

FILED
January 26, 2023
Clerk of The Court
Superior Court of CA
County of Santa Clara
20CV369926
By: rwalker

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARTIN MORENO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

WAITER.COM, INC., a California corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 20CV369926

Assigned for All Purposes to: Hon. Theodore C. Zayner
Honorable Patricia M. Lueas
~~Department 3~~

CLASS ACTION

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

Hearing Date: January 25, 2023
Hearing Time: 1:30 p.m.
Hearing Place: Department ~~3~~ 19

Complaint Filed: August 26, 2020
FAC Filed: April 18, 2022
Trial Date: None Set

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

6 Plaintiffs and Defendant Waiter.com, Inc. ("Defendant") entered the Settlement
7 Agreement on or about May 4, 2022 to settle this lawsuit.

8 The Court entered an order dated August 8, 2022 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, and
11 providing Class Members with an opportunity to object to the Settlement or exclude themselves
12 from the Class. A Final Approval Hearing was scheduled on January 25, 2023.

13 The Court held a Final Approval Hearing on January 25, 2023 to determine whether to
14 give final approval to the Settlement of this lawsuit.

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

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class been
20 given the opportunity to request exclusion, the Court has personal jurisdiction with respect to the
21 claims of all Class Members. The Court also 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 current and/or former hourly paid, non-
26 exempt persons employed by Defendant in California at any time since August 26, 2016 through
27 and including March 26, 2022 ("Class," "Class Members," and "Class Period"). There are three
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1 hundred eighty-three (383) Class Members who did not submit valid and timely requests to
2 exclude themselves from the Settlement (“Participating Class Members”).¹

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

6 5. Notice Packet. The Court finds the Notice of Class Action Settlement (“Class
7 Notice”) and the Election Not to Participate In (“Opt Out” Form) Class Action Settlement
8 (“Exclusion Form”) (collectively, known as the “Notice Packet”) and its distribution to Class
9 Members were implemented pursuant to the Settlement and this Court’s Preliminary Approval
10 Order. The Court also finds the Notice Packet:

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

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

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

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

22 6. Final Settlement Approval. The terms and provisions of the Settlement
23 Agreement have been entered in good faith and are the product of arm’s-length negotiations by
24 experienced counsel who have done a meaningful investigation of the claims. The Settlement
25 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
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28 ¹ The Settlement Administrator mailed Notice Packets to three hundred eighty-seven (387)
Class Members and received four (4) requests for exclusion. Thus, there are three hundred
eighty-three (383) Participating Class Members. 3

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

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

9. Release of Claims. Upon Defendant’s fulfillment of its payment obligations pursuant to section III (J)(9)(a) of the Agreement, Plaintiffs and Participating Class Members will fully and finally release and discharge the Released Parties from the Released Claims.

a. Effect of PAGA Settlement. Upon Defendant’s fulfillment of its payment obligations pursuant to section III (J)(9)(a) of the Agreement, Plaintiffs, California Labor and Workforce Development Agency (“LWDA”), and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible PAGA Employees, are barred from pursuing any action for civil penalties defined within the PAGA Released Claims against the Released Parties.

b. Plaintiffs’ Release of Claims and General Release. Upon Defendant’s fulfillment of its payment obligations pursuant to section III (J)(9)(a) of the Agreement, in exchange for the Class Representative Enhancement Payments of \$10,000 to Plaintiff Moreno and \$5,000 to Plaintiff Rivera, in recognition of their work and efforts in prosecuting the claims and obtaining the Settlement, and undertaking

1 the risk for the payment of costs if this matter had not successfully resolved,
2 Plaintiffs provide a general release of claims for themselves and their spouses,
3 heirs, successors, and assigns, as more fully set forth in the Settlement
4 Agreement. Plaintiffs' Release of Claims and General Release also includes a
5 waiver of Civil Code section 1542.

- 6 c. Released Parties. The Released Parties include Defendant and each of its
7 respective current, former, and future parent companies, subsidiaries, divisions,
8 and current and former affiliated individuals and entities, legal successors,
9 predecessors (including companies they have acquired, purchased, or absorbed),
10 assigns, joint ventures, and each and all of their respective officers, partners,
11 directors, owners, stockholders, servants, agents, shareholders, members,
12 managers, principals, investment advisors, consultants, employees,
13 representatives, attorneys, accountants, lenders, underwriters, benefits
14 administrators, investors, funds, and insurers, past, present, and future, and all
15 persons acting under, by, through, or in concert with any of them.

16 10. Class Representative Enhancement Payments. The Court finds the Class
17 Representative Enhancement Payments of \$10,000 to Plaintiff Moreno and \$5,000 to Plaintiff
18 Rivera, to be paid by Defendant to Plaintiffs out of the Gross Settlement Amount, to be
19 reasonable and appropriate. The Class Representative Enhancement Payments are to be paid
20 pursuant to the terms and provisions set forth in the Agreement.

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

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b. The Court reviewed Plaintiffs' declarations outlining their involvement. Given the risks inherent in their services as the class representatives, duration of the case and time involved, and benefits created for the Class, the Court approves the payment of the Class Representative Enhancement Payments of \$10,000 to Plaintiff Moreno and \$5,000 to Plaintiff Rivera.

11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award of \$157,500, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to be reasonable and appropriate. The Court further finds the Cost Award as reimbursement for actual litigation costs incurred of \$21,743.80, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members. Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiffs or Class Members in connection with or related in any manner to this lawsuit, Settlement, settlement administration, Released Claims, and/or PAGA Released Claims.

a. The Court has an independent right and responsibility to review the requested Attorney Fee Award and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The Attorney Fee Award requested by Class Counsel of \$157,500 is thirty-five percent (35%) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken, novel and difficult nature of this litigation, skills required, percentage fees award in previous and other cases, and contingent fees charged in the marketplace, the Court finds the requested Attorney Fee Award is consistent with the marketplace, is reasonable, and is approved.

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b. The Court reviewed the declaration of Douglas Han regarding the costs expended in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$25,000 in litigation costs. The Court finds Class Counsel expended \$21,743.80 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of the Cost Award of \$21,743.80 from the common fund for the reimbursement of Class Counsel's litigation costs.

12. Administration Costs. The Court finds Administration Costs of \$8,862, to be paid by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court reviewed the declaration of Denise Islas from Simpluris, Inc., the Court-approved Settlement Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, constitutes the best practicable notice to the Class, and satisfied due process. Thus, the Court approves the payment of the Administration Costs of \$8,862 for the Settlement Administrator's services in administering the Settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) will be paid to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$5,000) shall be distributed to Eligible PAGA Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding of the Settlement. Within fourteen (14) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of \$450,000 into the Qualified Settlement Fund. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate Individual Settlement Shares. Within fourteen (14) calendar days after the deadline to fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement.

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1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement Agreement is entitled to a presumption of fairness. In the moving papers, Plaintiffs
3 contend the Settlement Agreement was the product of arm's-length negotiations following
4 extensive litigation, discovery, and exchange of documentation. The negotiations were facilitated
5 with the aid of Mark S. Rudy, Esq., an experienced and well-respected mediator.

6 a. The fairness of the Settlement Agreement is demonstrated by there being no
7 objections to and only four (4) requests for exclusion from the Settlement
8 Agreement. The Class Members who requested exclusion are Paul Lima, Xuliang
9 Wu, Robert Loveland, and Jamee Esteban.

10 b. The fairness of the Settlement is also illustrated by the gross *average* Individual
11 Settlement Share being approximately \$592.41, and the gross *highest* Individual
12 Settlement Share being about \$3,017.18.

13 16. Uncashed Checks. Participating Class Members must cash or deposit their
14 settlement payment checks within one hundred eighty (180) calendar days after the checks are
15 mailed to them. Uncashed settlement checks will be canceled and paid to the *cy pres* recipient
16 Central Legal de la Raza. Moreover, Eligible Aggrieved Employees will also have one hundred
17 eighty (180) calendar days after the checks are mailed to them to cash or deposit their settlement
18 checks encompassing their portion of the PAGA Payment. The amount of the uncashed
19 settlement checks by Eligible PAGA Employees for their portion of the PAGA Payment will be
20 canceled and paid to the LWDA.

21 17. Modification of Settlement Agreement. The Participating Class Members are
22 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
23 modifications of the Settlement Agreement by an express written instrument signed by counsel
24 for all Parties or their successors-in-interest. Such amendments or modifications shall be
25 consistent with this Order and Judgment and cannot limit the rights of Participating Class
26 Members under the Settlement Agreement.

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1 18. Final Accounting and Compliance. The Court sets a nonappearance case review
2 for October ²⁵~~20~~, 2023 at 1:30 p.m. in Department 3. Within ten (10) court days before this
3 hearing, Plaintiffs shall file a compliance status report. Pursuant to Code of Civil Procedure
4 section 384, the compliance status report shall specify the total amount paid to Participating
5 Class Members and the residual of the unclaimed settlement funds that will be paid to the entity
6 identified as the recipient of such funds, along with a proposed amended judgment to facilitate
7 this payment.

- 8 a. Ten percent (10%) of the Attorney Fee Award (\$15,700) shall be held in an
9 interest-bearing account, maintained by the Settlement Administrator, pending the
10 submission and approval of a final compliance status report after completion of
11 the distribution process.

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

- 16 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
17 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
18 arise out of the Settlement or this Order and Judgment;
19 b. entering such additional orders as may be necessary or appropriate to protect or
20 effectuate this Order and Judgment approving the Settlement, and permanently
21 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure
22 the fair and orderly administration of the Settlement; and
23 c. entering any other necessary or appropriate orders to protect and effectuate this
24 Court's retention of continuing jurisdiction.

25 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
26 Award, and Class Representative Enhancement Payments is GRANTED. The Settlement
27 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

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9 IT IS SO ORDERED.

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11 DATED: Signed: 1/26/2023 02:46 PM



HONORABLE ~~PATRICIA M. LUCAS~~
SUPERIOR COURT JUDGE

Hon. Theodore C. Zayner

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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 manderson@justicelawcorp.com

On January 27, 2023, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Moreno, et al. v. Waiter.com, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-870218-22**
Court Case No.: 20CV369926
Santa Clara 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 January 27, 2023, at Pasadena, California.



Mariah Anderson