claims when the Final Approval Order and judgment become final. Plaintiff shall serve a notice of settlement on the California Labor and Workforce Development Agency at the same time Plaintiff files the motion for preliminary approval (Cal. Labor Code § 2699(1)(2)). Plaintiff shall serve any Judgment within 10 days after entry of same on the California Labor and Workforce Development Agency (Cal. Labor Code § 2699(1)(3)). (§1.57.2)

• "PAGA Released Claims" means all claims, demands, rights, liabilities, penalties, fees, and causes of action under PAGA during the PAGA Period, including under Labor Code sections 558 and/or 2698 et seq., predicated on any Labor Code violations alleged in the operative Complaint (which include Labor Code sections 200, 201-204, 210, 218.5, 226, 500, 510, 558, 1174, 1182.2, 1182.12, 1194, 1194.2, 1197, and 1198) or that could have been alleged in the operative Complaint based on the facts,

policies, practices, occurrences, or acts alleged in the operative Complaint, or that are based on any alleged failure to pay minimum, regular, or hourly wages, and/or alleged off-the-clock work; failure to pay overtime wages or accurate overtime wages; failure to pay timely wages during employment; failure to provide accurate and/or complete wage statements; failure to maintain records. PAGA Released Claims shall not include PAGA claims predicated on meal period violations under Labor Code sections 226.7, 512, or 558. alleged in LASC Case Number 21STCV32573, entitled IVAN MAGANA et al v. US FOODS, INC., et al. (§1.36)

o "Released Parties" means Defendant and its past or present officers, directors, shareholder, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, and their respective successors and predecessors in interest, assigns, subsidiaries, affiliates, and parents. (§1.42)

o The cashing, deposit, or negotiation of this settlement check shall be deemed to be your consent in writing to become a party to this action for the purposes of effectuating the settlement and release of claims arising under the Fair Labor Standards Act ("FLSA") as described in the Settlement Agreement in Felipe Osorio v. US FOODS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS U.S. FOODSERVICE, INC., et al, Los Angeles County Superior Court, Case No. 20STCV46858. (§1.56.1)

o Named Plaintiff will provide a general release and 1542 waiver. (§1.57.3)

II. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On August 27, 2021, the parties participated in a full-day mediation before experienced employment mediator Eve Wagner, Esq, and were ultimately able to come to a settlement agreement. (Ryu Decl. ISO Preliminary Approval, §7).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to settlement, the parties conducted informal discovery and completed the Belaire-West opt-out process which resulted in the release of the names and contact information of approximately 1792 putative class members. (Ryu Supp. Decl., §5) It is represented that thereafter, Plaintiff propounded informal discovery requests for documents and

information in order to obtain timecards and payroll records of the consenting putative class members. On August 6, 2021, in response to Plaintiff's informal discovery requests, Defendant produced more than 13,000 documents as well as timecard and payroll data, in Excel format. Both sides agreed to take a 25% sampling of Class Member records. Plaintiff's experts, Berger Consulting Group, analyzed the entire sample time records and payroll records thoroughly, which corroborated Plaintiff's claims of systematic unpaid wages and meal break violations. (Ibid).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation. (Id. at ¶¶9-12).

4. What percentage of the class has objected? No objectors. (Kline Decl., ¶12).

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 plaintiffs on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.) Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

CLAIM	PRIOR MAX RECOVERY	CURRENT MAX RECOVERY	REDUCED RECOVERY
Unpaid Wages	\$1,232,136	\$1,232,136	\$1,108,922
Interest	\$73,084	\$73,084	\$66,535
Labor Code §226	\$5,793,600	\$3,440,300 ¹	\$696,510
Labor Code §203	\$2,324,167	\$2,321,700	\$1,032,090

¹ The \$3,440,300 amount represents an approximately 60% discount from \$5,793,600 for the risk of non-certification. (Ryu 2nd Supp. Decl. ISO Preliminary Approval, ¶18)

PAGA Penalties	\$20,591,200	\$3,116,600 ²	\$100,000
TOTAL	\$30,014,187	\$10,183,820	\$1,900,000

(Ryu Decl. ISO Preliminary Approval, ¶15; Ryu Supp. Decl. ISO Preliminary Approval, ¶¶16-22; Ryu 2nd Supp. Decl. ISO Preliminary Approval, ¶¶16-27.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

4. Amount offered in settlement. Plaintiff’s counsel obtained a \$1,900,000 non-reversionary settlement. This is approximately 18.7% of Plaintiff’s estimated recovery, which is within the “ballpark” of reasonableness.

The average estimated payment is \$1,328.44, and the highest estimated payment is \$3,343.66. (Kline Decl., ¶16.)

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.

7. Presence of a governmental participant. This factor is not applicable here.

² The \$3,116,600 amount represents an approximately 85% discount from \$20,591,200 for the risk of being unsuccessful on the merits, including the feasibility of Defendant’s argument that the PAGA claim will fail for the same reasons that the underlying claims will fail. (*Id.* at ¶20.)

8. Reaction of the class members to the proposed settlement.

Number of class members: 835 (Kline Decl., ¶6.)
Number of notice packets mailed: 835 (Id. at ¶8.)
Number of undeliverable notices: 8 (Id. at ¶9.)
Number of opt-outs: 0 (Id. at ¶11.)
Number of objections: 0 (Id. at ¶12.)
Number of Participating Class Members: 835 (Id. at ¶14.)
Average individual payment: \$1,328.44 (Id. at ¶16.)
Highest estimated payment: \$3,343.66 (Ibid.)

The Court concludes that the settlement can be deemed fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel, LOYR, APC, request \$665,000 (35%) in fees and litigation costs and expenses in the amount of \$17,722.65 to Class Counsel. (Motion ISO Final, 19:18-25.) The Settlement provides for attorney's fees up to \$665,000 and costs of \$20,000 (Settlement Agreement, ¶1.48.2.a); the class was provided notice of the requested awards and none objected. (Kline Decl., ¶12 and Exhibit A thereto.)

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, class counsel requests attorney fees using the percentage method, as cross checked by lodestar. In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) The fee request represents 35% of the gross settlement amount, which is above average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

Counsel represents that he has spent 348.25 hours in this matter, at a rate of \$650 per hour, for a lodestar of \$226,362.50, which would require a multiplier of 2.94 to yield the requested fee amount. (Ryu Decl. ISO Final Approval, ¶¶24, 27 and Exhibit B thereto.)

As for costs, class counsel incurred costs of \$17,722.65. (Ryu Decl. ISO Final Approval, ¶28 and Exhibit C thereto.) Class Counsel is requesting \$17,722.65 in costs, which is less than the settlement cap of \$20,000. The costs in this case include, but are not limited to, filing and service fees (\$1,460.50), expert costs (\$3,862.50), mediation (\$9,450), and administration costs (\$1,850). (Ibid.) The costs seem reasonable and necessary to litigation.

Based on the above, the court awards \$633,333.33 (1/3 of GSA) for fees and \$17,722.65 for litigation costs.

D. Claims Administration Costs

The claims administrator, Simpluris, is asking for \$10,750 for costs of administering the settlement. (Kline Decl. ¶17.) This is equal to the estimated cost of \$10,750 provided for in the Settlement Agreement (¶1.48.2.c) and disclosed to Class Members in the Notice. (Islas Decl. ¶12 and Exhibit A thereto.)

The court awards costs in the requested amount of \$10,750.

E. Incentive Award to Class Representative

The Settlement agreement provides for up to \$20,000 for an incentive award to the class representative. (Settlement Agreement, ¶1.48.2.b.)

In connection with the final fairness hearing, the named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he 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.)

Plaintiff Osorio's contributions to this litigation include, but are not limited to, obtaining counsel, meeting with counsel, gathering documents, reviewing documents, responding to written discovery, answering questions, providing witness information, contacting hundreds of class members, and reviewing the settlement agreement. (Osorio Decl., ¶¶3-5, 8-13.) The court notes these efforts are commendable, but not exceptional.

Based on the above, the court grants the enhancement award in the reduced amount of \$5,000 to Plaintiff Felipe Osorio.

III. CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final 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 \$1,900,000.
B. The Net Settlement Amount is the GSA minus the following:

\$633,333.33 (1/3) for attorneys' fees to Class Counsel, LOYR, APC;
\$17,722.65 in attorney costs to Class Counsel;
\$10,750 for claims administration costs to Simpluris, Inc.;
\$5,000 to the class representative, Felipe Osorio, for an enhancement award;
\$75,000 (75% of \$100,000 PAGA penalty) payable to the LWDA.

C. The employer's share of payroll taxes will be paid separately by Defendant in addition to the GSA.

D. Plaintiffs release of Defendants from claims described herein.

3) By May 31, 2023, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

4) By May 3, 2024, Class Counsel must file a Final Report re: Distribution of the settlement funds.

5) Court sets a Non-Appearance Case Review for May 10, 2024, 8:30 AM, Department 9.

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

IT IS SO ORDERED.

DATED: May 3, 2023




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

PLAINTIFF/PETITIONER: FELIPE OSORIO
 DEFENDANT/RESPONDENT: US FOODS, INC.

CASE NUMBER:
 20STCV46858

**PROOF OF SERVICE BY FIRST-CLASS MAIL
 NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):

- a. ☐ deposited the sealed envelope with the United States Postal Service.
 b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on (*date*):
 b. from (*city and state*):

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:

City:

State and zip code:

c. Name of person served:

Street address:

City:

State and zip code:

b. Name of person served:

Street address:

City:

State and zip code:

d. Name of person served:

Street address:

City:

State and zip code:

☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached _____.

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

Date: _____

 (TYPE OR PRINT NAME OF DECLARANT)

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 (SIGNATURE OF DECLARANT)

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PROOF OF SERVICE

I am employed in the aforesaid county, State of California. I am over the age of 18 years and not a party to the within action. My business address is **1055 West 7th Street, Suite 2290, Los Angeles, CA 90017.**

On May 3, 2023, I served the following document(s) described as **NOTICE OF ENTRY OF JUDGMENT OR ORDER (CIV-130)** on the interested parties in this action, addressed as follows:

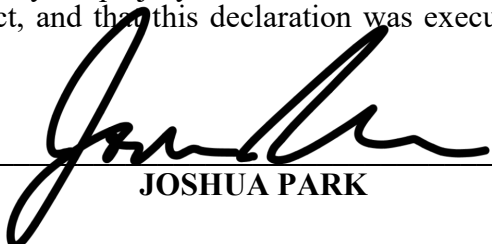
Joseph C. Liburt jliburt@orrick.com Katie E. Briscoe kbriscoe@orrick.com Luba Lerner llerner@orrick.com Annie H. Chen annie.chen@orrick.com	<i>Attorneys for Defendant</i>
ORRICK, HERRINGTON, & SUTCLIFFE LLP 1000 Marsh Road Menlo Park, CA 94025	

(X) **(BY ELECTRONIC SERVICE)** My electronic service address is joshua.park@loywr.com. Pursuant to California Code of Civil Procedure section 1010.6 and California Rules of Court, rule 2.251, I served the foregoing document on the interested party at the electronic service addresses (e-mail addresses) listed above.

STATE OF CALIFORNIA
LABOR AND WORKFORCE DEVELOPMENT AGENCY (LWDA)

(X) **(BY ELECTRONIC SERVICE)** I served the foregoing document to the LWDA by uploading the foregoing documents on the LWDA Website (<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 3, 2023, in Los Angeles, California.



JOSHUA PARK