

JUL 22 2021

~~CONFIDENTIAL~~ RULINGS/ORDERS

Sherri R. Carter, Executive Officer/Clerk

By , Deputy

Pedro Martinez

Orellana v. Nicker Management I, Inc. dba McDonald's, et al.  
Case No.: 19STCV42850

The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as fair, adequate, and reasonable.

The essential terms are, among other things:

- A. The Gross Settlement Amount ("GSA") is \$1,000,000.
- B. The Net Settlement Amount ("Net") \$599,166.67 is the GSA minus the following:

- Up to \$333,333.33 (33 1/3%) for attorney fees;
- Up to \$20,000 for litigation costs;
- Up to \$5,000 for a service award to the proposed class representative;
- Up to \$35,000 for settlement administration costs;
- \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA; and

- C. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by January 21, 2022. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] 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] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Nonappearance case management review is set for January 28, 2022, 8:30 a.m., Dept. 9.

I.  
BACKGROUND

Plaintiff Bianca Hernandez Orellana sues her former employer, Defendants Nicker Management I, Inc., Nicker-18th,

Inc., Nicker-Alameda, Inc., Nicker-Avalon, Inc., Nicker-Carson, Inc., Nicker-Central, Inc., Nicker-Compton, Inc., Nicker-Crenshaw, Inc., Nicker-Figueroa, Inc., Nicker-Florence, Inc., Nicker-Imperial, Inc., Nicker-Long Beach, Inc., Nicker-Manchester, Inc., Nicker-Mlk, Inc., Nicker-Pendleton, Inc., Nicker-Rosecrans, Inc., Nicker-Slauson, Nicker-Western, Inc., and Nicwil-Alondra, Inc. (collectively, "Defendant", "Defendants" or "Nicker"), for alleged wage and hour violations. Defendants operated nineteen (19) McDonald's fast food franchise locations in California. Plaintiff seeks to represent a class of Defendants' current and former non-exempt employees.

On December 2, 2019, Plaintiff filed a putative wage-and-hour class action complaint against Defendant Nicker Management I, Inc. On November 3, 2020, Plaintiff filed the First Amended Complaint to add additional Defendant entities and allege the following causes of action: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194, and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) unfair business practices (Business and Professions Code 17200 et seq.); and (8) civil penalties under Private Attorneys General Act ("PAGA") (Labor Code § 2698 et seq.)

On August 6, 2020, the parties participated in private mediation with mediator Todd Smith, Esq. via Zoom. After negotiations and discussions, Mr. Smith issued a mediator's proposal that was accepted by all parties, the material terms of which are encompassed within the long-form Stipulation of Settlement ("Settlement Agreement"), a copy of which was filed with the Court.

On April 30, 2021, the Court issued a "checklist" to the parties pertaining to deficiencies in the Settlement Agreement. In response, the parties filed supplemental briefing, including the revised Settlement Agreement attached as Exhibit 7 to the Supplemental Declaration of Justin F. Marquez ("Marquez Decl.").

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

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II.  
SETTLEMENT AGREEMENT

A. Definitions

Class: all persons who worked for any Defendants in California as an hourly paid or non-exempt employee during the Settlement Period. (Settlement Agreement ¶I.AA)

Class Period: December 2, 2015 through the date the Court grants preliminary approval of the settlement. (¶I.BB)

Participating PAGA Members: all Participating Class Members who worked for any Defendant from December 2, 2018 through the date the Court grants preliminary approval of the settlement. (¶I.R)

The Parties stipulate to class certification for settlement purposes only. (¶III.B)

B. Terms of Settlement Agreement

The essential terms are as follows:

- The Settlement Amount is \$1,000,000, non-reversionary. (¶I.Z)
- The Net Settlement Fund ("Net") (\$599,166.67) is the Settlement Amount minus the following:
  - o Up to \$333,333.33 (33 1/3%) for attorney fees (¶XIV);
  - o Up to \$20,000 for litigation costs (Ibid.);
  - o Up to \$5,000 for an enhancement award to the Named Plaintiff (¶XV);
  - o Up to \$35,000 for settlement administration costs (¶IX);and
  - o Payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA (¶XVII).
- Defendant's share of payroll taxes will be paid in addition to the Settlement Amount. (¶XVI)
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (Notice pg. 2)
- Response Deadline. Forty-five (45) calendar days from the initial mailing of the Notice. (¶I.V) The Response Deadline applies to the submission of written objections (¶X.H.1), opt-outs (pg. 15, ¶X.C), and workweek disputes (¶XI).

o Any Settlement Class member who timely and validly submits a Request to be Excluded from the Settlement Class and the Settlement will not be entitled to any portion of the Net Settlement payments, will not be bound by the terms and conditions of the Settlement except that the Participating PAGA Members claim for PAGA penalties will still be released, and will not have any right to object, appeal, or comment thereon. (§X.C.1 at pg. 16)

• Class Members who opt out of the class settlement will still receive a portion of the PAGA settlement. (Notice pg. 6)

o In the event that five percent (5%) or more of the Class Members exercise their right to exclude themselves and opt out of the Settlement and Settlement Agreement, Defendants retain the exclusive right, but not the obligation, to withdraw from and terminate the Settlement and the Settlement Agreement. (§X.C.4 at pg. 17)

• Individual Settlement Payment Calculation. The Settlement Administrator will calculate the total number of workweeks for all Class Members who were employed by any Defendants during the Settlement Class Period ("Total Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Fund (not including the amount the Court approves in PAGA penalties) by the total number of Workweeks available to the Class Members who do not opt out in accordance with Section X(C) above during the Settlement Class Period ("Workweek Point Value"). An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's workweeks worked during the Class Period ("Eligible Workweeks") by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member. (§XII.A)

o As to distribution of PAGA penalties, the Settlement Administrator will calculate the total number of workweeks for all Participating PAGA Members who were employed by any Defendants during the PAGA Period ("Total PAGA Workweeks"). The value of each PAGA Workweek shall be determined by the Settlement Administrator by dividing 25% of the total amount the Court approves in PAGA penalties by the total number of PAGA Workweeks available to Participating PAGA Members ("PAGA Workweek Point Value"). (§XII.A)

o Tax Allocation. Each individual settlement payment will be allocated as 50% to wages, 50% to penalties and interest. (§XVI) Each payment to Participating PAGA Members shall be treated as 100% penalties. (§XII.A)

• Funding of Settlement. No earlier than February 7, 2022, and only after the Court grants Final Approval of the Settlement and a determination of the Individual Settlement Share to which

each member of the Settlement Class is entitled, Defendants shall wire to the Settlement Administrator the Settlement Amount and the Employer Taxes. (§XII.B)

o Disbursement. The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved enhancement to Named Plaintiff, and PAGA Settlement) and the Employer Taxes to be mailed within twenty-one (21) calendar days following the date of funding. At no time will Defendants be required to escrow any portion of the Settlement Amount. (§XII.C.1)

• Uncashed Checks. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed unpaid residue pursuant Code of Civil Procedure Section 384(a). In accordance with Code of Civil Procedure Section 384 ... unpaid residue (uncashed or returned checks) will be paid to the Cy Pres Beneficiary at 180 Montgomery Street, Suite 600, San Francisco, CA 94104. (§XII.C.2)

o "Cy Pres Beneficiary" means Legal Aid at Work, which is a non-profit organization that provides pro bono legal assistance to the public. The Parties agree that designating The Legal Aid at Work as the Cy Pres Beneficiary will "further the purposes of the underlying class proceedings in this action and will promote justice for all Californians" in conformity with California Code of Civil Procedure section 384. By executing this Settlement Agreement, the Parties represent that they do not have a personal or financial interest in the designated Cy Pres Beneficiary. (§I.G; see also Supp. Marquez Decl. §§ 9-10.)

• ILYM Group, Inc. will perform notice and settlement administration. (§I.X)

• The Settlement Agreement was submitted to the LWDA on January 27, 2021. (Supp. Marquez Decl., Exhibit 5)

• Notice of Entry of Final Judgment will be posted on the Settlement Administrator's website. (§IX)

• Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

### III. DISCUSSION

#### A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On August 6, 2020, the parties participated in private mediation with mediator Todd Smith, Esq. via Zoom.

After negotiations and discussions, Mr. Smith issued a mediator's proposal that was accepted by all parties. The Parties subsequently finalized the Settlement Agreement. (Declaration of Justin F. Marquez ¶7.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that following the filing of the Complaint, the parties exchanged documents and information before mediating this action. Defendants produced a sample of time and pay records for class members. Defendants also provided documents of its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (Id. at ¶5.) Counsel further represents that this information included class member demographics (i.e., the number of class members, workweeks, and average total compensation of the class), and used a statistics expert to create a damages model to evaluate the realistic range of potential recovery for the class. (Id. at ¶14.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶46.)

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."].)

The Court concludes that 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 plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

Violation	Maximum Exposure	Realistic Exposure
Off-the-Clock Wage Claim	\$3,150,297.61	\$315,029.76
Meal Period Claim	\$1,270,861.52	\$127,086.15
Rest Period Claim	\$678,649.20	\$67,864.92
Waiting Time Penalties	\$5,686,024.50	\$500,000 subtotal
Wage Statement Penalties	\$3,785,100.00	
PAGA Penalties	\$3,930,800.00	
Total	\$18,501,732.83	\$1,009,980.83

(Marquez Decl. ¶¶ 16-21.)

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 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 \$1,000,000 non-reversionary settlement. The \$1,000,000 settlement amount represents approximately 5.4% of Defendant's maximum potential damages and 99% of Defendant's realistic potential damages, which, given the uncertain outcomes, is within the "ballpark of reasonableness." The \$1,000,000 settlement amount, after reduced by the requested deductions, leaves approximately \$599,166.67 to be divided among approximately 3,510 putative class members. Assuming full participation, the resulting payments will average approximately \$170.70 per class member. [ $\$599,166.67 / 3,510 = \$170.70$ ]

In addition, each PAGA Employee will receive a portion of the PAGA penalty, estimated to be \$1.26 per PAGA member. ( $\$2,500$  or 25% of \$10,000 PAGA penalty  $\div$  1,980 aggrieved employees = \$1.26)

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 fairness hearing.

The Court concludes that the settlement can be preliminarily deemed "fair, adequate, and reasonable."

#### C. Scope of the Release

As of the date on which Defendants fully fund the settlement, all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum or otherwise make a claim against any of the Released Parties for any of the Released Claims arising during the Settlement Period, including the following claims: 1) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders or any comparable federal statute under any theory of liability; 2) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum wage or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; 3) all claims alleged in the operative complaint, under any legal theory of liability, for failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide rest periods pursuant to California Labor Code § 226.7 and the IWC Wage Orders; 5) all



claims alleged in the operative complaint, under any legal theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code § 226.7(b); 6) all claims alleged in the operative complaint, under any legal theory of liability, for violation of Business & Professions Code §§ 17200, et seq.; 7) all claims alleged in the operative complaint and Plaintiff's PAGA letter, under any legal theory of liability, for penalties pursuant to PAGA (Labor Code §§ 2698 et seq.); 8) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-203; 9) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged wage statement violations pursuant to California Labor Code §§ 226 and 1174.5; and 10) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties or any another amounts that could be potentially owed to Class Members during the Settlement Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 558, and 1197.1. (¶VIII.A)

"Released Claims" means all known and unknown claims, rights, demands, liabilities, and causes of action that were alleged or that could have been alleged based on the facts of the operative complaints filed in the matter, including but not limited to wage and hour claims for any and all violations of California's Labor Code, Unfair Competition Law, applicable IWC Wage Orders, or any other statute, rule, or regulation governing hours and wages, based on claims that include but is not limited to unpaid minimum wages, straight time wages, overtime wages, double-time wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all wages due during and at the end of employment, failure to furnish accurate, itemized wage statements, failure to maintain accurate payroll records, failure to reimburse business expenses, unfair or unlawful business practices, civil penalties under California's Private Attorneys General Act of 2004 (but only to PAGA claims asserted in Plaintiff's PAGA letter, attached as Exhibit B), interest, attorney's fees, and any other alleged wage/hour violations or other claims that were or could have been asserted based on the facts alleged in the Litigation. (¶I.T)

"Released Parties" means Defendants and its past, present and/or future, direct and/or indirect, owners, officers,

directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, assigns, divisions, affiliates, trustees, fiduciaries, subrogees, executors, partners, joint employers, insurers, and related corporations. (¶I.U)

FLSA Notice and FLSA Release: The Settlement Administrator shall include with the mailing of settlement payments to Settlement Class members, an "FLSA Notice" (Exhibit C). Class Members who cashed, deposited, or otherwise negotiated their Settlement Checks shall be deemed to have "opted in" to the FLSA Claims pursuant to 29 USC 216(b) for purposes of releasing such claims pursuant to ¶VII.A. (¶XII.D)

The Named Plaintiff will additionally provide a general release and §1542 waiver. (¶VIII.B)

D. May Conditional Class Certification Be Granted?

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. Windsor (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 at 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, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 3,510 Class Members. (Motion at 15:21-22.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (Motion at 15:24-25.)

3. 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.)

Regarding commonality, Plaintiff contends that the employment practices at issue are: whether Defendants had legally compliant policies and practices to provide employees with meal periods; whether Defendants had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether Defendants had legally compliant policies and practices for all hours worked, including overtime wages; whether Defendants paid terminated employees all vacation wages at the correct rate of pay; whether final payment of wages was untimely and excluded unpaid wages, including meal period premium wages, and rest period premium wages; and whether the wage statements were consequently non-compliant. Plaintiff contends that the factual and legal issues are the same for all of the identified class members, including Plaintiff, and that all class members suffered from, and seek redress for, the same alleged injuries. (Motion at 16:16-25.)

As to typicality, Plaintiff represents that she worked for Defendants during the class period and alleges that she was subject to the same policies and practices as other similarly situated employees. (Declaration of Bianca Hernandez Orellana ¶¶ 3-6.)

Finally, as to adequacy, Plaintiff represents that she is aware of the risks of serving as class representative and has been actively involved in the litigation. (Id. at ¶¶ 7-12.)

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

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

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

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E. Is the Notice Proper?

1. Content of class notice. A copy of the revised proposed notice to class members is attached to the 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; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); 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 provided to class members in both English and Spanish. (Supp. Marquez Decl. ¶6.)

2. Method of class notice. As soon as practicable following Preliminary Approval of the Settlement, but no later than thirty (30) calendar days after the Court's Preliminary Approval order, Defendants will provide to the Settlement Administrator the Class List. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential, and will not be disclosed by the Settlement Administrator to any non-Party, except as may be required to applicable tax authorities, pursuant to the express written consent of Defendants, by order of the Court, or as may be necessary to carry out its duties under the Settlement. (¶X.B)

The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and shall mail the Notice and Workweek Dispute Form to the members of the Settlement Class via first-class regular U.S. Mail using the most current mailing address information available, within ten (10) calendar days of the receipt of the Class List from Defendants. (¶X.C)

If a Notice is returned from the initial notice mailing, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement Class member. Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline date,

shall be sent to the forwarding address affixed thereto. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. Settlement Class Members who receive a re-mailed Notice will have 15 additional days to submit an Opt-Out Form or objection to the settlement (i.e., 60 calendar days from first mailing) irrespective of when the first mailing was returned as undeliverable only if the return mailing is received within the initial 45 day Response Deadline. (§X.D)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$35,000. (§IX) Prior to the time of the final fairness hearing, the settlement 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

CRC 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 \$333,333.33 (33 1/3%) in attorney fees will be addressed at the

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 (capped at \$20,000) by detailing how they were incurred.

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$5,000 for the class representative, Bianca Hernandez Orellana (¶XV). In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "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 of the enhancement award at the time of final approval.

IV.  
CONCLUSION

Based upon the foregoing, the Court orders that:

- 1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as fair, adequate, and reasonable.
- 2) The essential terms are, among other things:
  - A. The Gross Settlement Amount ("GSA") is \$1,000,000.
  - B. The Net Settlement Amount ("Net") \$599,166.67 is the GSA minus the following:

Up to \$333,333.33 (33 1/3%) for attorney fees;  
Up to \$20,000 for litigation costs;  
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Up to \$35,000 for settlement administration costs;  
\$7,500 (75% of \$10,000 PAGA penalty) to the LWDA; and

C. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by January 21, 2022. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

4) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] 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] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Nonappearance case management review is set for January 28, 2022, 8:30 a.m., Dept. 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: JUL 22 2021

JUL 22 2021



YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT

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