

DOUGLAS HAN (SBN 232858)
 SHUNT TATAVOS-GHARAJEH (SBN 272164)
 TALIA LUX (SBN 336074)
JUSTICE LAW CORPORATION
 751 North Fair Oaks Avenue, Suite 101
 Pasadena, California 91103
 Tel: (818) 230-7502
 Fax: (818) 230-7259
Attorneys for Plaintiff

FILED
 Superior Court of California
 County of Alameda

07/13/2023

Clerk of the Court, Executive Officer / Clerk of the Court

By: *A. Tumonong* Deputy
 A. Tumonong

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA**

THOMAS TESENE, individually, on behalf of
 other members of the general public similarly
 situated, and on behalf of aggrieved employees
 pursuant to the Private Attorneys General Act
 ("PAGA");

Plaintiff,

v.

CFR RINKENS, LLC, a California limited
 liability company; and DOES 1 through 100,
 inclusive;

Defendants.

Case No.: RG21113141

Assigned for All Purposes to:
 Honorable Tara Desautels
 Department 16

CLASS ACTION

**AMENDED [PROPOSED] ORDER OF
 FINAL APPROVAL AND JUDGMENT**

[Reservation No.: A-21113141-001]

Hearing Date: June 14, 2023
 Hearing Time: 2:30 p.m.
 Hearing Place: Department 16

Complaint Filed: September 20, 2021
 FAC Filed: August 19, 2022
 Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Thomas Tesene's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Joint Stipulation of Class Action Settlement and Release of
4 Claims ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS AND**
5 **ORDERS:**

6 Plaintiff and Defendant CFR Rinkens, LLC ("Defendant") entered the Settlement
7 Agreement on or about October 5, 2022 to settle this lawsuit.

8 The Court entered an order dated February 6, 2023 preliminarily approving the settlement
9 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
10 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
11 providing Class Members with an opportunity to object to the Settlement or exclude themselves
12 from the Class, and scheduling a Final Approval Hearing.

13 The Court held a Final Approval Hearing on June 14, 2023 to determine whether to give
14 final approval to the Settlement of this lawsuit.

15 1. Incorporation of Other Documents. This Amended Order of Final Approval and
16 Judgment ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise
17 provided herein, all capitalized terms in this Order and Judgment shall have the same meaning as
18 set forth in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
20 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
21 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement and grants final certification of the Class.

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of all hourly-paid, non-exempt employees who,
26 during either the period of time from July 1, 2018, through September 1, 2022, have previously
27 been or currently are employed in California by Defendant, as an hourly-paid, non-exempt
28 employee ("Class," "Class Members," and "Class Period"). There are one hundred eighty-nine

(189) Class Members who have not submitted a complete, valid, and timely request to be excluded from the Settlement (“Participating Class Members”).

4. Adequacy of Representation. Class Counsel fully and adequately represented the Class for the purposes of entering and implementing the Settlement and satisfied the requirements of Code of Civil Procedure section 382.

5. Notice Packet. The Court finds the Class Notice and Request for Exclusion form (collectively, known as the “Notice Packet”) and its distribution to Class Members were implemented pursuant to the Settlement and this Court’s Preliminary Approval Order. The Court also finds the Notice Packet:

a. constitutes notice reasonably calculated to apprise Class Members of: (i) pendency of this lawsuit; (ii) material terms and provisions of the Settlement Agreement and their rights; (iii) their right to object to any aspect of the Settlement Agreement; (iv) their right to exclude themselves from the Settlement Agreement; (v) their right to receive settlement payments; (vi) their right to appear at the Final Approval Hearing; and (vii) binding effect of the orders and judgment in this lawsuit on all Participating Class Members;

b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process;

c. constitutes the best practicable notice to Class Members under the circumstances of this lawsuit; and

d. constitutes notice reasonable, adequate, and sufficient to Class Members.

6. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered into good faith and are the product of arm’s-length negotiations by experienced counsel who have done a meaningful investigation of the claims. The Settlement Agreement and all its terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

7. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any action to enforce the terms and provisions of the Settlement Agreement.

1 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiff, Participating Class Members, PAGA Group
3 Members, and their spouses, heirs, registered domestic partners, executors, administrators,
4 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
5 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
6 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
7 that were or could have been raised in this lawsuit and are encompassed by the Released Claims
8 and Private Attorneys General Act of 2004 (“PAGA”) Released Claims. The Settlement
9 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
10 Class Members who have submitted timely requests for exclusion.

11 9. Participating Class Members Released Claims. As of the date of the Judgment,
12 each Participating Class Member, and without the need to manually sign a release document,
13 shall release the Released Parties from all causes of action and claims that were alleged or
14 reasonably could have been alleged based on the facts and legal theories contained in the lawsuit.

15 a. PAGA Group Released Claims. As of the date of the Judgment, each PAGA
16 Group Member, and without the need to manually sign a release document, shall
17 release the Released Parties and California for claims for civil penalties pursuant
18 to PAGA based upon all causes of action and claims that were alleged or
19 reasonably could have been alleged based on the facts and legal theories
20 contained in the lawsuit, and/or the California Labor and Workforce Development
21 Agency (“LWDA”) Exhaustion Letter.

22 b. Plaintiff’s Released Claims. Plaintiff, individually and on behalf of Plaintiff’s
23 heirs, executors, administrators, representatives, attorneys, successors and assigns
24 knowingly and voluntarily releases and forever discharges Plaintiff’s Released
25 Parties to the fullest extent permitted by law, of and from any and all claims,
26 known and unknown, asserted and unasserted, which Plaintiff has or may have
27 against Plaintiff’s Released Parties as of the date of execution of the Settlement
28

Agreement. To affect a full and complete general release, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code.

- c. Released Parties. The Released Parties include Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

10. Class Representative Payment. The Court finds the Class Representative Payment of \$10,000, to be paid by Defendant to Plaintiff out of the Maximum Settlement Amount, to be reasonable and appropriate. Class Representative Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

- a. The rationale for making enhancement payments is class representatives should be compensated for the expense and risk they incurred in conferring a benefit on the Class. Criteria courts consider include: (1) risk to the class representatives in commencing suit; (2) notoriety and personal difficulties; (3) amount of time and effort spent by the class representatives; (4) duration of the litigation; and (5) personal benefit (or lack thereof) enjoyed by class representatives.

- b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the risks inherent in the services as the class representative, duration of the case and time involved, and benefits created for the Class, the Court approves the payment of the Class Representative Payment of \$10,000 to Plaintiff.

11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. The Court finds the Class Counsel Fees Payment of \$134,832, to be paid out of the Maximum Settlement Amount by Defendant to Class Counsel, to be reasonable and appropriate. In addition, the Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual litigation costs incurred of \$14,585.83, to be paid by Defendant to Class Counsel out of the Maximum Settlement Amount, to be reasonable and appropriate. Such fees and costs are to

1 be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant
2 shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
3 incurred by Class Counsel or any other counsel representing Plaintiff or Class Members.
4 Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or
5 disbursements incurred by Plaintiff or Class Members in connection with or related in any
6 manner to this lawsuit, Settlement Agreement, settlement administration, and/or Released Claims
7 and PAGA Released Claims.

8 a. The Court has an independent right and responsibility to review the Class Counsel
9 Fees Payment and only award so much as it determines reasonable. (See
10 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
11 127-28.) The Class Counsel Fees Payment of \$134,832 is thirty percent (30%)¹ of
12 the common fund created for the benefit of the Class and is supported by use of
13 the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016)
14 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken,
15 novel and difficult nature of this litigation, skills required, percentage fees award
16 in previous and other cases, and contingent fees charged in the marketplace, the
17 Court finds the Class Counsel Fees Payment is consistent with the marketplace, is
18 reasonable, and is approved.

19 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
20 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
21 seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class
22 Counsel expended \$14,585.83 in litigation costs, and such costs were reasonable.
23 Thus, the Court approves the payment of the Class Counsel Litigation Expenses
24 Payment of \$14,585.83 from the common fund for the reimbursement of Class
25 Counsel's litigation costs.

27 ¹ The Escalator Clause set forth in paragraph 18 of the Settlement Agreement was
28 triggered, resulting in the Maximum Settlement Amount increasing from \$400,000 to
\$449,440. The increase to the Maximum Settlement Amount was calculated as follows:
([6118 (actual number of pay periods) – 5,500] ÷ 5,000) x \$400,000 = \$49,440. In other

1 12. Settlement Administrator Payment. The Court finds Settlement Administrator
2 Payment of \$7,750, to be paid by Defendant to the Settlement Administrator out of the
3 Maximum Settlement Amount, to be reasonable and appropriate. The Settlement Administrator
4 Payment are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

5 a. The Court reviewed the declaration of Kaylie O'Connor from CPT Group, Inc.,
6 the Court-approved Settlement Administrator. The Court finds notice was
7 provided to the Class pursuant to the Preliminary Approval Order, constitutes the
8 best practicable notice to the Class, and satisfied due process. Thus, the Court
9 approves the payment of the Settlement Administrator Payment of \$7,750 for the
10 Settlement Administrator's services in administering the Settlement.

11 13. PAGA Payment. The Court finds the PAGA Payment of \$50,000, seventy-five
12 percent (75%) of which (\$37,500) will be paid to the LWDA out of the Maximum Settlement
13 Amount and twenty-five percent (25%) of which (\$12,500) shall be distributed to PAGA Group
14 Members, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be paid
15 pursuant to the terms and provisions set forth in the Settlement Agreement.

16 14. Funding the Settlement. The Settlement Administrator shall establish a
17 Settlement Account within ten (10) days of the Effective Date and notify the Parties when the
18 Settlement Account has been established. Within ten (10) days after receiving notification of the
19 Settlement Account and statement for the Settlement Account Deposit, Defendant shall pay into
20 the Settlement Account an amount equal to the Settlement Account Deposit. The settlement
21 payments shall be sent by the Settlement Administrator via U.S. Mail within fourteen (14) days
22 of its receipt of the Settlement Account Deposit from Defendant.

23 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
24 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
25 Settlement was the product of arm's-length negotiations following extensive litigation,
26 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
27 Lynn Frank, an experienced and well-respected mediator.

28

words, \$400,000 + \$49,440 = \$449,440.

1 a. The fairness of the Settlement is demonstrated by there being no objections to and
2 no requests for exclusion from the Settlement.

3 b. The fairness of the Settlement is further illustrated by the gross *average*
4 Individual Settlement Share being approximately \$1,295.09, and the gross *highest*
5 Individual Settlement Share being about \$4,449.39.

6 16. Uncashed Checks. Any checks paid to Participating Class Members and/or
7 PAGA Group Members shall be negotiable for one hundred and eighty (180) calendar days from
8 the date of their issuance. Uncashed settlement checks will be voided and transmitted to the *cy*
9 *pres* recipient Legal Aid At Work for use in the County of Los Angeles.

10 17. Modification of Settlement Agreement. The Participating Class Members are
11 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
12 modifications of the Settlement Agreement only by an express written instrument signed by all
13 Parties, their successors-in-interest, and/or the Parties' respective counsel, as authorized. Such
14 amendments or modifications shall be consistent with this Order and Judgment and cannot limit
15 the rights of Participating Class Members under the Settlement Agreement.

16 18. Final Accounting and Compliance. The Court sets a nonappearance case review
17 9:00 a.m.
17 for March 1, 2024 at ~~2:30 p.m.~~ in Department 16. Within five (5) court days before this hearing,
18 Plaintiff shall file a compliance status report. Pursuant to Code of Civil Procedure section 384,
19 the compliance status report shall specify the total amount paid to Participating Class Members
20 and the residual of the unclaimed settlement funds that will be paid to the entity identified as the
21 recipient of such funds in the Settlement Agreement, along with a proposed amended judgment
22 to facilitate this payment.

23 a. Holdback Provision. Ten percent (10%) of the Class Counsel Fees Payment
24 (\$13,483.20) shall be held in an interest-bearing account, maintained by the
25 Settlement Administrator, pending the submission and approval of a final
26 compliance status report after completion of the distribution process.

27 ///

28 ///

1 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
2 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
3 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
4 and for any other necessary purpose, including, without limitation:

- 5 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
6 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
7 arise out of the Settlement or this Order and Judgment;
- 8 b. entering such additional orders as may be necessary or appropriate to protect or
9 effectuate this Order and Judgment approving the Settlement, and permanently
10 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
11 fair and orderly administration of the Settlement; and
- 12 c. entering any other necessary or appropriate orders to protect and effectuate this
13 Court's retention of continuing jurisdiction.

14 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
15 Class Counsel Litigation Expenses Payment, and Class Representative Payment is GRANTED.
16 The Settlement Administrator is directed to carry out the terms of the Settlement forthwith.

17 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
18 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
19 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
20 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
21 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
22 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
23 THE JUDGMENT THEREON.

24 IT IS SO ORDERED.

25 07/13/2023
26 DATED: _____



HONORABLE TARA DESAUTELS
SUPERIOR COURT JUDGE
Tara Desautels / Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jtorrez@justicelawcorp.com

On July 14, 2023, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Tesene v. CFR Rinkens, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-837570-21**
Court Case No.: RG21113141
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on July 14, 2023, at Pasadena, California.



Jessica Torrez