

FILED
Superior Court of California
County of Los Angeles

OCT 04 2023

David W. Slayton, Executive Officer/Clerk of Court
By: E. Munoz, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

LUIS GUZMAN RAMIREZ, on behalf of
himself and others similarly situated,

Plaintiff,

v.

FAR WEST RESTAURANT GROUP,
LLC; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 21STCV26982

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS**

Date: October 3, 2023
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

On July 22, 2021, Plaintiff filed a purported class action, alleging the following violations: (1) failure to provide rest breaks in violation of Labor Code section 226.7; (2) failure to timely pay wages during employment in violation of Labor Code sections 204; (3) failure to provide complete and accurate wage statements in violation of Labor Code section 226; (4) failure to timely pay wages due at time of separation of

1 employment in violation of Labor Code sections 201, 202, and 203; and (5) unfair
2 business practices in violation of Business and Professions Code section 17200, et seq.
3 On November 4, 2021, Plaintiff filed a separate Private Attorneys General Act of 2004
4 (“PAGA”) representative lawsuit seeking civil penalties to PAGA, Labor Code § 2698,
5 et seq. for the same underlying predicate Labor Code violations.

6 On January 17, 2023, the Parties participated in a full-day mediation session
7 with Hon. Daniel Buckley (Ret.) and were ultimately able to reach a settlement in
8 principle, based on Judge Buckley’s mediator’s proposal. A fully executed copy of the
9 Settlement Agreement was filed with the Court on June 1, 2023, attached to the
10 Declaration of Joseph Lavi (“Lavi Decl”) as Exhibit 1.

11 On August 11, 2023 Defendant filed a Notice of Related Case as to this and two
12 other actions, 21STCV40634 and 23STCV12284. The court deemed the matters
13 related by minute order of August 28, 2023.

14 The matter came on for hearing on August 23, 2023 and the Court and counsel
15 discussed certain questions regarding the settlement, as outlined in the order of August
16 22, 2023. Thereafter counsel for plaintiff, S. Phillip Song, filed a Declaration¹ dated
17 September 26, 2023 (Song Dec.) and Amended Settlement Agreement executed
18 September 20, 2023. All references below are to the Amended Settlement Agreement.

21 ¹ The Declaration is deficient to the extent it is said to be either on personal
22 knowledge or information and belief. Testimony “[u]pon information and belief” in a
23 declaration is inadmissible hearsay and must be disregarded. *Star Motor Imports, Inc. v.*
24 *Superior Court* (1979) 88 Cal.App.3d 201, 204.
25

NITIONS

California and were
for whom Defendant is
ss action waiver. (§1.5)
March 17, 2023. (§1.12.)
o Defendant in California
A Period. (§1.4)
to March 17, 2023.

(§3.1). This includes
58.33 to be paid 75% to the
loyees (\$140,214.58)

o as of January 6, 2023, (1)
orkweeks during the
d Employees who worked
f the number of workweeks
e Class Period or pay
g the PAGA Period is
ures (rounded to the

1 nearest whole percent), Defendant agrees to increase the Gross Settlement
2 Amount on a proportional basis (i.e., if there was a 12.2% increase in the
3 number of workweeks worked by Settlement Class Members, Defendant
4 would increase the Gross Settlement Amount by 2%) (§8).

- 5 • The Net Settlement Amount (“Net”) (\$239,189.58) is the GSA less:
 - 6 ○ Up to \$356,666.67 (33.33%) for attorney fees (§3.2.2);
 - 7 ○ Up to \$25,000 for attorney costs (*Ibid.*);
 - 8 ○ Up to \$7,500 for a service award to the proposed class representative
9 (§3.2.1); and
 - 10 ○ Estimated \$21,000 for settlement administration costs (§3.2.3).
- 11 • Employer-side payroll taxes will be paid by Defendant (§3.1).
- 12 • Assuming the Court approves all maximum requested deductions, approximately
13 \$239,189.58 will be available for automatic distribution to participating class
14 members. Assuming full participation, the average settlement share will be
15 approximately \$1,720.79. ($\$239,189.58 \text{ Net} \div 139 \text{ class members} = \$1,720.79$).
16 In addition, each PAGA member will receive a portion of the PAGA penalty,
17 estimated to be \$26.06 per PAGA member. ($\$140,214.58 \text{ or } 25\% \text{ of}$
18 $\$560,858.33 \text{ PAGA penalty} \div 5,381 \text{ PAGA members} = \26.06).
- 19 • There is no Claim Requirement (§3.1).
- 20 • The settlement is not reversionary (*Ibid.*).
- 21 • Individual Settlement Share Calculation: An Individual Class Payment
22 calculated as follows: (1) 10% of the total amount allocated to Individual Class
23 Payments will be divided equally among Participating Class Members who are
24 former employees of Defendant as of March 17, 2023. (2) The remaining 90%
25 will be: (a) divided by the total number of Workweeks worked by all

1 Participating Class Members during the Class Period and (b) the result will be
2 multiplied by each Participating Class Member's Workweeks. (§3.2.4).

- 3 • Tax Withholdings: 20% as wages, 80% interest and penalties (§3.2.4.1).
- 4 • Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount,
5 and also fund the amounts necessary to fully pay Defendant's share of payroll
6 taxes by transmitting the funds to the Administrator no later than 14 days after
7 the Effective Date (§4.3).
- 8 • Distribution: Within 14 days after Defendant funds the Gross Settlement
9 Amount, the Administrator will mail checks for all Individual Class Payments,
10 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
11 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
12 Litigation Expenses Payment, and the Class Representative Service Payment.
13 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
14 Expenses Payment and the Class Representative Service Payment shall not
15 precede disbursement of Individual Class Payments and Individual PAGA
16 Payments. (§4.4).
- 17 • Uncashed Settlement Payment Checks: For any Class Member or Aggrieved
18 Employee whose Individual Class Payment check or Individual PAGA Payment
19 check is uncashed and cancelled after the void date, the Administrator shall
20 transmit the funds represented by such checks to the California Controller's
21 Unclaimed Property Fund in the name of the Class Member or Aggrieved
22 Employee thereby leaving no "unpaid residue" subject to the requirements of
23 California Code of Civil Procedure Section 384, subd. (b). (§4.4.3.)

24 //

25 //

1 **C. TERMS OF RELEASES**

- 2 • **Class Release:** All Participating Class Members, on behalf of themselves and
3 their respective former and present representatives, agents, attorneys, heirs,
4 administrators, successors and assigns, release Released Parties from all claims,
5 rights, demands, liabilities, and causes of action that were alleged, or reasonably
6 could have been alleged, based on the Class Period facts alleged in the Operative
7 Complaint and ascertained in the course of the Action including, (a) any and all
8 claims involving failure to provide compliant rest periods, including failure to
9 pay rest period premium pay, (b) any and all claims involving any alleged failure
10 to timely pay all wages during employment, (c) any and all claims involving any
11 alleged failure to provide compliant wage statements, (d) any and all claims
12 involving any alleged failure to timely pay all earned wages and final paychecks
13 due at the time of separation of employment. Except as set forth in Section 5.3 of
14 this Agreement, Participating Class Members do not release any other claims,
15 including claims for vested benefits, wrongful termination, violation of the Fair
16 Employment and Housing Act, unemployment insurance, disability, social
17 security, workers' compensation or claims based on facts occurring outside the
18 Class Period. (§5.2)
- 19 • **PAGA Release:** All Aggrieved Employees will release and discharge Released
20 Parties from all claims, demands, rights, liabilities and causes of action seeking
21 civil penalties under California Labor Code Private Attorneys General Act of
22 2004 that were alleged, or reasonably could have been alleged, based on the facts
23 contained in the Operative Complaint and the PAGA Notice and ascertained in
24 the course of the Action. The release period for the PAGA claim shall be the
25 same as the PAGA Period. All Aggrieved Employees, regardless of whether they

1 have opted out of the Class Settlement as described above, and the State of
2 California shall be bound by the PAGA Release and fully release and discharge
3 Defendant and all Released Parties from all released PAGA claims upon the
4 approval of the settlement of PAGA Claims in this Action. The Parties agree
5 there is no statutory right for any Aggrieved Employee to object, opt out or
6 otherwise exclude himself or herself from the Settlement. Unless otherwise
7 provided by law, the Parties further agree there is no right or opportunity for any
8 Aggrieved Employee to appeal the approval of the PAGA settlement by the
9 Court, this settlement shall not be subject to collateral attack by any Aggrieved
10 Employee, and such prohibited collateral attack shall include, but not be limited
11 to, claims that the Aggrieved Employee failed, for any reason, to timely receive
12 his or her individual Settlement Payment. (§5.3)

- 13 • Released Parties: Defendant and each of its former and present directors,
14 officers, shareholders, owners, members, attorneys, insurers, predecessors,
15 successors, assigns, subsidiaries, and affiliates. (§1.42.)
- 16 • The named Plaintiff(s) will also provide a general release and a waiver of the
17 protections of Cal. Civ. Code §1542. (§5.1)
- 18 • The releases are effective on the date when Defendant fully funds the entire
19 Gross Settlement Amount and funds all employer payroll taxes owed on the
20 Wage Portion of the Individual Class Payments (§5).

21 22 **D. SETTLEMENT ADMINISTRATION**

- 23 • The proposed Settlement Administrator is Simpluris, which has provided evidence
24 that no counsel are affiliated with it and that it has adequate procedures in place to
25

1 safeguard the data and funds to be entrusted to it. (Declaration of Eric Springer,
2 ¶4, attached to the Lavi Decl., as Exhibit 3 thereto).

- 3 • Settlement administration costs are estimated to be \$21,000 (¶3.2.3).
- 4 • Notice: The manner of giving notice is described below.
- 5 • Response Deadline: "Response Deadline" means 60 days after the Administrator
6 mails Notice to Class Members, and shall be the last date on which Class
7 Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement,
8 or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to
9 whom Notice Packets are resent after having been returned undeliverable to the
10 Administrator shall have an additional 14 calendar days beyond the expiration of
11 the Response Deadline (¶1.44). This deadline also applies to challenges to
12 calculation of workweeks (¶7.6).
 - 13 ○ If the number of valid Requests for Exclusion identified in the Exclusion
14 List exceeds 5% of the total of all Class Members, Defendant may, but is
15 not obligated to, elect to withdraw from the Settlement (¶9).
- 16 • Notice of Final Judgment will be posted on the Settlement Administrator's website
17 (¶7.8.1).

18 19 **III. SETTLEMENT STANDARDS AND PROCEDURE**

20 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
21 of an entire class action, or of a cause of action in a class action, or as to a party,
22 requires the approval of the court after hearing." "Any party to a settlement agreement
23 may serve and file a written notice of motion for preliminary approval of the settlement.
24 The settlement agreement and proposed notice to class members must be filed with the
25

1 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
2 Court, rule 3.769(c).

3 “In a class action lawsuit, the court undertakes the responsibility to assess
4 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
5 dismissal of a class action. The purpose of the requirement [of court review] is the
6 protection of those class members, including the named plaintiffs, whose rights may not
7 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
8 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
9 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
10 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
11 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
12 agreement to the extent necessary to reach a reasoned judgment that the agreement is
13 not the product of fraud or overreaching by, or collusion between, the negotiating
14 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
15 concerned.”] [internal quotation marks omitted].

16 “The burden is on the proponent of the settlement to show that it is fair and
17 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
18 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
19 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
20 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
21 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

22 Notwithstanding an initial presumption of fairness, “the court should not give
23 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
24 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
25 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*

1 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
2 members, the court must independently and objectively analyze the evidence and
3 circumstances before it in order to determine whether the settlement is in the best
4 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
5 In that determination, the court should consider factors such as “the strength of
6 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
7 the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and stage of the proceedings, the
9 experience and views of counsel, the presence of a governmental participant, and the
10 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
11 factors is not exclusive and the court is free to engage in a balancing and weighing of
12 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
13 245.

14 At the same time, “[a] settlement need not obtain 100 percent of the damages
15 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
16 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
17 substantially narrower than it would be if the suits were to be successfully litigated,’
18 this is no bar to a class settlement because ‘the public interest may indeed be served by
19 a voluntary settlement in which each side gives ground in the interest of avoiding
20 litigation.’” *Id.* at 250.

21 22 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

23 24 **A. THERE IS A PRESUMPTION OF FAIRNESS**

25 The settlement is entitled to a presumption of fairness for the following reasons:

1
2 **1. The settlement was reached through arm's-length bargaining**

3 On January 17, 2023, the Parties participated in a full-day mediation session
4 with Hon. Daniel Buckley (Ret.) and were ultimately able to reach a settlement in
5 principle, based on Judge Buckley's mediator's proposal. (Lavi Decl., ¶9)

6
7 **2. The investigation and discovery were sufficient**

8 Counsel represent that prior to mediation, informal discovery exchange included:
9 (1) the number of employees that Defendant could not locate executed arbitration
10 agreements for; (2) the number of current and former putative class members and
11 aggrieved employees in the class period; (3) data regarding the number of shifts which
12 qualified for a rest period; (4) confirmation that Defendant failed to provide rest break
13 premiums to the putative class; (5) the average rate of pay; (6) the total number of
14 workweeks worked by putative class members; and (7) the total number of pay periods
15 worked by aggrieved employees. Aside from this data, Plaintiff's counsel also reviewed
16 and evaluated the policies and procedures within Defendant's employee handbooks and
17 engaged in meet and confer calls and emails with Defendant's counsel regarding the
18 disputed factual and legal issues involved in this case. Additionally, Plaintiff's counsel
19 also analyzed the risks attending further prosecution, including the risks related to a
20 contested motion for class certification and difficulties associated with establishing the
21 damages alleged. (*Id.* at ¶12)

22 This is sufficient to value the case for settlement purposes.

23 //

24 //

1 **3. Counsel is experienced in similar litigation**

2 Class Counsel represent that they are experienced in class action litigation,
3 including wage and hour class actions. (*Id.* at ¶¶ 30-33)
4

5 **4. Percentage of the class objecting**

6 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
7 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
8 the court receive objections to the proposed settlement, it will consider and either sustain
9 or overrule them at the fairness hearing.”].
10

11 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
12 **FAIR, ADEQUATE, AND REASONABLE**
13

14 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
15 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
16 does when it approves a settlement as in good faith under Code of Civil Procedure
17 section 877.6, the court must at least satisfy itself that the class settlement is within the
18 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
19 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
20 consider and weigh the nature of the claim, the possible defenses, the situation of the
21 parties, and *the exercise of business judgment* in determining whether the proposed
22 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
23 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).
24 //
25 //

1. Amount Offered in Settlement

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.* at 130.)

Class Counsel estimated Defendant’s maximum exposure at \$1,429,378.76, based on the following analysis:

Violation	Maximum Exposure
Rest Periods	\$479,030.76
Wage Statements	\$216,000.00
Waiting Time	\$280,908.00
PAGA	\$453,440.00
TOTAL	\$1,429,378.76

(Lavi Decl., ¶¶ 12-29.)

Class Counsel obtained a gross settlement valued at \$1,070,000. This is approximately 74.86% of Defendant’s estimated maximum exposure.

2. The Risks of Future Litigation

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. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.]). Further the settlement was negotiated and endorsed by class Counsel who as indicated above are experienced in class action

1 litigation. Based upon their investigation and analysis, the attorneys representing
2 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
3 adequate. (Lavi Decl., ¶¶ 12-29.)

4 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
5 which was sent a copy of the Settlement Agreement on June 1, 2023 and has not yet
6 objected. (Lavi Decl. Exhibit 5 thereto.) Any objection by it will be considered at the
7 final fairness hearing.

8 9 **3. The Releases Are Limited**

10 The Court has reviewed the Releases to be given by the absent class members and
11 the named plaintiff(s). The releases, described above, are tailored to the pleadings and
12 release only those claims in the pleadings. There is no general release by the absent
13 class. The named plaintiff's' general release(s) is/are appropriate given that he/her/each
14 was represented by counsel in its negotiation.

15 16 **4. Conclusion**

17 Class Counsel estimated Defendant's maximum exposure at \$1,429,378.76. Class
18 Counsel obtained a gross settlement valued at \$1,070,000. This is approximately 74.86%
19 of Defendant's maximum exposure, which, given the uncertain outcomes, including the
20 potential that the class might not be certified, that liability is a contested issue, and that
21 the full amount of penalties would not necessarily be assessed even if the class is certified
22 and liability found, the settlement is within the "ballpark of reasonableness."

23 //

24 //

25 //

1 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

2 A detailed analysis of the elements required for class certification is not required,
3 but it is advisable to review each element when a class is being conditionally certified.
4 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
5 advocating class treatment must demonstrate the existence of an ascertainable and
6 sufficiently numerous class, a well-defined community of interest, and substantial
7 benefits from certification that render proceeding as a class superior to the alternatives.”
8 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

9 **1. The Proposed Class is Numerous**

10 There are 139 putative Class Members. (MPA 17:23-25) Numerosity is
11 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
12 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
13 *class action is liberally construed,*” and citing examples wherein classes of as little as
14 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
15 (1972) 28 Cal.App.3d 1017, were upheld).

16 **2. The Proposed Class Is Ascertainable**

17 “A class is ascertainable, as would support certification under statute
18 governing class actions generally, when it is defined in terms of objective
19 characteristics and common transactional facts that make the ultimate identification
20 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
21 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

22 The class is defined above. Class Members are ascertainable through
23 Defendant’s payroll records. (MPA, 18:9-10)

24 //

25 //

3. There Is A Community of Interest

“The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’”

Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.

As to predominant questions of law or fact, Plaintiff testifies that he and all other non-exempt employees who worked for defendant in California at any time between July 22, 2017 to March 17, 2023 were subject to the same policies and procedures regarding on-premises rest periods, the lack of premium wages for noncompliant rest breaks, the provision of incomplete wage statements and the failure to pay final wages. (Rodriguez Dec. ¶5). This raises common issues.

As to typicality, Counsel contend that the claims of the class representative are typical of the claims of the class members as a whole, because the named Plaintiff suffered the same alleged violations (i.e., that Defendant required employees to remain on premises during rest periods, and as a result, Defendant did not relinquish control as to how its employees spent their rest breaks; that Defendant failed to provide rest period premium wages for non-compliant rest periods; that Defendant failed to provide complete and accurate wage statements; and that Defendant failed to pay all wages due upon separation of employment) as the class, and thus, the claims of the named Plaintiff fairly represents the claims of the class as a whole. (*Id.*, MPA, 18:1-8.)

As to adequacy, Plaintiff represents that he has conducted himself diligently and responsibly in representing the class in this litigation, he understands his fiduciary obligations, he has actively participated in the prosecution of this case, and does not have any interest that is adverse to the interests of the other class members. (MPA, 18:11-20;

1 Declaration of Luis Guzman Ramirez, *passim*, attached to the Lavi Decl, Exhibit 2
2 thereto.) As previously stated, Class Counsel have experience in class action litigation.

3 4 **4. Substantial Benefits Exist**

5 Given the relatively small size of the individual claims, a class action is superior to
6 separate actions by the class members.

7 8 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 9 **OF DUE PROCESS**

10 The purpose of notice is to provide due process to absent class members. A practical
11 approach is required, in which the circumstances of the case determine what forms of
12 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
13 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
14 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
15 stake of the individual class members; (4) the cost of notifying class members; (5) the
16 resources of the parties; (6) the possible prejudice to class members who do not receive
17 notice; and (7) the res judicata effect on class members.

18 **1. Method of class notice**

19 Not later than 30 days after the Court grants Preliminary Approval of the
20 Settlement, Defendant will deliver the Class Data to the Administrator (¶4.2).

21 Using best efforts to perform as soon as possible, and in no event later than 14
22 days after receiving the Class Data, the Administrator will send to all Class Members
23 identified in the Class Data, via first-class United States Postal Service ("USPS") mail,
24 the Class Notice, with Spanish translation, substantially in the form attached to this
25 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate

1 the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment
2 payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if
3 applicable) used to calculate these amounts. Before mailing Class Notices, the
4 Administrator shall update Class Member addresses using the National Change of
5 Address database (§7.4.2).

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

13 **2. Content of class notice.**

14 A copy of the proposed class notice is attached to the Settlement Agreement as
15 Exhibit A. The notice includes information such as: a summary of the litigation; the
16 nature of the settlement; the terms of the settlement agreement; the maximum
17 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
18 the enhancement award, and claims administration costs); the procedures and deadlines
19 for participating in, opting out of, or objecting to, the settlement; the consequences of
20 participating in, opting out of, or objecting to, the settlement; and the date, time, and
21 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
22 given in both English and Spanish (§7.4.2).

23 **3. Settlement Administration Costs**

24 Settlement administration costs are estimated at **\$21,000**, including the cost of
25 notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement

1 administrator must submit a declaration attesting to the total costs incurred and
2 anticipated to be incurred to finalize the settlement for approval by the Court.

3 4 **E. ATTORNEY FEES AND COSTS**

5 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
6 implied, that has been entered into with respect to the payment of attorney fees or the
7 submission of an application for the approval of attorney fees must be set forth in full in
8 any application for approval of the dismissal or settlement of an action that has been
9 certified as a class action.”

10 Ultimately, the award of attorney fees is made by the court at the fairness
11 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
12 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
13 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
14 1132-1136. In common fund cases, the court may use the percentage method. If
15 sufficient information is provided a cross-check against the lodestar may be conducted.
16 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
17 agreement by the parties to the contrary, “the court ha[s] an independent right and
18 responsibility to review the attorney fee provision of the settlement agreement and
19 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
20 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

21 The question of class counsel’s entitlement to **\$356,666.67** (33.33%) in attorney
22 fees will be addressed at the final fairness hearing when class counsel brings a noticed
23 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
24 the court with current market tested hourly rate information and billing information so
25

1 that it can properly apply the lodestar method and must indicate what multiplier (if
2 applicable) is being sought.

3 Class counsel should also be prepared to justify the costs sought (capped at
4 **\$25,000**) by detailing how they were incurred.

5 6 **F. SERVICE AWARDS**

7 The Settlement Agreement provides for a service award of up to **\$7,500** for the
8 class representative(s). Trial courts should not sanction enhancement awards of
9 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
10 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the
11 form of quantification of time and effort expended on the litigation, and in the form of
12 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
13 required in order for the trial court to conclude that an enhancement was ‘necessary to
14 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
15 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
16 original.

17 The Court will decide the issue of the enhancement award at the time of final
18 approval.

19 20 **G. OTHER**

21 The Amended Settlement Agreement indicates that resolution of this action will
22 have the effect of effecting or eliminating related case No. 23STCV12284, *Sotelo v.*
23 *Far West Restaurant Group LLC* (¶2.6). Counsel for Plaintiffs shall forthwith and no
24 later than October 13, 2023 serve this Order on Counsel for Plaintiffs and Counsel for
25 Defendants in the *Sotelo* action and file proof of service of same.

1
2 **V. CONCLUSION AND ORDER**

3 Subject to the condition set forth above, the Court hereby:

4 (1) Grants preliminary approval of the settlement as fair, adequate, and
5 reasonable;

6 (2) Grants conditional class certification;

7 (3) Appoints Plaintiff Luis Guzman Ramirez as Class Representative;

8 (4) Appoints Joseph Lavi, Esq. and Vincent C. Granberry, Esq. of Lavi &
9 Ebrahimian, LLP as Class Counsel;

10 (5) Appoints Simpluris, Inc. as Settlement Administrator;

11 (6) Approves the proposed notice plan; and

12 (7) Approves the proposed schedule of settlement proceedings as follows:

- 13 • Preliminary approval hearing: October 3, 2023
- 14 • Deadline for Defendant to provide class list to settlement administrator:
- 15 November 2, 2023 (within 30 calendar days from preliminary approval)
- 16 • Deadline for settlement administrator to mail notices: November 16, 2023
- 17 (within 44 calendar days from preliminary approval)
- 18 • Deadline for class members to opt out: January 15, 2024 (60 calendar days from
- 19 the initial mailing of the Notice Packets)
- 20 • Deadline for class members to object: January 15, 2024 (60 calendar days from
- 21 the initial mailing of the Notice Packets)
- 22 • Deadline for class counsel to file motion for final approval: February 6, 2024
- 23 (16 court days prior to final fairness hearing)
- 24 • Final fairness hearing: March 1, 2024 at 9:00 a.m..
- 25

1 Any failure to fully and timely comply with the contingency may result in the
2 revocation of this Order in its entirety.

3
4 Dated: 10/4/23



5 MAREN E. NELSON

6 Judge of the Superior Court
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25