

04/23/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy

**FINAL RULING RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

**Department SSC-9**

**Hon. Elaine Lu**

**Antoinette Brown v. ELA Foods, Inc. and POP Foods Services, Inc.**

**Case No.: 22STCV26088**

Hearing: April 23, 2024 c/f January 31, 2024

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

Plaintiff's Motion for Final Approval of Class Action Settlement must be filed by **January 24, 2025**. Plaintiff must call the Court **prior** to filing and serving to obtain a hearing date.

Plaintiff's Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Order and Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Order and Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

**A Non-Appearance Case Review is set for January 31, 2025, 8:30 a.m., Department 9.**

**BACKGROUND**

This is a wage and hour class action. Defendants own and operate franchises of Popeye's Louisiana Kitchen restaurants, including at least five restaurants in California.

On August 11, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for (1) failure to pay minimum wages and liquidated damages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to reimburse business expenses; (6) failure to provide accurate wage statements; and (7) failure to pay all wages due upon separation of employment. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, and deny any and all liability for the causes of action alleged.

Plaintiff filed a First Amended Complaint adding a PAGA cause of action on October 17, 2022.

Defendants and Defense Counsel represent that a former employee (and putative Class Member and putative Aggrieved Employee), Daniel Vasquez filed a class action complaint on June 23, 2023 (Los Angeles Superior Court Case No.: 23STCV14703) ("Vasquez Class Action") and a representative PAGA action on August 29, 2023 (Los Angeles Superior Court Case No.: 23STCV20790) ("Vasquez PAGA Action"). Defendants maintain the Action completely envelopes the Vasquez Class Action and the Vasquez PAGA Action (both as to the claims alleged and as to the scope of the putative class definitions, including named plaintiff Daniel Vasquez). As such, it is Defendants' position that the Vasquez Class Action and the Vasquez PAGA Action will be extinguished by the Settlement.

Counsel represents that prior to the 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), sample arbitration agreements, issuance of wage statements, and termination wages, as well as information regarding the number of putative Class Members who are current and former employees, the number of PAGA Members, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. Counsel further represents that, from this information, Plaintiff was able to analyze Defendants' liability for the claims asserted in this case and, with the assistance of Plaintiff's experts at Berger Consulting Group, the potential exposure and damages. For the sampling, Counsel states that the Parties agreed upon and obtained records for about 20% of the putative class members at the suggestion of the consulting experts at Berger Consulting Group. From that sampling, which Berger considered statistically reliable, Berger was to extrapolate out to provide estimates for the entire class.

On July 6, 2023, the Parties participated in a full-day mediation with the Hon. Steven Denton (Ret.) and, while the Parties did not settle at the mediation, they continued to negotiate with the mediator's assistance and reached agreement on all major issues following a mediator's proposal. A fully executed copy of the Settlement Agreement was filed with the Court on December 5, 2023 attached to the Declaration Of Nikki Trenner ("Trenner Decl."), as Exhibit 1.

On January 26, 2024, the Court issued a checklist of issues for Counsel to address regarding the Settlement Agreement. In response, on March 28, 2024, Counsel filed supplemental briefing and an Amended Settlement Agreement attached to the Supplemental Declaration of Nikki Trenner ("Trenner 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 in California employed by Defendants during the Class Period. (¶1.5)
  - "Class Period" means the period from September 7, 2020 to January 31, 2024 or the date the total number of work weeks totals 25,786, whichever date is sooner (subject to Paragraph 8 below). (¶1.12)
- "Aggrieved Employee" means all current and former non-exempt, hourly employees in California employed by Defendants during the PAGA Period. (¶1.4)
  - "PAGA Period" means the period from August 13, 2021 to January 31, 2024 or the date the total number of work weeks totals 25,786, whichever date is sooner (subject to Paragraph 8 below). (¶1.32)
- Based on a review of its records to date, Defendants estimate there are approximately 1,340 Class Members who collectively worked a total of approximately 23,442 Workweeks, and approximately 734 Aggrieved Employees who worked a total of approximately 10,091 PAGA Pay Periods. (¶4.1)

- The Gross Settlement Amount was agreed upon based on Defendants’ representations of the total number of Workweeks in the Class Period and total number of Pay Periods in the PAGA Period. If the number of Workweeks during the Class Period exceeds 23,442 by more than ten percent (10%) (i.e. 25,786 or higher), Defendants shall have the election to either (a) cut off the Class Period at that point, or (b) the Gross Settlement Amount shall be increased on a pro rata basis per Workweek exceeding the 10% increase (i.e. if the number increases by 11%, the Gross Settlement Amount shall be increased by 1%). (¶8)
- The parties stipulate to class certification for settlement purposes only. (¶12.1.)

### **TERMS OF SETTLEMENT AGREEMENT**

The essential terms are as follows:

- The Gross Settlement Amount (“GSA”) is **\$350,000**, non-reversionary. (¶3.1)
- The Net Settlement Amount (“Net”) (**\$178,333.33**) is the GSA minus the following:
  - Up to **\$116,666.67** (1/3) for attorney fees (¶3.2.2);
  - Up to **\$20,000** for litigation costs (*Ibid.*);
  - Up to **\$20,000** for settlement administration costs (¶3.2.2); and
  - Payment of **\$7,500** (75% of \$10,000 PAGA penalty) to the LWDA. (¶3.2.4)
- Defendants will pay their share of taxes separate from the GSA. (¶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. The Gross Settlement Amount shall be paid by Defendants in two equal installments, with the First Installment Payment being due upon the Effective Date and the Second Installment Payment being due within six months thereafter. (¶4.3) Defendants ELA Foods, Inc. and Pop Foods Services, Inc. have filed the declaration of Najdik Amirian explaining the reasons for the parties’ stipulation to a two-installment payment plan.
  - Distribution: Within 14 days after Defendants fund the Second Installment Payment, 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, and the Class Counsel Litigation Expenses Payment. Disbursement of the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (¶4.4)
- There is no claim form requirement. (¶3.1)
- 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 each Participating Class Member’s Workweeks. (¶3.2.3)
  - Tax Allocation: 25% as wages and 75% 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 (\$2,500.00) 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. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (¶13.2.5.1)

- Tax Allocation: IRS 1099 Forms. (¶13.2.5.2)
- "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) The deadline also applies to challenges to workweek calculations. (¶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 Class Member whose Individual Class 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(b). (¶4.4.3)
- The settlement administrator will be Atticus Administration, LLC. (¶1.2)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶7.8.1)
- The proposed settlement was submitted to the LWDA on December 5, 2023. (Trenner Decl., Exhibit 6.) The proposed amended settlement was submitted to the LWDA on March 19, 2024. (Trenner Supp. Decl., Exhibit 2.)
- 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 July 6, 2023, the Parties participated in a full-day mediation with the Hon. Steven Denton (Ret.) and, while the Parties did not settle at the mediation, they continued to negotiate with the mediator's assistance and reached agreement on all major issues following a mediator's proposal. (Trenner Decl., ¶15.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to the 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), sample arbitration agreements, issuance of wage statements, and termination wages, as well as information regarding the number of

putative Class Members who are current and former employees, the number of PAGA Members, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. (*Id.* at ¶16.) Counsel further represents that, from this information, Plaintiff was able to analyze Defendants’ liability for the claims asserted in this case and, with the assistance of Plaintiff’s experts at Berger Consulting Group, the potential exposure and damages. (*Ibid.*) For the sampling, Counsel states that the Parties agreed upon and obtained records for about 20% of the putative class members at the suggestion of the consulting experts at Berger Consulting Group. (*Ibid.*) From that sampling, which Berger considered statistically reliable, Berger was able to extrapolate out to provide estimates for the entire class. (*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. (*Id.* at ¶¶6-12.)

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.4<sup>th</sup> 116, 130.) Here, Class Counsel has provided detailed analysis, summarized below, of the estimated values of the claims asserted:

<b>Violation</b>	<b>Maximum Exposure</b>
Unpaid Wages	\$152,373.00
Meal Break Violations	\$200,004.00
Rest Break Violations	\$726,528.00
Business Expense Reimbursement	\$87,495.00
Wage Statement Violations	\$966,700.00
Waiting Time Penalties	\$2,391,660.00
PAGA	\$5,000,000.00
<b>TOTAL</b>	<b>\$9,524,760.00</b>

(Trenner Decl. ¶¶38-48.)

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.4<sup>th</sup> 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. Plaintiff’s counsel obtained a \$350,000 non-reversionary settlement. The \$350,000 settlement amount constitutes approximately 3.67% of Defendant’s maximum exposure. Given the uncertain outcomes, the settlement appears to be within the “ballpark of reasonableness” when considering the PAGA estimate is about 50% of the total estimated recovery and PAGA recovery are notoriously discretionary.

The \$350,000 settlement amount, if reduced by the requested deductions, will leave \$178,333.33 to be divided among approximately 1,340 class members. The resulting payments will average \$133.08 per class member. [ $\$178,333.33 / 1,340 = \$133.08$ ].

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, including, (1) failure to pay minimum wages and liquidated damages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to reimburse business expenses; (6) failure to provide accurate wage statements; and (7) failure to pay all wages due upon separation of employment 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, based on the facts stated in the Operative Complaint and the PAGA Notice, including, (1) failure to pay minimum wages and liquidated damages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to reimburse business expenses; (6) failure to provide accurate wage statements; (7) failure to pay all wages due upon separation of employment; (8) failure to keep accurate records; (9) failure to produce employee records; (10) failure to provide paid sick leave; (11) failure to provide supplemental paid sick leave; (12) refusal to make payment; (13) failure to provide suitable resting facilities; (14) failure to provide suitable seating; (15) statutory wage violations; (16) failure to pay vested vacation pay; (17) failure to provide employees with notice of state employment laws; (18) standard conditions of labor violations; and (19) unlawful agreements during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period. (¶5.2)

- “Released Parties” means: Defendants and each of their former and present directors, officers, shareholders, owners, members, managing agents, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates. (¶1.42)
- Plaintiff’s release. “In addition to the Gross Settlement Amount and in lieu of a representative enhancement/incentive award, Defendants have agreed to pay Plaintiff an additional sum of \$15,000.00 (“Individual Settlement Amount”) to resolve Plaintiff’s alleged individual claims.” (¶11)

#### **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 1,340 class members. (Trenner Decl., ¶49.) 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. (Trenner Decl., ¶49.)

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. (Trenner Decl., ¶53.)

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 ¶50.)

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 ¶ 51; Declaration of Antoinette Brown, ¶¶5-6.)

In addition to the Gross Settlement Amount and in lieu of a representative enhancement/incentive award, Defendants have agreed to pay Plaintiff an additional sum of \$15,000.00 (“Individual Settlement Amount”) to resolve Plaintiff’s alleged individual claims. (Settlement Agreement, ¶11) Plaintiff represents that as part of the resolution of this case, she has entered into a confidential, individual settlement with ELA regarding all of her claims against the company, including individual non-wage and hour claims she has related to [her] employment with ELA and her injury and disability. In that settlement she is giving a full general release of claims and is waiving any unknown claims. (Brown Decl., ¶7.)

Regarding potential conflicts of interest arising from this arrangement, Counsel represent that Plaintiff’s individual claim was for retaliation and that the resolution of Plaintiff’s nonwage/hour claims was reached separately from the mediation that resulted in the proposed class/PAGA settlement. (Trenner Supp. Decl., ¶¶7-10) Counsel contends that Plaintiff’s individual matter did not have any impact on or influence over Plaintiff’s representation of the class, because the resolution of her individual claim was reached following the mediation to settle the class claims. (*Id.* at ¶10.) Further, Counsel contends that Plaintiff will not seek an enhancement award either, in recognition of the fact she is receiving additional monies for her individual claims, and thus is putting the class members’ interest before her own. (*Ibid.*)

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

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 may be 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 Settlement Agreement. 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.

Notice will be given in English and Spanish. (¶7.4.2)

b. Method of class notice.

Class Data. 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)

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**

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.4<sup>th</sup> 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4<sup>th</sup> 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4<sup>th</sup> 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.4<sup>th</sup> 123, 128.)

The question of whether Class Counsel is entitled to **\$116,666.67** (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 not request a service award. (Brown Decl., ¶7)

**CONCLUSION**

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

Plaintiff's Motion for Final Approval of Class Action Settlement must be filed by **January 24, 2025**. Plaintiff must call the Court **prior** to filing and serving to obtain a hearing date.

Plaintiff's Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Order and Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Order and Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

**A Non-Appearance Case Review is set for January 31, 2025, 8:30 a.m., Department 9.**

COURT CLERK TO GIVE NOTICE TO MOVING PARTY (PLAINTIFF). THE MOVING PARTY IS TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: April 23, 2024



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ELAINE LU  
JUDGE OF THE SUPERIOR COURT