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CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

MARK DUTILLIEUL, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

METHODOLOGY, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No. C22-00759

**~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL**

Date: November 14, 2024

Time: 9:00 a.m.

Judge: Hon. Judge Charles S. Treat

Dept.: 12

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class Action
2 and PAGA Claims and Release of Claims ("Agreement") and Motion for Class Counsel Award and
3 Class Representative Service Award duly came on for hearing on November 14, 2024, before the
4 above-entitled Court. Zakay Law Group, APLC appeared on behalf of Plaintiff MARK
5 DUTILLIEUL ("Plaintiff"). Seyfarth Shaw LLP appeared on behalf of Defendant
6 METHODOLOGY, INC., (hereinafter "Defendant").

7 **I.**

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

11 1. All capitalized terms used herein shall have the same meaning as defined in
12 the Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending
14 in the California Superior Court for the County of Contra Costa ("Court"), Case No. C22-00759,
15 entitled *Mark Dutillieul v. Methodology, Inc.*, and over all Parties to this litigation, including the
16 Class.

17 **Preliminary Approval of the Settlement**

18 3. On July 24, 2024, the Court granted preliminary approval of a class-wide
19 settlement. At this same time, the court approved certification of a provisional settlement class for
20 settlement purposes only. The Court confirms this Order and finally approves the settlement and
21 the certification of the Class.

22 **Notice to the Class**

23 4. In compliance with the Preliminary Approval Order, the Notice Packet was
24 mailed by first class mail to the Class Members at their last known addresses on September 10,
25 2024. Mailing of the Notice Packet to their last known addresses was the best notice practicable
26 under the circumstances and was reasonably calculated to communicate actual notice of the
27 litigation and the proposed settlement to the members of the Class Members. The Court finds that
28 the Notice Packet provided fully satisfies the requirements of California Rules of Court, rule 3.769.

1 5. The Response Deadline for opting out or objecting was October 25, 2024.
2 There was an adequate interval between notice and deadline to permit Class Members to choose
3 what to do and act on their decision. No Class Members objected. No Class Members requested
4 exclusion. 100% of the Class Members will be participating in the Settlement and will be sent
5 Individual Settlement Payments.

6 **Fairness Of the Settlement**

7 6. The Agreement provides for a Gross Settlement Amount of \$200,000.00.
8 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
9 Cal.App.4th 1794, 1801.)

10 a. The settlement was reached through arms-length bargaining between
11 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
12 settlement.

13 b. The Parties' investigation and discovery have been sufficient to allow
14 the Court and counsel to act intelligently.

15 c. Counsel for all Parties are experienced in similar employment class
16 action litigation and have previously settled similar class claims on behalf of employees claiming
17 compensation. All counsel recommended approval of the Settlement.

18 d. The percentage of objectors and requests for exclusion is zero. No
19 objections were received. No requests for exclusion were received.

20 e. The participation rate is high. 100% of Class Members will be
21 participating in the Settlement and will be sent settlement payments.

22 7. The consideration to be given to the Class Members under the terms of the
23 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
24 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
25 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
26 litigation and the delays which would ensue from continued prosecution of the Action.

27 8. The Agreement is finally approved as fair, adequate, and reasonable and in
28 the best interests of the Settlement Class Members.

Attorneys' Fees and Litigation Expenses

9. The Agreement provides for a Class Counsel Award in the amount of up to Ninety One Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$91,666.66). Subject to Court approval, the Class Counsel Award consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount, or Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$66,666.66) and reimbursement of costs and expenses in the amount of Twenty Five Thousand Dollars and Zero Cents (\$25,000.00).

10. A Class Counsel Award of Ninety-One Thousand, Six Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$91,666.66) comprised of attorneys' fees in the amount of Sixty-Six Thousand, Six Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$66,666.66) and reimbursement of actually incurred costs and expenses in the amount of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) is reasonable in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class Counsel. The

requested attorneys' fee award represents 1/3 of the common fund, which is reasonable and at the low end of the range for fee awards in common fund cases and is supported by Class Counsel's lodestar.

Class Representative Service Awards

11. The Agreement provides for a Class Representative Service Award of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, subject to the Court's approval. The Court finds that the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff is reasonable in light of the risks and burdens undertaken by the Plaintiff in this class action litigation.

Settlement Administration Costs

12. The Agreement provides for Settlement Administration Costs to be paid in an amount not to exceed \$9,650.00. The Declaration of the Settlement Administrator provides that the actual claims administration expenses incurred to date are \$9,650. The amount of this payment is reasonable in light of the work performed by the Settlement Administrator.

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1 **II. ORDERS**

2 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

3 1. The Class is certified for the purposes of settlement only. The Settlement
4 Class is hereby defined to include all current and former non-exempt employees of Methodology
5 who worked for Methodology within the state of California at any time during the period from April
6 19, 2018 through August 16, 2023 ("Class Period").

7 2. Every person in the Class who did not submit and timely and validly Request
8 for Exclusion is a Settlement Class Member. The Court finds, based on the declaration of the
9 Settlement Administrator, that no Class Members opted-out of the Settlement.

10 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
11 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
12 this Order and the terms of the Agreement.

13 4. Class Counsel are awarded Seventy-Seven Thousand, Six Hundred and Fifty-
14 Six Dollars and Sixty-Six Cents (\$77,656.66) for the Class Counsel Award comprised of one-third
15 of the Gross Settlement Amount, or Sixty-Six Thousand, Six Hundred Sixty-Six Dollars and Sixty-
16 Six Cents (\$66,666.66) and litigation expenses in the amount of Ten Thousand, Nine Hundred
17 Ninety Dollars and Zero Cents (\$10,990.00). Class Counsel shall not seek or obtain any other
18 compensation or reimbursement from Defendant, Plaintiffs, or members of the Class.

19 5. The payment of the Class Representative Service Award to Plaintiff in the
20 amount of \$10,000.00 is approved.

21 6. The payment of up to \$9,650.00 to the Settlement Administrator for
22 Settlement Administration Costs is approved.

23 7. The PAGA Settlement of \$20,000.00 is hereby approved as fair, reasonable,
24 adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds
25 that Plaintiffs and Class Counsel negotiated the PAGA Settlement at arms-length, absent of any
26 fraud or collusion.

27 8. Final Judgment is hereby entered in this action. The Final Judgment shall
28 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge

1 of the Released Parties from all class claims alleged in the operative complaint, or that reasonably
2 could have been alleged based on the facts alleged in the operative complaint, which occurred during
3 the Class Period, and expressly excluding all other claims, including claims for vested benefits,
4 wrongful termination, unemployment insurance, disability, social security, workers' compensation,
5 and class claims outside of the Class Period.

6 9. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
7 California and all PAGA Employees, pursuant to the California Labor Code Private Attorneys'
8 General Act ("PAGA") and shall release the Released Parties from all PAGA claims alleged in the
9 operative complaint and Plaintiffs' PAGA notice(s) or that could have been alleged based on the
10 fact and allegations plead in the operative complaint and PAGA Notice(s), which occurred during
11 the PAGA Period, and expressly excluding all other claims, including claims for vested benefits,
12 wrongful termination, unemployment insurance, disability, social security, workers' compensation,
13 and PAGA claims outside the PAGA Period.

14 10. The term "PAGA Employees" is hereby defined as all means all Class
15 Members that worked for Defendant at any time during the period from May 16, 2022 to August
16 16, 2023 (the "PAGA Period").

17 11. The Agreement is not an admission by Defendant, nor is this Final Approval
18 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
19 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
20 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
21 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
22 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
23 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
24 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
25 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
26 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
27 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
28 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and

Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the claims being released by the Settlement.

12. Notice of entry of this Final Approval Order and Judgment shall be given to Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment to individual Class Members and the Final Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated in the Notice Packet.

13. After entry of Final Judgment, the Court shall retain jurisdiction to construe, interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with the distribution of settlement benefits.

14. If the Settlement does not become final and effective in accordance with the terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

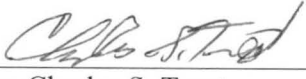
15. A Compliance Hearing is scheduled for July 30, 2026, at 9:00 a.m. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date.

16. The Court ORDERS that 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

17. This Order encompasses all orders made in the Court's November 13, 2024, Tentative Ruling attached hereto as Exhibit A and incorporated herein.

IT IS SO ORDERED.

DATED: 12/13, 2024


Hon. Charles S. Treat
Judge, Superior Court for the State of California,
County of Contra Costa

~~RECEIVED~~
~~PER COURT~~

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 11/14/2024

now to the pleading against them. Defendants may answer or otherwise respond to the second amended complaint within 28 days after it is filed and served.

5. OSC re Unserved Defendants.

For similar reasons, the Court discharges the technically pending order to show cause why unserved defendants should not be dismissed. Just as defendants were understandably uncertain about what complaint they should answer and when, it made sense for plaintiff to refrain from formally serving the then-pending complaint when it appeared that a further amendment might likely be forthcoming. However, plaintiff should now move promptly in serving any unserved defendants and getting all the parties into the case that need to be here.

6. Future Court Dates.

Given what has been said above, it is fairly likely that this case will be showing up, in one form or another, on Department 39's law-and-motion calendar between now and next spring. In order to ensure that some certain calendar date is set, however, the Court will set a CMC for April 1, 2025, at 8:30 a.m. in Department 39.

Effective January 6, 2025, this case is reassigned for all purposes to Department 39.

Law & Motion

4. 9:00 AM CASE NUMBER: C22-00759
CASE NAME: MARK DUTILLIEUL VS. METHODOLOGY, INC
*HEARING ON MOTION IN RE: CLASS COUNSEL AWARD AND CLASS REP SERVICE AWARD
FILED BY:
TENTATIVE RULING:

See Line 5.

5. 9:00 AM CASE NUMBER: C22-00759
CASE NAME: MARK DUTILLIEUL VS. METHODOLOGY, INC
HEARING IN RE: FINAL APPROVAL
FILED BY:
TENTATIVE RULING:

Plaintiff Mark Dutillieul moves for final approval of his class action and PAGA settlement with defendant Methodology, Inc. He also moves for approval of his attorney's fees, litigation costs, administration costs, and representative payment. The motions are **granted**.

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Since preliminary approval was granted, the administrator has mailed notices to 368 class members. 64 packets were returned by the post office. Follow up resulted in new addresses, leaving only 7 non-deliverable. No objections or opt-out requests have been received.

A. Background and Settlement Terms

Defendant is in the business of preparing and selling gourmet meals, delivered directly to consumers. Plaintiff was employed at defendant as a material handler and delivery driver in 2018 and 2019.

The original complaint was filed on April 19, 2022 as a class action. PAGA claims were added by later amendment.

The settlement will create a gross settlement fund of \$200,000. The class representative payment to the plaintiff will be \$10,000. Attorney's fees will be \$66,667 (one-third of the settlement). Litigation costs as approved are \$10,990. The settlement administrator's costs are estimated at \$9,650. PAGA penalties will be \$20,000, resulting in a payment of \$15,000 to the LWDA. The net amount paid directly to the class members will be about \$82,693. The fund is non-reversionary. There are an estimated 368 class members. Based on the estimated class size, the average net payment for each class member is approximately \$225, not including distribution of PAGA penalties. (The average figure is higher than that used in the preliminary approval; it is decreased by a larger class size but increased by the substantially reduced litigation costs.) The average PAGA payout to covered employees will be about \$32. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the relevant period is later.

Payment of the gross settlement amount to the administrator, and payments through to the class members, will be a good deal slower and more complicated than is usual, a settlement term strongly influenced by the economics of defendant and its ability to pay. The total will be paid in 27 equal monthly installments over a lengthy period. The initial payment was due after the long-form settlement agreement was signed and has presumably been received already. Thus, it will be seen that the settlement amount will not be fully funded and paid until sometime in 2026. No interim installment payments will be made to the class members; they will receive their distributions in one-time payments after the full amount has been received by the administrator. At the Court's suggestion, the parties will take steps to encourage class members to update the administrator with current mailing addresses and contact information so that the ultimate payments will reach their intended payees to the maximum extent possible.

The proposed settlement will certify a class of all current and former non-exempt employees employed at Defendants' California facilities between April 19, 2018 and August 16, 2023. For PAGA purposes, the period covered by the settlement is May 16, 2022 to August 16, 2023.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds will be apportioned to class members based on the number of workweeks worked during the class period.

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A list of class members will be provided to the settlement administrator within 21 days after preliminary approval. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the state controller's unclaimed property fund.

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court cannot release claims that are outside the scope of the allegations of the complaint.") "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. For example, much of plaintiff's allegations centers on possible off-the-clock work, including missed or skipped meal breaks and rest breaks. Defendant, however, pointed out that its formal policies prohibit off-the-clock work, and asserted that it would have had no knowledge of employees beginning work before punching in or continuing after punching out. Further, it argued that it was required to make meal and rest breaks available, but not required to ensure that they be taken, so long as no employer policy prevented or discouraged taking such breaks. As to unreimbursed employee expenses (such as cell phone use, mileage, and masks), plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably necessary to job performance, and were unreimbursed. There is also a contention that bonuses were not properly taken into account in determining correct overtime hourly rates. Defendant, however, contended that such bonuses were discretionary and irregular. Furthermore, the fact-intensive character of all such claims would have presented a serious obstacle to class certification.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.")) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.)

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

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B. Legal Standards

The primary determination to be made is whether the proposed settlement is “fair, reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

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

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

C. Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$66,667. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)

Accordingly, plaintiff has provided information concerning the lodestar fee amount. He estimates the lodestar at \$99,057, representing an implied “negative” (actually “less than one”) multiplier of about 0.67. No adjustment from the one-third fee is necessary. The attorney’s fees are reasonable and are approved.

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The requested representative payment of \$10,000 for the named plaintiff was deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of the request. Plaintiff points out that he executed a broader release than the class as a whole, but does not identify any particular claims of value that he may have. He also risks damage to his reputation and more difficulty in obtaining employment. The representative payment is approved.

Litigation costs of \$10,990 (mostly mediation and filing fees) are reasonable and are approved. The Court notes with disapproval that throughout their moving papers, plaintiff's counsel persist in saying they're seeking litigation costs of "up to \$25,000" as capped in the settlement agreement; and indeed their own estimated figures for the net settlement amount, and the average settlement payment to class members, are artificially low because their calculations assume the full \$25,000 in costs. But in fact counsel state that the amounts actually incurred by the three plaintiff law firms come to only \$10,990, a figure verified by their detailed billings. Plaintiff nowhere actually says he's asking for the full \$25,000, and the Court can conceive of no reason why plaintiff would be entitled to recover costs of more than double what was actually incurred.

The settlement administrator's costs of \$9,650 are reasonable and are approved.

D. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motions are granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

Effective January 6, 2025, this case is reassigned for all purposes to Department 39.