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7 Attorneys for Plaintiff
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8 and on behalf of all similarly situated employees

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SHASTA**

11 JOSHUA THOMPSON, individually and on
behalf of all similarly situated employees

12 Plaintiff(s),

13 v.

14 FROZEN GOURMET, INC., a California
15 Corporation; and DOES 1 to 100, inclusive,

16 Defendants.

CASE NO. SCRDCVC21-0198322

[PROPOSED] ORDER OF FINAL APPROVAL
AND JUDGEMENT

Assigned to Hon. Tamara L. Wood

Date.: January 30, 2023
Time: 8:30 AM
Dept: Dept. 8
Action Filed: October 6, 2021

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19 The above-entitled matter came on regularly for hearing on Monday, January 30, 2023 at
20 8:30 am in Department C8, the Honorable Tamara L. Wood presiding. The appearances are as
21 stated in the record. Having reviewed and considered the written submissions of all parties and
22 being fully advised, the Court rules as follows:

23 **i. RECITALS**

24 Plaintiff Joshua Thompson ("Plaintiff") alleges violations of the Labor Code on behalf of
25 employees of Defendant Frozen Gourmet, Inc., ("Defendant") and on behalf of the State of
26 California pursuant to the Labor Code Private Attorney General Act ("PAGA"). The parties have
27 reached a settlement, which the Court preliminarily approved on June 23, 2022 ("Preliminary
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Approval Order”). The factual and procedural background of the action and the Court’s analysis of the settlement and the settlement class are set forth in that Order.

Before the Court is Plaintiff’s Motion for Final Approval of the Settlement, including attorney fees, costs, and service awards. Plaintiff’s motion is unopposed.

a. Legal Standards for Approving a Class Action/PAGA Settlement

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.).

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Wershba v. Apple Computer, Inc.*, supra, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.).

In general, the most important factor is the strength of Plaintiff’s case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168Cal.App.4th 116, 130.) Still, the list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba v. Apple Computer, Inc.*, supra, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."

1 (*Ibid.*, quoting *Dunk v. Ford Motor Co.*, supra, 48 Cal.App.4th at p. 1801, internal quotation marks
2 omitted.)

3
4 The burden is on the proponent of the settlement to show that it is fair and
5 reasonable. However "a presumption of fairness exists where: (1) the settlement is
6 reached through arm's-length bargaining; (2) investigation and discovery are
sufficient to allow counsel and the court to act intelligently; (3) counsel is
experienced in similar litigation; and (4) the percentage of objectors is small."

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8 (*Wershba v. Apple Computer, Inc.*, supra, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor Co.*,
9 supra, 48 Cal.App.4th at p. 1802.).

10 Finally, Labor Code section 2699, subdivision (1) provides that "[t]he superior court shall
11 review and approve any penalties sought as part of a proposed settlement agreement pursuant to"
12 PAGA. Seventy-five percent of any penalties recovered under PAGA go to the Labor and
13 Workforce Development Agency ("LWDA"), leaving the remaining twenty-five percent for the
14 aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348,
15 380.) "[T]here is no requirement that the Court certify a PAGA claim for representative treatment"
16 as in a class action. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No.
17 CV122615PSGJEMX) 2015 WL 12732709, at *5.) "[W]hen a PAGA claim is settled, the relief
18 provided ... [should] be genuine and meaningful, consistent with the underlying purpose of the
19 statute to benefit the public " (Id. at *13.) The settlement must be reasonable in light of the
20 potential verdict value (see *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d
21 1110, 1135 [rejecting settlement of less than one percent of the potential verdict]); however, it may
22 be substantially discounted given that courts often exercise their discretion to award PAGA
23 penalties below the statutory maximum even where a claim succeeds at trial (see *Viceral v. Mistras*
24 *Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8-9).

25 b. Terms of the Settlement

26 Attached as Exhibit A to this judgment is the Joint Stipulation of Class Action Settlement
27 and Release ("Agreement" or "Settlement Agreement"). Unless otherwise stated, all capitalized
28 terms in this Order and Judgment have the same meaning as in the Agreement.

1 The Agreement contemplates, inter alia, the following terms: The non-reversionary Gross
2 Settlement Amount is \$180,000 (“Gross Settlement”). The Agreement authorizes attorney fees of
3 \$63,000.00, litigation costs of 10,741.49, and administration costs of up to \$3,995.00 to be paid
4 from the Gross Settlement. The agreement also contemplates that \$18,000 of the settlement will be
5 for PAGA penalties, of which \$13,500.00 will be distributed to the LWDA. Finally, each Class
6 Representative seeks an enhancement award of \$4,500.00.

7 The Agreement further contemplates that the Gross Settlement will be increased by a
8 proportional amount if the total amount of workweeks worked by the Class was *at least* 10% higher
9 than the number of workweeks represented by the Defendant. In the present case, the actual
10 workweeks worked by the Class was 1,774.25, whereas Defendant represented that the total
11 number of workweeks worked by the Class was 1,350; this amounts to a 19.48% difference.
12 Accordingly, the Gross Settlement amount increased to \$215,060.61, and attorneys’ fees to
13 \$75,271.21.

14 The net settlement will be distributed to individual class members pro rata based on their
15 qualifying workweeks. Class members will not be required to submit a claim to receive their
16 payments. Settlement awards will be allocated 33.3% as wages, 33.3% as interest, and 33.3% as
17 civil and statutory penalties, and Defendant will pay its share of payroll taxes separately from the
18 Gross Settlement. Funds associated with checks uncashed after 180 days shall be redistributed to
19 Legal Aid at Work as a cy pres recipient.

20 In the Preliminary Approval Order, the Court approved Phoenix Settlement Administrators
21 as the Settlement Administrator and approved the process by which notice was to be given to the
22 class, including the form of the notice that was to be sent to the Class. Class members who do not
23 opt out of the settlement will release all Released Claims including those asserted or that could
24 have been asserted based on the facts alleged in the Coordinated Action.

25 c. Evidence Presented

26 In support of the Motion for Final Approval, Plaintiff reiterates that the settlement is fair
27 and reasonable on the same grounds as presented during the Motion for Preliminary Approval. In
28 addition, Plaintiff presents the Declaration of Kevin Lee on behalf of the Settlement Administrator,

1 declarations of counsel, and declarations of the Class Representatives.

2 **ii. FINDINGS**

3 The Court, having reviewed the submissions of the Parties, and the arguments of counsel, and
4 being duly advised, finds as follows:

5 a. The Court finds that the Settlement Agreement is presumptively fair and reasonable

6 As an initial matter, the presumption of fairness articulated in *Wershba* applies here. As to
7 the first factor, as part of the Motion for Preliminary Approval, the Court reviewed the litigation
8 history of the case as described in the Settlement Agreement and determined at that time that the
9 settlement was indeed arrived at via arms-length negotiation between two mediation sessions.

10 Nothing has been presented to the Court to contradict that finding, and the Court therefore finds
11 that the settlement was arrived at through arms-length negotiation.

12 As to the second factor, the Court again holds that the discovery into Defendant's policies
13 and procedures, and the data about the class members and the number of shifts worked is adequate
14 for the parties and the Court to evaluate the strengths and weaknesses of Plaintiff's case.

15 As to the third factor, Class Counsel has established, by their declarations listing their many
16 Class, PAGA, and wage and hour cases, that they are experienced in Class Action and wage and
17 hour matters.

18 As to the final factor, the Declaration of Kevin Lee establishes (1) that the notice process is
19 complete; (2) that the class members totaled 25; (3) that the notice packet and procedures approved
20 in the Order Granting Preliminary Approval were followed; (4) that of the 25 notice packets
21 mailed, 2 were returned; (5) that of the 2 returned packets, 2 were forwarded to addresses updated
22 via running a skip-trace using TransUnion TLOxp, leaving only no packets undeliverable; and (6)
23 that as of November 22, 2022 the Settlement Administrator had received no requests for exclusion,
24 no objections, and no disputes as to the number of workweeks worked. The Court therefore
25 concludes that sufficient notice has been provided to the Class and that no objections were received
26 by the Class Administrator or the Court.

27 Thus, the Settlement is entitled to a presumption of fairness. While such a presumption
28 may be rebutted, no objections were raised, and no evidence against the fairness or reasonableness

1 of the settlement was presented at the hearing.

2 b. The Attorney Fees and Costs Requested are Reasonable

3 Plaintiff seeks a fee award of \$75,271.21, which is slightly more than one-third of the Gross
4 Settlement or 35%, which is not an uncommon contingency fee allocation in a wage and hour class
5 action. This award is facially reasonable under the “common fund” doctrine, which allows a party
6 recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff
7 also provide a lodestar figure of \$52,647.50, resulting from 113.5 aggregate hours working on the
8 case, at an average rate of \$463.85 per hour. Plaintiff’s request results in a multiplier of 1.42. As a
9 cross-check, the lodestar supports the percentage fee requested, particularly given the lack of
10 objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th
11 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the
12 common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)
13 Plaintiff’s counsel also requests \$10,741.49 in costs. This appears reasonable based on summaries
14 provided.

15 Likewise, the Settlement Administrator Costs of \$3,995.00 appears to be fair and
16 reasonable.

17 c. The Enhancement Award to Named Plaintiff is Reasonable

18 The requested enhancement award of \$5,000 to Plaintiff is fair and reasonable. The Class
19 Representative spent hours with his counsel prosecuting the action as described in his submitted
20 declarations, received a favorable outcome for the class members in light of the risks in obtaining
21 class certification with the multitude of different work locations the class members worked at, and
22 publicly lent his name to the law action in the face of a growing industry of companies who offer
23 their services to employers to help them screen out litigious potential employees.

24 d. Notice to the LWDA is Adequate

25 The Court finds that the Declaration of Manny Starr demonstrates that a copy of this motion
26 and all supporting papers was submitted to the LWDA contemporaneously with being filed with
27 the Court. Further, notice of the Settlement Agreement and the Order Granting Preliminary
28 Approval was previously served on the LWDA pursuant to Labor Code section 2699(1)(2).

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2 **iii. ORDER AND JUDGMENT**

3 In accordance with the above, IT IS HEREBY ORDERED THAT:

4 Plaintiff's motion for final approval is GRANTED. The following Class is certified for settlement
5 purposes:

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7 all non-exempt hourly-paid route employees of Frozen Gourmet, Inc. who
8 performed work in California at any time during the period from October 6, 2017,
through October 1, 2021.

9 There are no exclusions from the class, as no requests for exclusion were received.

10 Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., §
11 668.5.) Judgement is entered FOR PLAINTIFF AND THE CLASS and AGAINST
12 DEFENDANT. Plaintiff and the members of the class shall take from their complaint only the
13 relief set forth in the Settlement Agreement (incorporated herein by reference) and this Order and
14 Judgment. Class Counsel shall recover \$75,271.21 in fees and \$10,741.49 in costs. The Settlement
15 Administrator shall recover \$3,995 in administration costs. Pursuant to Rule 3.769(h) of the
16 California Rules of Court, the Court retains jurisdiction over the parties to enforce the terms of the
17 Settlement Agreement and the final order and judgment.

18 The Settlement Administrator shall distribute the Net Settlement Amount as contemplated
19 in the Settlement Agreement within 15 business days. As of the check cashing deadline, a total of
20 \$ _____ in Individual Settlement Payments to Class Members remain uncashed.
21 Pursuant California Code of Civil Procedure section 384, this amount, plus any interest that has
22 accrued thereon, shall be distributed to Legal Aid at Work as a cy pres recipient, as dictated by the
23 Settlement.

24 The Court hereby enters final judgment in this case in accordance with the terms of the
25 Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the
26 Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over
27 the action and the Parties, including all Class Members, for purposes of enforcing and interpreting
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1 this Order and the Settlement.

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3 IT IS SO ORDERED

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5 Dated:

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Honorable Tamara L. Wood
Judge of the Superior Court

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