

FILED
Superior Court of California
County of Los Angeles

AUG 02 2023

David W. Stalton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

YOHANNA SANCHEZ, individually, and
on behalf of other members of the general
public similarly situated,

Plaintiff,

v.

SU CASA DE CAMBIO CESAR
CHAVEZ, INC., a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21STCV32728

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITION

I. BACKGROUND

Plaintiff Yohanna Sanchez and putative class members sue their former employer, Su Casa De Cambio Cesar Chavez, Inc., (hereafter, "Defendant" or "SCDC") for alleged wage and hour violations. Defendant provides check cashing services to the public at various locations throughout California. Plaintiff seeks to represent a class of Defendants' current and former non-exempt employees.

1 On September 3, 2021, Plaintiff filed a putative wage-and-hour class action
2 complaint against Defendant for: (1) Failure to Pay Minimum and Straight Time Wages
3 (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Wages
4 (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab.
5 Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code
6 §§ 226.7); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§
7 201-203); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §
8 226); and (7) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.). On
9 September 3, 2021, Plaintiff also sent a notice to Defendant and the California Labor &
10 Workforce Development Agency (“LWDA”) alleging similar wage and hour violations
11 pursuant to the Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, et
12 seq.).

13 On November 9, 2021, Plaintiff filed her PAGA complaint. After the parties
14 agreed to mediate this case, they also agreed to Plaintiff filing a First Amended
15 Complaint (“FAC”) to add her PAGA claim to this case. The First Amended
16 Complaint is the operative complaint in the Action (the “Operative Complaint.”). On
17 February 25, 2022, Plaintiff filed her FAC and subsequently dismissed her separately
18 filed PAGA matter.

19 On June 17, 2022, the Parties participated in private mediation with class action
20 mediator, Brandon McKelvey, Esq., conducted through videoconference over Zoom.
21 Counsel contends the settlement negotiations were at arm’s length and, although
22 conducted in a professional manner, were adversarial. Further, Counsel contends that
23 the Parties went into the mediation willing to explore the potential for a settlement of
24 the dispute, but each side was also prepared to litigate their position through trial and
25 appeal if a settlement had not been reached.

1 Finally, Counsel contends that after extensive negotiations and discussions
2 regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses,
3 the Parties were able to reach a resolution. The terms were finalized in a Class Action
4 and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), a fully-
5 executed copy of which is attached to the Declaration of Justin F Marquez filed
6 November 2, 2022 as Exhibit 1.

7 The matter came on for hearing on March 10, 2023 following the issuance of a
8 "checklist" on March 9, 2023. At hearing the matter was continued to June 14, 2023 as
9 a non-appearance matter, provided counsel filed necessary documentation. A Second
10 Amended Complaint was filed April 7, 2023 adding a claim for reimbursements (Labor
11 Code §2802). It is represented this claim was discovered during the mediation process.
12 Marquez Dec. ¶ 19 FN 1. An answer was filed May 9, 2023. Additional materials were
13 submitted June 13, 2023, including a revised settlement agreement attached to the
14 Declaration of Chistina M. Le as Exhibit 8. A red-lined version of that agreement
15 (compared to the one previously submitted) was filed July 26, 2023 after request by the
16 Court. All references below are to the agreement submitted June 13, 2023.

17 Having considered all of material submitted preliminary approval is granted for
18 the reasons set forth below on condition that requests for opt-outs, objections, and
19 workweek challenges are understood to be timely if presented within 45 (as extended
20 for remailed notices). In this regard, the Settlement Agreement is inconsistent
21 ambiguous, as the "Response Deadline" (¶1.43) is defined as 45 days and the deadline
22 is said to be 45 days in ¶8.4.4 but the Request for Exclusion is said to be 60 days in
23 ¶8.5.1. The Notice shall reflect a 45 days period for objections, exclusions, and
24 workweek challenges.

II. THE TERMS OF THE SETTLEMENT

A. SETTLEMENT CLASS AND RELATED DEFINITIONS

“Class” means all persons employed by SCDC in California and classified as an hourly paid, non-exempt employee who worked for SCDC during the Class Period. (Settlement Agreement, ¶1.5.)

- “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee). (¶1.9.)

- “Class Period” means the period from March 9, 2017 through the date the Court grants Preliminary Approval of the Settlement. (¶1.12.)

- “Aggrieved Employee” means a person employed by SCDC in California and classified as a hourly paid, non-exempt employee who worked for SCDC during the PAGA Period. (¶1.4.)

- “PAGA Period” means the period from March 11, 2020 through the date the Court grants Preliminary Approval of the Settlement. (¶1.31.)

- At mediation, SCDC represented that there were 104 employees who collectively worked a total of 17,836 workweeks and 69 Aggrieved Employees who worked a total 2,778 of PAGA Pay Periods. (¶4.1.)

B. THE MONETARY TERMS OF SETTLEMENT

The essential monetary terms are as follows:

- The Gross Settlement Amount (“GSA”) is **\$353,500** (¶3.1). This includes payment of a PAGA penalty of **\$25,000** to be paid 75% to the LWDA (\$18,750) and 25% to the Aggrieved Employees (\$6,250). (¶3.2.5.)

1 ○ Escalator Clause: At mediation, SCDC represented that there were: (1)
2 104 Class Members and 17,836 Total Workweeks during the Class
3 period. If the actual number of Total Workweeks exceeds this figure by
4 more than 10% as of the date of Preliminary Approval (i.e., there are
5 19,620 or more workweeks worked), SCDC shall increase the Gross
6 Settlement Amount in an amount equal to the increase in class workweeks
7 above the 10% threshold (e.g., if there is an 11% increase in the Total
8 Workweeks then SCDC will increase the Gross Settlement amount by
9 1%). (¶9.)

- 10 • The Net Settlement Amount (“Net”) (\$174,666.67) is the GSA less:
 - 11 ○ Up to \$117,833.33 (33.33%) for attorney fees (¶3.2.2.);
 - 12 ○ Up to \$16,000 for attorney costs (*Ibid.*);
 - 13 ○ Up to \$10,000 for a service award to the proposed class representative
14 (¶3.2.1.); and
 - 15 ○ Estimated \$10,000 for settlement administration costs (¶3.2.3).
- 16 • Employer-side payroll taxes will be paid by Defendant in addition to the Gross
17 Settlement Amount. (¶3.1.)
- 18 • Assuming the Court approves all maximum requested deductions, approximately
19 \$174,666.67 will be available for automatic distribution to participating class
20 members. Assuming full participation, the average settlement share will be
21 approximately \$1,679.48. (\$180,916.67 Net ÷ 104 class members = \$1,679.48).
22 In addition, each PAGA member will receive a portion of the PAGA penalty,
23 estimated to be \$90.58 per PAGA member. (\$6,250 or 25% of \$25,000 PAGA
24 penalty ÷ 69 PAGA members = \$90.58). In this regard, the Declaration of
25

Marquez (¶29) is in error and is corrected in the Declaration of Le filed June 13, 2023 (¶3).

- There is no Claim Requirement. (Notice, pg. 2.)
- The settlement is not reversionary. (¶3.1.)
- Individual Settlement Share Calculation: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (¶3.2.4.)
- PAGA Payment Calculation: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$6,250.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (¶3.2.5.1.)
- Tax Withholdings: 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims and 90% will be allocated to settlement of claims for interest and penalties. (¶3.2.4.1.)
- Funding of Settlement: SCDC shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay SCDC's share of payroll taxes by transmitting the funds to the Administrator no earlier than December 17, 2023, with funding of the Settlement Amount to be paid within 14 days from that date (December 17, 2023), unless SCDC voluntarily chooses to make payment sooner. (¶4.3.)

- 1 • Distribution: Within 14 days after SCDC funds the Gross Settlement Amount,
2 the Administrator will mail checks for all Individual Class Payments, all
3 Individual PAGA Payments, the LWDA PAGA Payment, the Administration
4 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
5 Litigation Expenses Payment, and the Class Representative Service Payment.
6 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
7 Expenses Payment and the Class Representative Service Payment shall not
8 precede disbursement of Individual Class Payments and Individual PAGA
9 Payments. (§4.4.)
- 10 • Uncashed Settlement Payment Checks: The face of each check shall prominently
11 state the date (not less than 180 days after the date of mailing) when the check
12 will be voided. (§4.4.1.) For any Class Member whose Individual Class Payment
13 check or Individual PAGA Payment check is uncashed and cancelled after the
14 void date, the Administrator shall transmit the funds represented by such checks
15 to the California Controller's Unclaimed Property Fund in the name of the Class
16 Member thereby leaving no "unpaid residue" subject to the requirements of
17 California Code of Civil Procedure Section 384, subd. (b). (§4.4.3).

18 19 **C. TERMS OF RELEASES**

- 20 • Class Release: All Participating Class Members, on behalf of themselves and
21 their respective former and present representatives, agents, attorneys, heirs,
22 administrators, successors, and assigns, release SCDC and each of its former and
23 present directors, officers, shareholders, owners, members, attorneys, insurers,
24 predecessors, successors, assigns, subsidiaries, and affiliates from (i) all claims
25 that were alleged, or reasonably could have been alleged, based on the Class

1 Period facts stated in the Operative Complaint and ascertained in the course of
2 the Action including, but not limited to, any and all claims for (1) failure to pay
3 minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and
4 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3)
5 failure to provide meal periods and to pay premium payments (Cal. Lab. Code
6 §§ 226.7, 512); (4) failure to authorize and permit rest periods and to pay
7 premium payments (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final
8 wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide
9 accurate itemized wage statements (Cal. Lab. Code § 226); (7) failure to
10 reimburse business-related expenses (Labor Code § 2802); (8) violation of
11 California's Unfair Competition Law (California Business and Professions Code
12 §§ 17200, et seq.); and failure to maintain records (Labor Code § 1174.5).

13 Participating Class Members do not release any other claims, including claims
14 for vested benefits, wrongful termination, violation of the Fair Employment and
15 Housing Act, unemployment insurance, disability, social security, workers'
16 compensation, or claims based on facts occurring outside the Class Period.

17 (¶6.2)

- 18 • PAGA Release: Upon either the Date When SCDC Fully Funds the Entire Gross
19 Settlement Amount and Funds All Employer Payroll Taxes Owed on the Wage
20 Portion of the Individual Class Payments, or the Date the Court Grants Final
21 Approval of the Settlement, whichever is later, Plaintiff, all Aggrieved
22 Employees, and the State of California are deemed to release all claims for
23 PAGA civil penalties, which occurred during the PAGA Period, pursuant to
24 Labor Code section 2698 et seq. alleged or that could have been alleged based on
25 the allegations asserted in the Operative Complaint and PAGA Notice, including

1 but not limited to claims for (1) failure to pay minimum and straight time wages
2 (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime
3 wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to provide meal periods
4 and to pay premium payments (Cal. Lab. Code §§ 226.7, 512); (4) failure to
5 authorize and permit rest periods and to pay premium payments (Cal. Lab. Code
6 §§ 226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§
7 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab.
8 Code § 226); (7) failure to reimburse business-related expenses (Labor Code §
9 2802); and (8) failure to maintain records (Labor Code § 1174.5). (¶6.3.)

- 10 • Released Parties: SCDC and each of its former and present directors, officers,
11 shareholders, owners, members, attorneys, insurers, predecessors, successors,
12 assigns, subsidiaries, and affiliates. (¶1.41.)
- 13 • The named Plaintiff will also provide a general release and a waiver of the
14 protections of Cal. Civ. Code §1542. (¶¶ 6.1-6.1.1)
- 15 • The releases are effective on the date when SCDC fully funds the entire Gross
16 Settlement Amount and funds all employer payroll taxes owed on the Wage
17 Portion of the Individual Class Payments. (¶6.)

18 19 **D. SETTLEMENT ADMINISTRATION**

- 20 • The proposed Settlement Administrator is ILYM Group, Inc., which has provided
21 evidence that no counsel are affiliated with it and that it has adequate procedures
22 in place to safeguard the data and funds to be entrusted to it. (See Declaration of
23 Sean Hartranft [Senior Vice President of Sales for ILYM Group], ¶¶ 2-3;
24 Declaration of Rod Garza [President of Defendant], ¶2; Declaration of Ashley N.
25 Lopezello – [Defendant’s Counsel], ¶2.)

- 1 • Settlement administration costs are estimated to be \$10,000. (§3.2.3.)
- 2 • Notice: The manner of giving notice is described below.
- 3 • Response Deadline: 45 days after the Administrator mails Notice to Class
- 4 Members and Aggrieved Employees, and shall be the last date on which Class
- 5 Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement,
- 6 or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to
- 7 whom Notice Packets are re-sent after having been returned undeliverable to the
- 8 Administrator shall have an additional 14 calendar days beyond the Response
- 9 Deadline has expired. (§1.43.) The same deadline applies to challenges to
- 10 calculation of workweeks. (§8.6.) As discussed, *supra*, the deadline to request
- 11 exclusion is inconsistent and shown to be both 45 and 60 days. (Compare §8.5.1
- 12 with §§ 8.4.4 and 1.43.
- 13 ○ SCDC'S RIGHT TO WITHDRAW: If the number of valid Requests for
- 14 Exclusion identified in the Exclusion List exceeds 10% of the total of all
- 15 Class Members, SCDC may, but is not obligated, elect to withdraw from
- 16 the Settlement. The Parties agree that, if SCDC withdraws, the Settlement
- 17 shall be void ab initio, have no force or effect whatsoever, and that neither
- 18 Party will have any further obligation to perform under this Agreement;
- 19 provided, however, SCDC will remain responsible for paying all Settlement
- 20 Administration Expenses incurred to that point. SCDC must notify Class
- 21 Counsel and the Court of its election to withdraw not later than seven days
- 22 after the Administrator sends the final Exclusion List to Defense Counsel;
- 23 late elections will have no effect. (§10.)
- 24 • Notice of Final Judgment will be posted on the Settlement Administrator's
- 25 website. (§8.8.1.)

1 **III. SETTLEMENT STANDARDS AND PROCEDURE**

2 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
3 of an entire class action, or of a cause of action in a class action, or as to a party,
4 requires the approval of the court after hearing.” “Any party to a settlement agreement
5 may serve and file a written notice of motion for preliminary approval of the settlement.
6 The settlement agreement and proposed notice to class members must be filed with the
7 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
8 Court, rule 3.769(c).

9 “In a class action lawsuit, the court undertakes the responsibility to assess
10 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
11 dismissal of a class action. The purpose of the requirement [of court review] is the
12 protection of those class members, including the named plaintiffs, whose rights may not
13 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
14 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
15 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
16 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
17 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
18 agreement to the extent necessary to reach a reasoned judgment that the agreement is
19 not the product of fraud or overreaching by, or collusion between, the negotiating
20 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
21 concerned.”] [internal quotation marks omitted].

22 “The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
24 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
25 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

1 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
2 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

3 Notwithstanding an initial presumption of fairness, “the court should not give
4 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
5 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
6 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
7 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
8 members, the court must independently and objectively analyze the evidence and
9 circumstances before it in order to determine whether the settlement is in the best
10 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
11 In that determination, the court should consider factors such as “the strength of
12 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
13 the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the
16 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
17 factors is not exclusive and the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
19 245.

20 At the same time, “[a] settlement need not obtain 100 percent of the damages
21 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
22 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated,’
24 this is no bar to a class settlement because ‘the public interest may indeed be served by
25

1 a voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.” *Id.* at 250.

3 4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5 6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

8 9 **1. The settlement was reached through arm’s-length bargaining**

10 On June 17, 2022, the Parties participated in private mediation with class action
11 mediator, Brandon McKelvey, Esq., conducted through videoconference over Zoom.
12 Counsel contends the settlement negotiations were at arm’s length and, although
13 conducted in a professional manner, were adversarial. Further, Counsel contends that
14 the Parties went into the mediation willing to explore the potential for a settlement of
15 the dispute, but each side was also prepared to litigate their position through trial and
16 appeal if a settlement had not been reached. (Marquez Decl. ¶9.)

17 Counsel contends that after extensive negotiations and discussions regarding the
18 strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties
19 were able to reach a resolution. (*Id.* ¶10.)

20 21 22 **2. The investigation and discovery were sufficient**

23 Counsel represents that prior to mediation, the Parties exchanged documents and
24 information. (Marquez Dec, ¶7.) According to Counsel, Defendant produced a 20%
25 sampling of timekeeping and pay records for the class members. (*Ibid.*) Defendant also

1 provided documents of their wage and hour policies and practices during the class
2 period, and information regarding the total number of current and former employees in
3 its informal discovery responses. (*Ibid.*)

4 After reviewing documents regarding Defendant's wage and hour policies and
5 practices, analyzing Defendant's timekeeping and payroll records, Class Counsel
6 represents they were able to evaluate the probability of class certification, success on
7 the merits, and Defendant's maximum monetary exposure for all claims. (*Id.* at ¶8.)
8 Class Counsel represents they investigated the applicable law regarding the claims and
9 defenses asserted in the Litigation, reviewed these records, and utilized an expert to
10 prepare a damages analysis prior to mediation. (*Ibid.*)

11 Counsel's expert represents that the sample was analyzed on the shift and
12 workweek levels, calculating the work shift level of data at a 95% confidence interval
13 with a 0.9% margin of error and the workweek level of at a 95% confidence interval
14 with a 2.1% margin of error. (Declaration of Jarret Gorlick, ¶¶7-8.) Counsel's expert
15 contends that a 95% confidence level with a maximum margin of error of 5%, and a
16 95% confidence level with a maximum margin of error of 5% are generally accepted as
17 scientifically valid and supported in statistics. (*Id.* at ¶9-10.) Counsel concludes that the
18 data analyzed is statistically valid because the margins of error he calculated (0.9% and
19 2.1%) were lower than the generally accepted 5% margin of error. (*Id.* ¶9.)

20 This work and analysis is sufficient to value the case for settlement purposes.

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

22
23 Class Counsel represent that they are experienced in class action litigation,
24 including wage and hour class actions. (Marquez Dec. ¶¶ 42-52.)
25

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

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

7 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
8 **FAIR, ADEQUATE, AND REASONABLE**
9

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

21 **1. Amount Offered in Settlement**

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

24 Class Counsel estimated Defendant’s maximum exposure at \$3,517,854 and
25 realistic exposure at **\$567,469.20**, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
Failure to pay for all hours worked	\$328,059.00	\$65,611.80
Meal Breaks	\$1,155,756.00	\$231,151.20
Rest Period Violations	\$1,149,480.00	\$114,948.00
Reimbursement	\$211,536.00	\$21,153.60
Derivative penalties (Including \$277,800.00 for PAGA)	\$673,023.00	\$134,604.60
Total	\$3,517,854.00	\$567,469.20

Class Counsel discounted the claim for failure to pay all hours worked given the difficulties in certifying a class on that claim. As to meal and rest periods Class Counsel indicates the records showed 75.1% of all shifts had short, missed, or no meal periods. However, 1/3 of the violations occurred between hours 5 and 6, when meal periods may be waived, and Defendants contended the missed meals were voluntary or taken at a later time per employee choice. An assumed violation rate of 75% was applied to rest periods but this number was discounted due to lack of records and the difficulties of proving this claim. Cell phone expenses constituted the reimbursement claim but this was discounted due to the difficulties in establishing how much each employee used his or her phone for work purposes. Penalties were discounted due to Class Counsel's assessment that same likely would not be awarded in totality. (Marquez Decl., ¶¶ 18 -26; Le Dec. filed June 13, 2023 ¶¶ 13-16.)

Class Counsel negotiated a gross settlement valued at \$353,500. This is approximately 10.05% of Defendant's maximum exposure and 62.29% of Defendant's realistic exposure taking into the risks described by Class Counsel.

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 wage and hour class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and adequate. (Marquez Decl., ¶17.)

The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA, which was sent a copy of the Settlement Agreement on November 2, 2022 and has not yet objected. (*Id.* at ¶11; *See* Proof of Service attached to the Motion.) Any objection by it will be considered at the final fairness hearing.

3. The Releases Are Limited

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

1 **4. Conclusion**

2 Class Counsel estimated Defendant's maximum exposure at \$3,517,854. Class
3 Counsel obtained a gross settlement valued at \$353,500. This is approximately 10.05%
4 of Defendant's maximum exposure, which, given the uncertain outcomes, including the
5 potential that the class might not be certified, that liability is a contested issue, and that
6 the full amount of penalties would not necessarily be assessed even if the class is certified
7 and liability found, the settlement is within the "ballpark of reasonableness."

8
9 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

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

17
18 **1. The Proposed Class is Numerous**

19 There are 104 putative Class Members. (Plaintiff's Notice of Motion and
20 Motion for Preliminary Approval of Class Action Settlement; Memorandum of Points
21 and Authorities ("Motion") at 16:14-15.) Numerosity is established. *Franchise Tax*
22 *Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating
23 that the "requirement that there be many parties to a class action is liberally
24 construed," and citing examples wherein classes of as little as 10, *Bowles v. Superior*
25

1 Court (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017,
2 were upheld).

3 4 **2. The Proposed Class Is Ascertainable**

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

10 The class is defined above. Class Members are ascertainable through the
11 Defendant’s regular business records using specific criteria (i.e., job position) to
12 identify class members. (Motion at 16:16-18.)

13 14 **3. There Is A Community of Interest**

15 “The community of interest requirement involves three factors: ‘(1) predominant
16 common questions of law or fact; (2) class representatives with claims or defenses typical
17 of the class; and (3) class representatives who can adequately represent the class.’”
18 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

19 As to predominant questions of law or fact, Counsel contends that the alleged
20 employment practices at issue are: whether Defendant had legally compliant policies and
21 practices for all hours worked, including overtime wages; whether Defendant had legally
22 compliant policies and practices to provide employees with meal periods; whether
23 Defendant had legally compliant policies and practices authorizing and permitting its
24 employees to take rest periods; whether final payment of wages was untimely and
25 excluded unpaid wages, including meal period premium and rest period premium wages;

1 whether the wage statements were consequently non-compliant; and whether Defendant
2 adequately reimbursed employees for business expenditures. Counsel also contends that
3 the factual and legal issues are the same for all of the identified class members, including
4 Plaintiff. Further, all class members are alleged to have suffered from, and seek redress
5 for, the same alleged injuries. (Motion at 17:8-24.)

6 As to typicality, Counsel contends that Plaintiff is a former employee of
7 Defendant; as such, she alleges that she was subject to the same policies and practices as
8 other similarly situated employees. (*Id.* at 18:5-7.)

9 As to adequacy, Plaintiff(s) represents that she has actively participated in the
10 litigation of this action and understands her responsibilities. (Declaration of Yohanna
11 Sanches, ¶4)

12 Plaintiff further represents that she understood the risks, both professionally and
13 financially, associated with pursuing a class action case and acting as the Class
14 Representative. (*Id.* at ¶5.) As previously stated, Class Counsel have experience in class
15 action litigation.

16 17 **4. Substantial Benefits Exist**

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

20 21 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 22 **OF DUE PROCESS**

23 The purpose of notice is to provide due process to absent class members. A practical
24 approach is required, in which the circumstances of the case determine what forms of
25 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California

1 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
2 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
3 stake of the individual class members; (4) the cost of notifying class members; (5) the
4 resources of the parties; (6) the possible prejudice to class members who do not receive
5 notice; and (7) the res judicata effect on class members.

6 **1. Method of class notice**

7 Not later than 15 days after the Court grants Preliminary Approval of the
8 Settlement, SCDC will simultaneously deliver the Class Data to the Administrator, in
9 the form of a Microsoft Excel spreadsheet (§4.2). No later than three (3) business days
10 after receipt of the Class Data, the Administrator shall notify Class Counsel that the list
11 has been received and state the number of Class Members, PAGA Members,
12 Workweeks, and Pay Periods in the Class Data. (§8.4.1.)

13 Using best efforts to perform as soon as possible, and in no event later than 14
14 days after receiving the Class Data, the Administrator will send to all Class Members
15 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
16 the Class Notice. (§8.4.2.)

17 Not later than 3 business days after the Administrator’s receipt of any Class
18 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
19 Notice using any forwarding address provided by the USPS. If the USPS does not
20 provide a forwarding address, the Administrator shall conduct a Class Member Address
21 Search, and re-mail the Class Notice to the most current address obtained. The
22 Administrator has no obligation to make further attempts to locate or send Class Notice
23 to Class Members whose Class Notice is returned by the USPS a second time (§8.4.3.)

24 //

25 //

1 **2. Content of class notice.**

2 A copy of the proposed class notice is attached to the Settlement Agreement.
3 The notice includes information such as: a summary of the litigation; the nature of the
4 settlement; the terms of the settlement agreement; the maximum deductions to be made
5 from the gross settlement amount (i.e., attorney fees and costs, the enhancement award,
6 and claims administration costs); the procedures and deadlines for participating in,
7 opting out of, or objecting to, the settlement; the consequences of participating in,
8 opting out of, or objecting to, the settlement; and the date, time, and place of the final
9 approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be given in both
10 English and Spanish. (¶1.11.). If consistently stated that the opt-out, objection and
11 workweek dispute dates are 45 days from mailing (as extended by remailing) the Notice
12 is adequate.

13 **3. Settlement Administration Costs**

14 Settlement administration costs are estimated at **\$10,000**, including the cost of
15 notice. (¶3.2.3.) Prior to the time of the final fairness hearing, the settlement
16 administrator must submit a declaration attesting to the total costs incurred and
17 anticipated to be incurred to finalize the settlement for approval by the Court.
18

19 **E. ATTORNEY FEES AND COSTS**

20 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
21 implied, that has been entered into with respect to the payment of attorney fees or the
22 submission of an application for the approval of attorney fees must be set forth in full in
23 any application for approval of the dismissal or settlement of an action that has been
24 certified as a class action.”
25

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

12 The question of class counsel’s entitlement to **\$117,833.33** (33.33%) in attorney
13 fees will be addressed at the final fairness hearing when class counsel brings a noticed
14 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
15 the court with current market tested hourly rate information and billing information so
16 that it can properly apply the lodestar method and must indicate what multiplier (if
17 applicable) is being sought.

18 Class counsel should also be prepared to justify the costs sought (capped at
19 **\$16,000**) by detailing how they were incurred.
20

21 **F. SERVICE AWARDS**

22 The Settlement Agreement provides for a service award of up to **\$10,000** for the
23 class representative(s). Trial courts should not sanction enhancement awards of
24 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
25 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the

1 form of quantification of time and effort expended on the litigation, and in the form of
2 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
3 required in order for the trial court to conclude that an enhancement was ‘necessary to
4 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
5 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
6 original.

7 The Court will decide the issue of the enhancement award at the time of final
8 approval.

9
10 **V. CONCLUSION AND ORDER**

11 Subject to and contingent upon the Notice reflecting a 45 day period for opt-
12 outs, objections, and workweek challenges, the Court hereby:

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

15 (2) Grants conditional class certification;

16 (3) Appoints Johanna Sanchez as Class Representative(s);

17 (4) Appoints Justin Marquez of Wilshire Law Firm as Class Counsel;

18 (5) Appoints ILYM Group, Inc. as Settlement Administrator;

19 (6) Approves the proposed notice plan; and

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

- 21 • Preliminary approval hearing: August 1, 2023
- 22 • Deadline for Defendant to provide class list to settlement administrator: August
23 16, 2023 (within 15 calendar days from preliminary approval)
- 24 • Deadline for settlement administrator to mail notices: August 30, 2023 (within
25 14 calendar days from preliminary approval)

- Deadline for class members to opt out: October 16, 2023 (45 calendar days from the initial mailing of the Notice Packets)
- Deadline for class members to object: October 16, 2023 (45 calendar days from the initial mailing of the Notice Packets)
- Deadline for class counsel to file motion for final approval:
November 17, 2023 (16 court days prior to final fairness hearing)
- Final fairness hearing: December 13, 2023, at 9:00am

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

Dated:

8/1/23



MAREN E. NELSON

Judge of the Superior Court