

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SUYAPA LILIANA PALMA-HERNANDEZ,
individually and on behalf of all others similarly
situated,

PLAINTIFF,

v.

JC HAMBURGERS, INC., a California
corporation d/b/a/ McDonald's; DANIEL
BORBA, an individual; and DOES 1 through 50,
inclusive,

DEFENDANTS.

CASE NO.: 22CV405260

*Assigned for All Purposes to the Honorable
Theodore C. Zayner; Department 19*

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

Action Filed: October 24, 2022
Trial Date: Not set.

[PROPOSED] ORDER

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on December 18, 2024, at 1:30 p.m. in Department 19. hereby adopts its Tentative Ruling as the ruling of the Court. A true and correct copy of the Tentative Ruling is attached hereto as Exhibit A and is incorporated herein.

INTRODUCTION

Plaintiff Suyapa Liliana Palma-Hernandez (“Plaintiff”) brings this wage and hour action against defendant JC Hamburgers, Inc., a California corporation d/b/a McDonald’s, and Daniel Borba, an individual (collectively, “Defendants”). On October 24, 2022, Plaintiff filed the operative Class Action and Representative Action Complaint (“Complaint”), setting forth the following causes of action: (1) Failure to Provide Meal Periods and/or Pay Meal Period Premiums (Labor Code, §§ 226.7, 512); (2) Failure to Authorize and Permit Rest Breaks and/or Pay Rest Break Premiums (Labor Code, § 226.7); (3) Failure to Provide Complete and Accurate Wage Statements (Labor Code, § 226); (4) Failure to Timely Pay Final Wages (Labor Code, §§ 201-203); (5) Failure to Reimburse Necessary Business Expenses (Labor Code, § 2802); (6) Unfair Competition Law (“UCL”) Violations (Business & Professions Code, §§ 17200-17204); (7) Penalties Pursuant to the Private Attorneys General Act (“PAGA”) (Labor Code, §§ 2698-2699.5.)

The parties reached a settlement. Plaintiff moved for preliminary approval of the settlement. The motion was unopposed.

On July 17, 2024, the court continued the motion for preliminary approval of settlement. In its minute order, the court directed Plaintiff to identify a new cy pres recipient in compliance with Code of Civil Procedure section 384 and file an amended class notice. The court also found the settlement to be fair and reasonable, approved an enhancement award in the amount of \$2,500, and approved settlement administration costs in the amount of \$10,450. Plaintiff’s counsel subsequently filed a supplemental declaration, which identified Legal Aid at Work as the cy pres recipient and included an amended class notice

On September 4, 2024, the court granted Plaintiff’s motion for preliminary approval of settlement.

1 Now before the court is Plaintiff's motion for final approval of settlement. The motion is
2 unopposed.

3 LEGAL STANDARD

4 Generally, "questions whether a settlement was fair and reasonable, whether notice to the class
5 was adequate, whether certification of the class was proper, and whether the attorney fee award was
6 proper are matters addressed to the trial court's broad discretion." (Wershba v. Apple Computer, Inc.
7 (2001) 91 Cal.App.4th 224, 234-235 (Wershba), citing Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th
8 1794 (Dunk).)

9 In determining whether a class settlement is fair, adequate and reasonable, the
10 trial court should consider relevant factors, such as "the strength of plaintiffs'
11 case, the risk, expense, complexity and likely duration of further litigation, the
12 risk of maintaining class action status through trial, the amount offered in
13 settlement, the extent of discovery completed and the stage of the proceedings,
14 the experience and views of counsel, the presence of a governmental participant,
15 and the reaction of the class members to the proposed settlement."
16 (Wershba, supra, 91 Cal.App.4th at pp. 244-245, citing Dunk, supra, 48 Cal.App.4th at p. 1801 and
17 Officers for Justice v. Civil Service Com'n, etc. (9th Cir. 1982) 688 F.2d 615, 624 (Officers).)

18 "The list of factors is not exclusive and the court is free to engage in a balancing and weighing
19 of factors depending on the circumstances of each case." (Wershba, supra, 91 Cal.App.4th at p. 245.)
20 The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned
21 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
22 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
23 concerned." (Ibid., quoting Dunk, supra, 48 Cal.App.4th at p. 1801 and Officers, supra, 688 F.2d at p.
24 625, internal quotation marks omitted.)

25 The burden is on the proponent of the settlement to show that it is fair and
26 reasonable. However "a presumption of fairness exists where: (1) the
27 settlement is reached through arm's-length bargaining; (2) investigation and
28 discovery are sufficient to allow counsel and the court to act intelligently; (3)

counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”
(Wershba, supra, 91 Cal.App.4th at p. 245, citing Dunk, supra, 48 Cal.App.4th at p. 1802.)

DISCUSSION

The case has been settled on behalf of the following class: Plaintiff and all other individuals who are or were employed by Defendants as non-exempt hourly-paid employees, who worked at least one shift in California during the Class Period.

The Class Period is defined as the period from October 24, 2018 through June 30, 2024. The class also contains a subset of Aggrieved Employees who are defined as Plaintiff and all other individuals who are or were employed by Defendants as non-exempt hourly paid employees, who worked at least one shift in California from September 29, 2021 through June 30, 2024.

As discussed in connection with preliminary approval, Defendants will pay a gross settlement amount of \$900,000. The gross settlement amount includes attorney fees up to \$300,000 (one-third of the gross settlement amount), litigation costs not to exceed \$25,000, a PAGA allocation of \$75,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to Aggrieved Employees as individual PAGA payments), a service award up to \$7,500, and settlement administration costs not to exceed \$10,450.

The net settlement amount will be distributed to participating class members on pro rata basis according to the number of workweeks worked during the Class Period. Similarly, the portion of the PAGA amount allocated for individual payments will be distributed to Aggrieved Employees based on the number of pay periods worked during the PAGA Period.

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to Legal Aid at Work.

In exchange for the settlement, class members agree to release Defendants from all claims that were alleged, or reasonably could have alleged, based on the facts pleaded in the Complaint occurring during the Class Period. Aggrieved Employees agree to release Defendants, and related entities and persons, from all claims for PAGA civil penalties that were alleged, or reasonably could have been alleged, based on facts pleaded in the Complaint and/or the notice Plaintiff sent to the LWDA.

1 On October 22, 2024, the settlement administrator mailed notice packets to 460 class members.
2 (Declaration of Cassandra Polites of ILYM Group, Inc. Regarding Notice and Settlement Administration
3 (“Polites Dec.”), ¶ 7.) Ultimately, 63 notice packets were deemed undeliverable. (Id. at ¶ 10.) As of
4 December 5, 2024, there were no objections or requests for exclusion. (Id. at ¶¶ 11-12.)

5 The highest individual settlement payment to be paid is approximately \$10,778.69, the lowest
6 individual settlement payment to be paid is approximately \$39.48, and the average individual settlement
7 payment to be paid is approximately \$1,087.74. (Polites Dec., ¶ 16.) The court previously found the
8 proposed settlement is fair and the court continues to make that finding for purposes of final approval.

9 In connection with preliminary approval, the court approved an enhancement award to Plaintiff
10 in the amount of \$2,500. The court continues to approve the enhancement award in that amount.

11 The court also has an independent right and responsibility to review the requested attorney fees
12 and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone*
13 *Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel seeks attorney fees of \$300,000 (1/3 of
14 the gross settlement fund). Plaintiff’s counsel provides evidence demonstrating a total lodestar of
15 \$207,230. (Declaration of Hengameh S. Safaei in Support of Unopposed Motion for Final Approval of
16 Class Action Settlement (“Safaei Dec.”), ¶¶ 37-38 & Ex. 3.) This results in a multiplier of 1.45. The
17 court finds the attorney fees are reasonable as a percentage of the common fund and are approved.

18 Plaintiff’s counsel also requests litigation costs in the amount of \$11,689.99, and provides
19 evidence of incurred costs in the amount of \$25,693.81. (Safaei Dec., ¶ 40 & Ex. 4.) Consequently, the
20 litigation costs in the amount of \$25,000 are reasonable and approved.

21 In connection with preliminary approval, the court approved settlement administration costs in
22 the amount of \$10,450. The court continues to approve the settlement administration costs in that
23 amount.

24 Accordingly, the motion for final approval of the class and representative action.
25 settlement is **GRANTED**.

26 The court will set a compliance hearing for August 20, 2025, at 2:30 p.m. in Department 19. At
27 least ten court days before the hearing, class counsel and the settlement administrator shall submit a
28 summary accounting of the net settlement fund identifying distributions made as ordered herein, the

1 number and value of any uncashed checks, amounts remitted to Defendants, the status of any unresolved
2 issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the
3 compliance hearing remotely.

4 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY**

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6 DATED: December 19, 2024



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8 HONORABLE THEODORE C. ZAYNER
9 JUDGE OF THE SUPERIOR COURT
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EXHIBIT A

Calendar Line 5

Case Name: Palma-Hernandez v. JC Hamburgers, Inc. (PAGA)
Case No.: 22CV405260

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on December 18, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VII. INTRODUCTION

Plaintiff Suyapa Liliana Palma-Hernandez (“Plaintiff”) brings this wage and hour action against defendant JC Hamburgers, Inc., a California corporation d/b/a McDonald’s, and Daniel Borba, an individual (collectively, “Defendants”). On October 24, 2022, Plaintiff filed the operative Class Action and Representative Action Complaint (“Complaint”), setting forth the following causes of action: (1) Failure to Provide Meal Periods and/or Pay Meal Period Premiums (Labor Code, §§ 226.7, 512); (2) Failure to Authorize and Permit Rest Breaks and/or Pay Rest Break Premiums (Labor Code, § 226.7); (3) Failure to Provide Complete and Accurate Wage Statements (Labor Code, § 226); (4) Failure to Timely Pay Final Wages (Labor Code, §§ 201-203); (5) Failure to Reimburse Necessary Business Expenses (Labor Code, § 2802); (6) Unfair Competition Law (“UCL”) Violations (Business & Professions Code, §§ 17200-17204); (7) Penalties Pursuant to the Private Attorneys General Act (“PAGA”) (Labor Code, §§ 2698-2699.5.)

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Now before the court is Plaintiff's motion for final approval of settlement. The motion is unopposed.

VIII. LEGAL STANDARD

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

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

(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

IX. DISCUSSION

The case has been settled on behalf of the following class:
Plaintiff and all other individuals who are or were employed by Defendants as non-exempt hourly-paid employees, who worked at least one shift in California during the Class Period.

The Class Period is defined as the period from October 24, 2018 through June 30, 2024. The class also contains a subset of Aggrieved Employees who are defined as Plaintiff and all other individuals who are or were employed by Defendants as non-exempt hourly paid employees, who worked at least one shift in California from September 29, 2021 through June 30, 2024.

As discussed in connection with preliminary approval, Defendants will pay a gross settlement amount of \$900,000. The gross settlement amount includes attorney fees up to \$300,000 (one-third of the gross settlement amount), litigation costs not to exceed \$25,000, a PAGA allocation of \$75,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to Aggrieved Employees as individual PAGA payments), a service award up to \$7,500, and settlement administration costs not to exceed \$10,450.

The net settlement amount will be distributed to participating class members on pro rata basis according to the number of workweeks worked during the Class Period. Similarly, the portion of the PAGA amount allocated for individual payments will be distributed to Aggrieved Employees based on the number of pay periods worked during the PAGA Period.

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In connection with preliminary approval, the court approved an enhancement award to Plaintiff in the amount of \$2,500. The court continues to approve the enhancement award in that amount.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel seeks attorney fees of \$300,000 (1/3 of the gross settlement fund). Plaintiff's counsel provides evidence demonstrating a total lodestar of \$207,230. (Declaration of Hengameh S. Safaei in Support of Unopposed Motion for Final Approval of Class Action Settlement ("Safaei Dec."), ¶¶ 37-38 & Ex. 3.) This results in a multiplier of 1.45. The court finds the attorney fees are reasonable as a percentage of the common fund and are approved.

Plaintiff's counsel also requests litigation costs in the amount of \$11,689.99, and provides evidence of incurred costs in the amount of \$25,693.81. (Safaei Dec., ¶ 40 & Ex. 4.) Consequently, the litigation costs in the amount of \$25,000 are reasonable and approved.

In connection with preliminary approval, the court approved settlement administration costs in the amount of \$10,450. The court continues to approve the settlement administration costs in that amount.

Accordingly, the motion for final approval of the class and representative action settlement is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

The court will set a compliance hearing for August 20, 2025, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is 10880 Wilshire Boulevard, Suite 1101 Los Angeles, California 90024.

On December 18, 2024, I served the following document(s): [PROPOSED] ORDER GRANTING FINAL APPROVAL AND JUDGMENT on the following person(s):

Defendants JC HAMBURGERS, INC. and DANIEL BORBA

Johanna Rodriguez, Esq.
Jennifer Morin
WALSWORTH WFBM, LLP
Email: jrodriguez@wfbm.com
Jennifer Morin (jmorin@wfbm.com)

The documents were served by the following mean(s):

☒ **BY ELECTRONIC TRANSMISSION.** Based on an agreement of the parties to accept service by electronic transmission, I electronically served the document(s) to the person(s) at the electronic service address(es) listed above.

☐ **BY OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in the attached Proof of Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY FAX TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax number(s) listed above. No error was reported by the fax machine that I used.

☐ **BY MESSENGER SERVICE.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in the attached Proof of Service List and providing them to a professional messenger service for service.

☐ **BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in the attached Proof of Service List:

☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepared.

☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident of and employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

1 ☐ **BY PERSONAL SERVICE.** I personally delivered the documents to the persons at the
2 addresses listed in the attached Proof of Service List. (1) For a party represented by an attorney,
3 delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's
4 office, in an envelope or package clearly labeled to identify the attorney being served, with a
5 receptionist or an individual in charge of the office; or (c) if there was no person in the office with
6 whom the notice or papers could be left, by leaving them in a conspicuous place in the office between
the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the
party or by leaving the documents at the party's residence with some person not younger than 18
years of age between the hours of eight in the morning and six in the evening.

I declare under penalty of perjury under the laws of the State of California, that the foregoing
is true and correct to the best of my knowledge.

Executed on December 18, 2024, at Los Angeles, California.



Hengameh S. Safaei