

1 Raul Perez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
3 Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
4 Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
5 CAPSTONE LAW APC
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiffs Gilberto Rizo, Jose Rizo, and Antonio Romero

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF CONTRA COSTA
11

12 GILBERTO RIZO, JOSE RIZO, and
13 ANTONIO ROMERO, individually, and on
behalf of other members of the general public
14 similarly situated,

15 Plaintiffs,

16 vs.

17 SCOTT'S JACK LONDON SEAFOOD, INC.,
a California corporation; SCOTT'S SEAFOOD
18 GRILL & BAR (WALNUT CREEK), INC., a
California corporation; FOOD SPECIALISTS,
19 INC., a California corporation; VALET
HOSPITALITY SERVICES JACK LONDON
20 SQUARE, LLC, a California limited liability
company; and DOES 1 through 10, inclusive,
21

22 Defendants.
23
24
25
26
27
28

FILED
OCT 27 2022

K. BECKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: *ASG*

Case No.: CIVMSC21-00492

Assigned to the Hon. Edward G. Weil

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

Date: October 20, 2022
Time: 9:00 a.m.
Place: Department 39

Complaint Filed: March 10, 2021

1 Plaintiffs Gilberto Rizo, Jose Rizo, and Antonio Romero move for final approval of their class
2 action and PAGA settlement, including a separate motion for approval of attorney's fees and costs, a
3 class representative payment, and settlement administration costs, with defendants Scott's Jack London
4 Seafood, Inc., Scott's Seafood Grill & Bar (Walnut Creek), Food Specialists, Inc., and Valet Hospitality
5 Services Jack London Square ("Scott's"). Both motions will be considered together.

6 **A. Background and Settlement Terms**

7 The original complaint was filed March 10, 2021, raising claims under PAGA and a class action
8 on behalf of non-exempt employees alleging that defendant violated the Labor Code in various ways,
9 including unpaid overtime, unpaid minimum wage, con-compliant meal and rest periods, unreimbursed
10 business expenses, failure to provide one day of rest in seven, failure to provide reporting time, failure to
11 maintain payroll records, waiting time, and wage statement claims.

12 The settlement would create a gross settlement fund of \$390,000. The class representative
13 payment to each of the three plaintiffs would be \$10,000. Counsel's attorney's fees would be \$130,000
14 (one-third of the settlement). Litigation costs would not exceed \$15,000. The settlement administrator
15 (CPT Group) would receive an estimated \$15,000. PAGA penalties would be \$10,000, resulting in a
16 payment of \$7,500 to the LWDA. The fund is non-reversionary. Based on the estimated class size (940
17 members) the average net payment for each class member is approximately \$200.

18 Defendants will fund the settlement in two installments, one 30 days after the Effective Date, and
19 the second 210 days after the Effective Date.

20 The proposed settlement would certify a class of "all persons who worked for Defendants as
21 non-exempt, hourly paid employees in the State of California at any time from March 10, 2017 to
22 December 31, 2021."

23 The class members will not be required to file a claim. Class members may object or opt out of
24 the settlement. (Class members cannot opt out of the PAGA portion of the settlement.) Funds would be
25 apportioned to class members based on the number of individual workweeks worked by the individual
26 employee during the relevant time period.

27 Various prescribed follow-up steps will be taken with respect to mail that is returned as
28 undeliverable. Checks uncashed checks after 180 days "will be tendered to California Rural Legal

1 Assistance.” (Presumably, this means that the checks would be cancelled, and the remaining funds
2 would be provided to CRLA.) Pursuant to Code of Civil Procedure section 382.4, the agreement
3 provides that “the Parties do not have a connection to or a relationship with CRLA that could reasonable
4 create the appearance of impropriety as between the selection of CRLA as the recipient of the unclaimed
5 residuals and the interests of the class.” Plaintiffs’ counsel’s declaration makes the same statement with
6 respect to the plaintiffs’ attorneys.

7 Since preliminary approval was granted, the administrator has mailed notices to 790 class
8 members. 38 packets were returned by the post office. Follow up resulted in 28 new addresses, leaving
9 10 non-deliverable. No objections or requests to opt out have been received.

10 The settlement contains release language covering thirteen enumerated types of claims including
11 not only those alleged in the complaint and LWDA notice, but those for failure to provide suitable
12 seating and failure to pay split-shift premiums. Reviewing the First Amended Complaint, it appears that
13 the March 12, 2021 PAGA notices (exhibits 1, 2, and 3), included seating and split-shift allegations, but
14 those claims are not alleged factually or as causes of action. Unlike many release clauses, the language is
15 not limited to those arising from the facts alleged in the complaint. (*Amaro v. Anaheim Arena Mgmt.,*
16 *LLC* (2021) 69 Cal.App.5th 521, 537 [“A court cannot release claims that are outside the scope of the
17 allegations of the complaint.” “Put another way, a release of claims that’ go beyond the scope of the
18 allegations in the operative complaint’ is impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman*
19 *Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

20 Informal discovery was undertaken prior to mediation. The matter settled after extensive arms-
21 length negotiations, with included a mediation session with an experienced mediator.

22 Counsel also has provided a summary of a quantitative analysis of the case, and how the
23 settlement compares to the potential value of the case, after allowing for various risks and contingencies.
24 Counsel analyze the minimum wage/off-the-clock claim (\$308,335); meal period claims (\$370,000); res
25 period claims (\$550,000); business expense claims (\$23,000); reporting time claims (\$600,320); wage
26 statement claims (\$1,380,000); and waiting time penalty claims (\$2,856,000). The potential liability
27 needs to be adjusted for various evidence and risk based contingencies, including problems of proof, as
28 well as the derivative nature of wage statement and waiting time penalties. Claims for PAGA penalties

1 are difficult to evaluate for a number of reasons: they derive from other violations, they include
2 “stacking” of violations, the law may only allow application of the “initial violation” penalty amount,
3 and the total amount may be reduced in the discretion of the court. (*See* Labor Code, § 2699(e)(2)
4 [PAGA penalties may be reduced where “based on the facts and circumstances of the particular case, to
5 do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”])

6 In supplemental briefing in connection with the motion for preliminary approval, counsel
7 provided an analysis of the value of split-shift claims, estimating their maximum at \$337,500. Counsel
8 also has analyzed the seating claims, indicating that although most of the work cannot be done while
9 seated, the relevant IWC Order applies to “lulls in operation.” Counsel estimate the theoretical maximum
10 value of those claims at \$135,000.

11 The LWDA was notified of the settlement.

12 C. Legal Standards

13 The primary determination to be made is whether the proposed settlement is “fair, reasonable,
14 and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the
15 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk
16 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
17 completed and the state of the proceedings, the experience and views of counsel, the presence of a
18 governmental participant, and the reaction ... to the proposed settlement.” (*See also Amaro v. Anaheim*
19 *Arena Mgmt., LLC*, *supra*, 69 Cal.App.5th 521.)

20 Because this matter also proposes to settle PAGA claims, the Court also must consider the
21 criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA,*
22 *Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair,
23 reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.)
24 The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil
25 penalties between the affected aggrieved employees[.]” (*Id.*, at 64-65.)

26 California law provides some general guidance concerning judicial approval of any settlement.
27 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3
28 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.

1 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th
2 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a
3 just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins.*
4 *Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that
5 Neary does not always apply, because “[w]here the rights of the public are implicated, the additional
6 safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory
7 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th
8 48, 63.)

9 **D. Attorney Fees, Litigation Costs, Settlement Administrative Costs**

10 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund”
11 theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar
12 cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court
13 endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is
14 reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily
15 high or low, the trial court should consider whether the percentage used should be adjusted so as to bring
16 the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an
17 adjustment.” (*Id.*, at 505.)

18 Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They
19 estimate the lodestar at \$247,145, which would result in a “negative” implied multiplier of 0.52. They
20 based this amount on a total of 357.8 hours, at hourly rates ranging from \$950 to \$650. No adjustment
21 from the one-third fee is necessary. The attorney’s fees are reasonable and are approved.

22 The requested representative payments of \$10,000 for each named plaintiff were deferred until
23 this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American*
24 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Plaintiffs have provided declarations in
25 support of their requests. They point out that they executed broader releases than the class as a whole, but
26 do not identify any particular claims of value that they may have. They also risk damage to their
27 reputation and more difficulty in obtaining employment. Each plaintiff estimates that he spent 40 to 50
28 hours on the matter. These factors are not extraordinary, and there are three plaintiffs, which means that a

1 \$10,000 award each would add up to \$30,000 from the fund. Each plaintiff is awarded \$5,000. The
2 difference (\$15,000) will be added to the net settlement amount.

3 Litigation costs of \$11,500 are reasonable and are approved.

4 The settlement administrator's costs of \$12,000 are reasonable and are approved.

5 **F. Discussion and Conclusion**

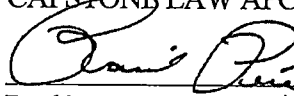
6 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and
7 adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees
8 (based on pay periods), is reasonable.

9 The motion is granted, with the reduction in the plaintiffs' representative payment.

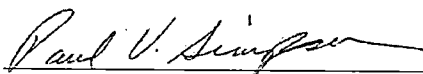
10 The ultimate judgment must provide for a compliance hearing after the settlement has been
11 completely implemented, to be determined in consultation with the Department's clerk. Plaintiffs'
12 counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the
13 attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found
14 by the Court. Pursuant to Code of Civil Procedure section 384(b), after the settlement is completely
15 implemented, the judgment must be amended to reflect the amount paid to the cy pres recipient.

16 **APPROVED AS TO FORM**

17
18 Dated: October 24, 2022

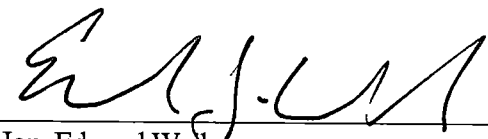
17 CAPSTONE LAW APC
18 By: 
19 Raul Perez
20 Attorneys for Plaintiffs

21
22 Dated: October 24, 2022

21 SIMPSON, GARRITY, INNES & JACUZZI
22 By: 
23 Paul V. Simpson
24 Attorneys for Defendants

25 **IT IS SO ORDERED.**

26 Dated: OCT 26 2022

25 
26 Hon. Edward Wei
27 Contra Costa County Superior Court Judge
28

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **October 24, 2022**, I served the document(s) described as:

[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT on the interested parties in this action by sending [] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Paul V. Simpson
psimpson@sgijlaw.com
Estelle Franklin
estelle@sgijlaw.com
SIMPSON, GARRITY, INNES & JACUZZI
P.C.
601 Gateway Boulevard, Suite 950
South San Francisco, CA 94080

Attorneys for:
SCOTT'S JACK LONDON SEAFOOD,
INC.;
SCOTT'S SEAFOOD GRILL & BAR
(WALNUT CREEK), INC.;
FOOD SPECIALISTS, INC.;
VALET HOSPITALITY SERVICES –
JACK LONDON SQUARE, LLC.

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[X] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

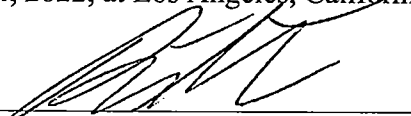
[] **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

[] **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

[] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **October 24, 2022**, at Los Angeles, California.

Riley McIntire
Type or Print Name


Signature