

Edward W. Choi, Esq. SBN 211334
LAW OFFICES OF CHOI & ASSOCIATES
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
Email: edward.choi@choiandassociates.com

Larry W. Lee (State Bar No. 228175)
DIVERSITY LAW GROUP, APC
515 South Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

David Lee, Esq. (SBN: 296294)
DAVID LEE LAW, A.P.C.
515 South Flower Street, Suite 1900
Los Angeles, CA 90071
Telephone: (213) 236-3536
Facsimile: (866) 658-4722

Brandon M. Banks, SBN 314667
BRANDON BANKS LAW, APC
3223 Webster Street
San Francisco, California 94123
Phone: (415) 289-9494
Email: brandon@brandonbanksllaw.com

Attorneys for Plaintiff, the Class, and the Aggrieved Employees

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

ALEXIS LAKEY, on behalf herself and on of
all others similarly situated,

Plaintiff,

vs.

POSHMARK, INC., a California Corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 22CV395084

*Assigned for All Purposes to Honorable Sunil
R. Kulkarni in Department 1*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 23, 2023
Time: 1:30 p.m.
Dept.: 1

1 Plaintiff Alexis Lakey moves for preliminary approval of her class action and PAGA
2 settlement with defendant Poshmark, Inc..

3 **A. Background and Settlement Terms**

4 On March 8, 2022, Plaintiff filed a class action complaint alleging failure to provide
5 proper compensation for all overtime hours worked in excess of 8 hours in a work day or 40
6 hours in a work week, failure to ensure that Plaintiff and Meal Break Class members had the
7 opportunities to take and were provided with 30-minute duty-free meal periods, failure to
8 accurately list the proper regular rate of pay on wage statements, and engaging in unfair and
9 unlawful business practices in California. On July 5, 2022, Plaintiff filed a First Amended
10 Complaint adding a cause of action under the Private Attorney General Act, Labor Code §2698,
11 *et seq.*

12 The settlement would create a gross settlement fund of \$450,000.00. The class
13 representative payment to plaintiff would be \$10,000.00. Counsel's attorney's fees would be
14 \$150,000.00 (one-third of the settlement). Litigation costs would not exceed \$25,000. The
15 settlement administrator (Phoenix) would cap its costs at \$9,500.00. PAGA penalties would be
16 \$25,000.00, resulting in a payment of \$18,750.00 to the LWDA. The fund is non-reversionary.

17 The proposed settlement would certify a class of employees who: (1) all current and
18 former non-exempt employees of Defendant who worked more than eight hours in any work
19 shift during the Class Settlement Period (the "Overtime Class Members"); (2) all current and
20 former non-exempt employees of Defendant who worked more than five hours in any work shift
21 during the Class Settlement Period (the "Meal Break Class Members"); and (3) all current and
22 former non-exempt employees who were paid salary wages during the Class Settlement Period
23 (the "Wage Statement Class Members"). The Class Period is from March 8, 2018, through March
24 1, 2023. The PAGA Settlement Period is from March 8, 2021, through March 1, 2023. The class
25 is estimated at 410 members.

26 The class members will not be required to file a claim. Class members may object or opt
27 out of the settlement. (Class members cannot opt out of the PAGA portion of the settlement.)
28 Each class member would receive an allocation based on the total number of Eligible Pay Periods

1 worked during the Class Settlement Period.

2 In addition, PAGA Members will receive an allocation based on pay periods worked.

3 Various prescribed follow-up steps will be taken with respect to mail that is returned as
4 undeliverable. Uncashed checks would be cancelled and the amounts would be would be
5 provided to Legal Aid at Work.

6 Informal discovery was undertaken prior to mediation. The matter settled after extensive
7 arms-length negotiations, with included a mediation session with an experienced mediator.

8 Counsel also has provided a summary of a quantitative analysis of the case, and how the
9 settlement compares to the potential value of the case, after allowing for various risks and
10 contingencies.

11 The LWDA was notified of the settlement.

12 **B. Legal Standards**

13 The primary determination to be made is whether the proposed settlement is “fair,
14 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
15 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
16 further litigation, the risk of maintaining class action status through trial, the amount offered in
17 settlement, the extent of discovery completed and the state of the proceedings, the experience
18 and views of counsel, the presence of a governmental participant, and the reaction ... to the
19 proposed settlement.”

20 Because this matter also proposes to settle PAGA claims, the Court also must consider
21 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*
22 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court
23 found that the “fair, reasonable, and adequate” standard applicable to class actions applies to
24 PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness
25 of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]”
26 (*Id.*, at 64-65.)

27 California law provides some general guidance concerning judicial approval of any
28 settlement.

1 First, public policy generally favors settlement. (*Neary v. Regents of University of*
2 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
3 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
4 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender
5 its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet
6 in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d
7 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because
8 “[w]here the rights of the public are implicated, the additional safeguard of judicial review,
9 though more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer*
10 *Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

11 **C. Attorney fees**

12 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common
13 fund” theory. Even a proper common fund-based fee award, however, should be reviewed
14 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503,
15 the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the
16 percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar
17 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
18 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
19 court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Following typical
20 practice, however, the fee award will not be considered at this time, but only as part of final
21 approval.

22 Similarly, litigation costs and the requested representative payment of \$10,000 for
23 plaintiff will be reviewed at time of final approval. Criteria for evaluation of such requests are
24 discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

25 **D. Discussion**

26 The moving papers sufficiently establish that the proposed settlement is fair, reasonable,
27 and adequate to justify preliminary approval.

1 **E. Conclusion**

2 The motion is granted. Counsel are directed to prepare an order reflecting this tentative
3 ruling, the other findings in the previously submitted proposed order, and to obtain a hearing
4 date for the motion for final approval from the Department clerk. Other dates in the scheduled
5 notice process should track as appropriate to the hearing date. The ultimate judgment must
6 provide for a compliance hearing after the settlement has been completely implemented.
7 Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing
8 date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory
9 compliance as found by the Court.

10 The Court **HEREBY FURTHER ORDERS THE FOLLOWING:**

11 1. The Court grants preliminary approval to the Settlement based on the terms
12 set forth in Settlement Agreement ("Settlement" or "Agreement" used below, interchangeably,
13 refer to the terms in the Settlement Agreement.) This Order incorporates by reference the
14 definitions in the Agreement, and all terms defined therein shall have the same meaning in
15 this Order as set forth in the Agreement.

16 2. The Settlement provides for Defendant Poshmark, Inc. ("Defendant") to pay
17 the Total Settlement Amount of \$450,000.00 plus its share of employer's payroll taxes. The
18 Court preliminarily finds that the Settlement is fair, adequate, and reasonable to the Class, and
19 preliminarily approves the terms of the settlement. This preliminary approval is subject to the
20 objections of Class Members and final review by the Court.

21 3. A Final Approval Hearing shall be held before this Court on _____, at
22 1:30 p.m. in Department 1 of the Superior Court of the State of California for the County of
23 Santa Clara, to determine all necessary matters concerning the Settlement, including: whether
24 the proposed settlement of the Action on the terms and conditions provided for in the
25 Settlement is fair, adequate, and reasonable and should be finally approved by the Court;
26 whether the Final Approval Order and Judgment should be entered; whether the Individual
27 Settlement Payments contained in the Settlement should be approved as fair, adequate, and
28 reasonable to the Class Members; and whether to finally approve the PAGA Payment, the

1 Class Counsel Award, the Class Representative Enhancement Award, and the Settlement
2 Administrator Costs. The motion for final approval and the motion for award of attorneys' fees
3 and costs shall be filed no later than sixteen (16) court days before the Final Approval
4 Hearing.

5 4. The Court recognizes that the Plaintiff and the Defendant stipulate and agree
6 to certification of the Class for settlement purposes only. This stipulation will not be deemed
7 admissible in this or any other proceeding should this Settlement not become final. Whether
8 or not the settlement is finally approved, neither the Agreement, nor any document, statement,
9 proceeding or conduct related to the Agreement may be admitted in any proceeding as an
10 admission by Defendant or any of the Released Parties, the Plaintiff, or any person within
11 the definition of the Class.

12 5. The Class Settlement Period is from March 8, 2018, through March 1, 2023.
13 The PAGA Settlement Period is from March 8, 2021 through March 1, 2023. For settlement
14 purposes only, the Court certifies the following Settlement Class: (1) all current and former
15 non-exempt employees of Defendant who worked more than eight hours in any work shift during
16 the Class Settlement Period (the "Overtime Class Members"); (2) all current and former non-
17 exempt employees of Defendant who worked more than five hours in any work shift during the
18 Class Settlement Period (the "Meal Break Class Members"); and (3) all current and former non-
19 exempt employees who were paid salary wages during the Class Settlement Period (the "Wage
20 Statement Class Members").

21 6. The Court hereby appoints Alexis Lakey as the representative of the Class.
22 The Court further appoints Diversity Law Group, A Professional Corporation, Law Offices of
23 Choi and Associates, P.C., David Lee Law, P.C., and Brandon Banks Law, P.C., as counsel for
24 the Class ("Class Counsel").

25 7. The Agreement specifies for an attorneys' fees award not to exceed one-third
26 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed
27 \$25,000, and proposed Class Representative Enhancement Award to the Class Representative
28 in an amount not to exceed \$10,000. While these awards appear to be within the range of

1 reasonableness, the Court will not approve the amount of attorneys' fees and costs until the
2 Final Approval Hearing. Similarly, the Court will not decide the amount of any Class
3 Representative Enhancement Award until the Final Approval Hearing. The Plaintiff will be
4 required to present evidence supporting these requests, including lodestar, prior to final
5 approval.

6 8. The Court hereby approves, as to form and content, the Class Notice attached
7 as Exhibit A to the Agreement. The Court finds that the distribution of the Class Notice
8 substantially in the manner and form set forth in the Agreement and this Order meets the
9 requirements of due process, is the best notice practicable under the circumstances, and
10 shall constitute due and sufficient notice to all persons entitled thereto. The Court hereby
11 approves on a preliminary basis the Total Settlement Amount as provided for in the
12 Agreement. It appears to the Court on a preliminary basis that the settlement amount and
13 terms are fair, adequate, and reasonable as to all potential Class Members when balanced against
14 the probable outcome of further litigation relating to liability and damages issues. It further
15 appears that: investigation and research have been conducted such that counsel for the Parties
16 at this time are able to reasonably evaluate their respective positions; that settlement at this
17 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks
18 that would be presented by the further prosecution of the Action; and that the Settlement has
19 been reached as the result of intensive, serious and non-collusive, arms-length negotiations
20 before an experienced mediator.

21 9. The Court hereby appoints Phoenix Settlement Administrators as Settlement
22 Administrator. Within 21 days of this Order, Defendant will provide to the Settlement
23 Administrator an electronic database containing the Class Information. Within 30 days of this
24 Order, the Settlement Administrator will mail the Class Notice Packets to all Class Members
25 via first-class regular U.S. Mail to their last known address.

26 10. Any Class Member may choose to opt out of and be excluded from the Class
27 as provided in the Class Notice by following the instructions for requesting exclusion from
28 the Class that are set forth in the Class Notice. PAGA Members may not opt out of the PAGA

1 portion of the Settlement. All requests for exclusion must be submitted within forty-five (45)
2 days from the date the Class Notice is first mailed. Any person who chooses to opt out of and
3 be excluded from the Class will not be entitled to any recovery under the Settlement and
4 will not be bound by the non-PAGA portion of the Settlement or have any right to object,
5 appeal, or comment thereon. Any written request to opt out must comply with the instructions
6 in the Class Notice and be signed by each such person opting out. Class Members who have
7 not validly requested exclusion shall be bound by all determinations of the Court, the
8 Agreement, and the Judgment.

9 11. Any Class Member who has not opted out may appear at the final approval
10 hearing and may object or express their views regarding the Settlement and may present
11 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
12 and determined by the Court as provided in the Class Notice. Class Members will have 45
13 days from the date the Class Notices are mailed to postmark their written objections to the
14 Settlement Administrator. Class Members who fail to timely submit objections in the manner
15 specified above shall be deemed to have waived any objections and shall be foreclosed from
16 making any objection (whether by appeal or otherwise) to the Settlement.

17 12. The Settlement is not a concession or admission and shall not be used
18 against Defendant as an admission or indication with respect to any claim of any fault or
19 omission by Defendant. Whether or not the Settlement is finally approved, neither the
20 Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor
21 any reports or accounts thereof, shall in any event be construed as, offered or admitted in
22 evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant,
23 including, but not limited to, evidence of a presumption, concession, indication or admission by
24 Defendant of any liability, fault, wrongdoing, omission, concession, or damage.

25 13. In the event the Settlement does not become effective in accordance with
26 the terms of the Agreement, or the Settlement is not finally approved, or is terminated or fails
27 to become effective for any reason, this Order shall be rendered null and void and shall be
28

1 vacated, and the Parties shall revert to their respective positions as of before entering into
2 the Agreement.

3 14. The Court reserves the right to adjourn or continue the date of the final
4 approval hearing and all dates provided for in the Agreement without further notice to Class
5 Members and retains jurisdiction to consider all further applications arising out of or
6 connected with the proposed Settlement.

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10 DATED: _____

Honorable Sunil R. Kulkarni
Judge of the Superior Court

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