

**Preliminary Approval of Class Action Settlement
Department SSC-9**

FILED
Superior Court of California
County of Los Angeles

JAN 06 2025

David W. Slayton, Executive Officer/Clerk of Court
By: D. Keith, Deputy

Sheth v. Icon Burger Acquisition, LLC , et al.

Case No.: 22STCV09093

Hearing: November 6, 2024 continued from July 10, 2024

Non-Appearance Case Review on December 12, 2024

**FIRST AMENDED FINAL RULING ON THE PARTIES' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

The Parties' Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- A. The Gross Settlement Amount ("GSA") is **\$989,940**, non-reversionary. (¶3.1)
- B. The Net Settlement Amount is the GSA minus the following:
 - Up to **\$329,947** (33 1/3%) for attorney fees (¶3.2.2);
 - Up to **\$20,000** for litigation costs (*Ibid.*);
 - Up to **\$5,000** for a Service Payment to the Named Plaintiff (¶3.2.1);
 - Up to **\$20,000** for settlement administration costs (¶3.2.3); and
 - Payment of **\$18,750** (75% of \$25,000 PAGA penalty) to the LWDA. (¶3.2.5)
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.
- D. Plaintiffs shall release Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **July 29, 2025**. Plaintiff must call the Court PRIOR to filing and serving to obtain a hearing date and briefing schedule.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged single document that constitutes a [Proposed] Order and Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out.

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Non-Appearance Case Review is set for **August 5, 2025**, 8:30 a.m., Department 9.

BACKGROUND

This is a wage and hour class action. Defendants own and operate Smashburger restaurants, including at least 12 restaurants in California.

Plaintiff filed his class action lawsuit on March 14, 2022, alleging causes of action for unpaid minimum wages, unpaid overtime wages, failure to provide meal and rest breaks, wage statement violations, business expense reimbursements, and unfair competition.

Plaintiff filed a separate PAGA lawsuit on May 11, 2022, based on the same alleged Labor Code violations. Both matters were consolidated by stipulation on August 8, 2022.

Counsel represents that prior to mediation Defendants provided Plaintiff with informal discovery, including Plaintiff's personnel, time, and payroll records, time records and payroll records for a randomly selected sampling of about 20% of the Class Members, wage statement exemplars, Defendants' employee handbooks, including Defendants' policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, as well as information regarding the number of putative Class Members who are current and former employees, sample arbitration agreements, the number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period.

On January 22, 2024, the Parties participated in an all-day mediation presided over by Todd Smith, Esq., which led to this Agreement to settle the Action. A fully executed copy of the Settlement Agreement was filed with the Court on April 15, 2024 attached to the Declaration Of Chad Saunders ("Saunders Decl."), as Exhibit 1.

On July 9, 2024, the court issued a checklist of items for further briefing and continued preliminary approval. In response, on October 1, 2024, counsel filed a fully executed Amended Settlement Agreement attached to the Supplemental Declaration Of Chad Saunders ("Saunders Supp. Decl."), as Exhibit 1.

Now before the Court is Plaintiff's Motion for Preliminary Approval of the Settlement Agreement.

SETTLEMENT CLASS DEFINITION

- "Class" means all current and former non-exempt hourly employees employed by Defendants in California during the Class Period. (§1.5)
 - "Class Period" means the period from March 14, 2018 to September 1, 2024. (§1.12)

- “Aggrieved Employee” means all current and former non-exempt hourly employees employed by Defendants in California during the PAGA Period. (¶1.4)
 - “PAGA Period” means the period from March 14, 2021 to September 1, 2024. (¶1.32)
- Based on a review of its records to date, DEFENDANTS estimate there are 2,485 Class Members who collectively worked a total of 77,131 Workweeks as of September 1, 2024, and 1,175 Aggrieved Employees who worked a total 17,095 PAGA Pay Periods as of September 1, 2024.
- The parties agree to class certification for the purposes of settlement. (¶12.1)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Amount (“GSA”) is **\$989,940**, non-reversionary. (¶3.1)
- The Net Settlement Amount (“Net”) (**\$596,243**) is the GSA minus the following:
 - Up to **\$329,947** (33 1/3%) for attorney fees (¶3.2.2);
 - Up to **\$20,000** for litigation costs (*Ibid.*);
 - Up to **\$5,000** for a Service Payment to the Named Plaintiff (¶3.2.1);
 - Up to **\$20,000** for settlement administration costs (¶3.2.3); and
 - Payment of **\$18,750** (75% of \$25,000 PAGA penalty) to the LWDA. (¶3.2.5)
- Defendants will pay their share of taxes separate from the GSA. (¶4.3)
- There is no claim form requirement. (¶3.1)
- Funding of Settlement: Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants’ share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date. (¶4.3)
- Payments from the GSA: Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (¶4.4)
- Individual Settlement Payment 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

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each Participating Class Member's Workweeks. (¶3.2.4) . Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (¶3.2.4.2)

- Tax Allocation: 20% as wages and 80% as interest and penalties. (¶3.2.4.1)
- PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) 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. (¶3.2.5.1)
 - Tax Allocation: 100% penalties. (¶3.2.5.2)
- "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired. (¶1.44) Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fifteen (15) business days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. (¶7.6)
- Uncashed Settlement Checks: The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. (¶4.4.1) For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (¶4.4.3)
- The settlement administrator will be Atticus Administration, LLC. (¶1.2)
- The proposed settlement was submitted to the LWDA on April 15, 2024. (Saunders Decl., Exhibit 6.)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On January 22, 2024, the Parties participated in an all-day mediation presided over by Todd Smith, Esq., which led to this Agreement to settle the Action. (Saunders Decl., ¶15.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to mediation Defendants provided Plaintiff

with informal discovery, including Plaintiff's personnel, time, and payroll records, time records and payroll records for a randomly selected sampling of about 20% of the Class Members, wage statement exemplars, Defendants' employee handbooks, including Defendants' policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, as well as information regarding the number of putative Class Members who are current and former employees, sample arbitration agreements, the number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. (*Id.* at ¶16.) It is further represented that from this information, Plaintiff analyzed Defendants' potential liability and, with the assistance of Plaintiff's experts at Berger Consulting Group, the potential exposure and damages. (*Ibid.*)

3. Is counsel experienced in similar litigation? Yes. Class Counsel represents that they are experienced in class action litigation, including wage and hour class actions. (Saunders Decl., ¶¶16-12.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

CONCLUSION: The settlement is entitled to a presumption of fairness.

B. Is the settlement fair, adequate, and reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Here, Class Counsel has provided detailed analysis, summarized below, of the estimated values of the claims asserted:

Violation	Maximum Exposure
Rest and Meal Periods	\$926,500
Expenses	\$87,500
Unpaid Minimum Wages	\$936,900
Wage Statement Violations	\$966,700
Waiting Time Penalties	\$ 2,391,600
PAGA Penalties	\$5,000,000
Total	\$10,309,200

(Saunders Decl. ¶¶37-44.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, 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.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th

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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."].)

4. Amount offered in settlement. The \$989,940 settlement amount constitutes approximately 10% of Defendant's maximum exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$989,940 settlement amount, if reduced by the requested deductions, will leave \$596,243 to be divided among approximately 2,485 class members.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the final fairness hearing.

CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and reasonable."

C. Scope of the release

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, and Class Members will release claims against all Released Parties as follows: (¶15)

- Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint during the Class Period. Participating Class Members' only release these claims for the duration of the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (¶15.2)
- Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged,

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based on the facts stated in the Operative Complaint and the PAGA Notice during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period. (¶15.3)

- Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶15.1)

D. May conditional class certification be granted?

1. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.)

2. Analysis

a. Numerosity. There are approximately 2,485 class members. (Amended Settlement Agreement ¶¶ 4.1, 8.1.) This element is met.

b. Ascertainability. A class is ascertainable, as would support certification under statute governing class actions generally, when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 961.) The proposed class is defined above. The class members are ascertainable from Defendant’s employment records. (Saunders Decl. ¶45.)

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

Here, regarding commonality, Plaintiff contends that common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the same meal and rest break policies and alleged “de facto” policies resulting in meal period violations, and similarly subject to the same improper time rounding policy. (Saunders Decl., ¶48.)

As to typicality, Plaintiff contends that her claims are typical of the Class Members’ claims because they arise from the same factual basis and are based on the same legal theory as those applicable to the Class Members. Each Class Member is challenging the same policies and practices, and Plaintiff alleges that Defendant’s policies applied to all Class Members. (*Id.* at ¶46.)

As to adequacy, Plaintiff represents that she was informed of the risks of serving as class representative, participated in the litigation, and does not have conflicts of interest with the class. (*Id.* at ¶47; Declaration of Plaintiff Sheth, *passim.*)

d. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

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e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

CONCLUSION: The class is conditionally certified since the prerequisites of class certification have been satisfied.

E. Is the notice proper?

a. Content of class notice. The proposed notice is attached to the Amended Settlement Agreement as Exhibit A. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

b. Method of class notice. Notice will be via direct mail. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (¶7.4.2) Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (¶7.4.3) If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later. (¶7.4.5) Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶7.8.1)

c. Cost of class notice. As indicated above, settlement administration costs are estimated to be **\$20,000**. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney fees and costs

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

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to **\$329,947** (33 1/3%) in attorney fees and up to **\$20,000** in costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiff will request a service award of **\$5,000**. In connection with the final fairness hearing, the named Plaintiff must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . .'" (*Id.* at 806-807, italics and ellipsis in original.) The Court will decide the issue and amount of any enhancement award at the time of final approval.

CONCLUSION AND ORDER

The Parties' Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- A. The Gross Settlement Amount ("GSA") is **\$989,940**, non-reversionary. (¶3.1)

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- B. The Net Settlement Amount is the GSA minus the following:
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The Parties' Motion for Final Approval of Class Action Settlement must be filed by **July 29, 2025**. Plaintiff must call the Court PRIOR to filing and serving to obtain a hearing date and briefing schedule.

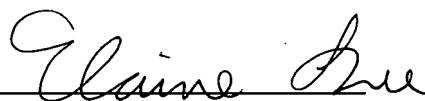
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Non-Appearance Case Review is set for **August 5, 2025**, 8:30 a.m., Department 9.

The Judicial Assistant is to give notice to all parties.

IT IS SO ORDERED.

DATED: January 6, 2025


Elaine Lu
Judge of the Superior Court