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Superior Court of California
County of Los Angeles**

DEC 18 2018

Sherril R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

CESAR NAVA, on behalf of herself and
others similarly situated,

Plaintiff,

v.

TACOS MEXICO, a California Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: BC572936

**ORDER GRANTING
MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: December 18, 2018
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

On February 18, 2015, Plaintiff filed a Class Action Complaint ("Complaint") alleging:
(1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal
periods; (4) failure to provide rest periods; (5) failure to pay all wages upon termination; (6)
failure to provide accurate wage statements; (7) unfair competition; and (8) civil penalties
pursuant to Labor Code §2699(a) ("PAGA").

1 Class Counsel engaged in formal and informal discovery which yielded information and
2 documentation concerning the claims set forth in the litigation, such as determining the number
3 of corporate owned restaurants, the number of putative class members who worked at those
4 restaurant locations, and that as of approximately January 13, 2015, Defendant ceased all
5 operations of any corporate owned restaurants.

6 Counsel for the respective Parties engaged in discussions about the strengths and
7 weaknesses of the claims and defenses. Plaintiff and Defendant undertook mediation efforts,
8 including attending a full-day mediation on January 17, 2018 before Steven J. Serratore, Esq.
9 which resulted in the Parties reaching a class wide settlement.

10 The parties subsequently executed a long-form *Joint Stipulation of Class Action*
11 *Settlement* ("Settlement Agreement"), a signed copy of which is attached to the Declaration of
12 James A. De Sario ("De Sario Decl.") as Exhibit 1.

13 On April 10, 2018, the Court requested supplemental briefing from counsel. In response,
14 on August 23, 2018, counsel filed the Supplemental Declaration of James A. De Sario ("De
15 Sario Supp. Decl.") with an *Amendment to Joint Stipulation for Class Action Settlement*
16 ("Amendment to Settlement Agreement") attached as Exhibit 2.

17 After Supplemental Briefing and Amendment to the Settlement Agreement, the Court
18 granted Preliminary Approval on September 6, 2018.

19 Now before the Court is Plaintiff's motion for final approval of the settlement.

20 **II. DISCUSSION**

21 **A. SETTLEMENT CLASS DEFINITION**

22 Under the settlement as presently proposed "Class Member(s)" or "Settlement Class"
23 means Plaintiff and all current and former non-exempt hourly employees who worked at
24 Defendant's corporate-owned stores in the state of California at any time between February 18,
25 2011 and January 13, 2015. (Settlement Agreement, ¶7.)

1 The "Class Period" is from February 18, 2011 through January 13, 2015. (¶8.)

2 There are 232 Participating Class Members. (Declaration of Cassandra Cita ("Cita
3 Decl."), ¶12.)

4 The Parties agree to stipulate to class action certification only for purposes of the
5 Settlement. (Motion ISO Preliminary Approval, 4:22-23)

6
7 **B. TERMS OF SETTLEMENT AGREEMENT**

8 The essential terms are as follows:

- 9 • The Gross Settlement Amount ("GSA") is **\$225,000**, non-reversionary. (¶12.)
- 10 • The Net Settlement Amount ("NSA") (**\$121,750.00**) is the GSA minus:
- 11 ○ Up to **\$75,000.00** (33 and 1/3%) for attorney fees (¶¶5; 25);
- 12 ○ Up to **\$12,500.00** for attorney costs (*Ibid.*);
- 13 ○ Up to **\$5,000** for a service award to the class representative (¶¶9; 26);
- 14 ○ Up to **\$7,000** for claims administration costs (¶¶3; 27); and
- 15 ○ **\$3,750** (75% of \$5,000 PAGA penalty) payable to the LWDA (¶12).
- 16 • Employer payroll taxes will be paid by Defendants in addition to the Gross Settlement
17 Amount. (¶24.)
- 18 • There is no claims process.
- 19 • The Objection/Exclusion Deadline Date is 45 days from the date of mailing of the Class
20 Notice. (¶22.) Those Class Members who receive a re-mailed Notice Packet will have
21 between the later of (i) an additional 15 calendar days or (ii) the Response Deadline to
22 fax or postmark a Request for Exclusion or submit an objection to the Settlement. (¶33).
- 23 • Individual Settlement Payment: The Claims Administrator will divide the Net Settlement
24 Amount by the total number of compensable workweeks ("Work Week Rate Amount")
25 and then multiply this amount by each Class Member's total number of compensable

1 workweeks to yield that employee's Net Settlement Payment. In the event that a Class
2 Member opts-out, his/her individual share of the settlement will be redistributed to
3 participating Class Members pursuant to the formula provided in the Settlement
4 Agreement. (¶29.)

5 ○ Each Individual Settlement Award will be allocated as 20% to wages, 40% to
6 interest, and 40% to penalties. (¶43.)

7 ○ Individual settlement checks are valid for 180 days. It is proposed that the amount
8 of any checks not cashed after 180 days, will be paid to the Settlement
9 Administrator to the California Department of Industrial Relations, with the
10 identity of the Participating Class Member to whom the funds belong, to be held
11 for the Participating Class Member per California Unclaimed Property Law. The
12 money paid to the California Department of Industrial Relations will remain the
13 Participating Class Member's property. This will allow Participating Class
14 Members who did not cash their checks to collect their Individual Settlement
15 Amounts at any time in the future. (¶41, as amended.)

- 16 ● The settlement administrator is Simpluris, Inc. (¶2.)
- 17 ● The settlement was submitted to the LWDA and it has not opposed same. (De Sario
18 Supp. Decl. ISO Preliminary Approval, ¶9, and Exhibit 5 thereto.)
- 19 ● Scope of the Release: Upon the date the Court enters an order granting final approval of
20 the Settlement, all Class Members who do not timely submit a valid Request for
21 Exclusion do and will be deemed to have fully, finally and forever released, settled,
22 compromised, relinquished and discharged any and all of the Released Parties of and
23 from any and all Released Claims accruing during the Class Period. (¶48.)
 - 24 ○ "Released Claims" means wage and hour claims, rights, demands, liabilities,
25 penalties, interest and causes of action, pled in Plaintiff's Complaint

1 ("Complaint") or that could have been pled in the Complaint based on the factual
2 allegations pled in the Complaint, including claims for failure to pay overtime
3 wages, failure to pay minimum wages, failure to provide meal periods, failure to
4 provide rest periods, failure to pay all wages upon termination, failure to provide
5 accurate wage statements, unfair competition claims under California Business &
6 Professions Code § 17200, et seq., civil penalties pursuant to Labor Code §2699,
7 et seq. This release will cover all Class Members who do not opt out of the
8 settlement. (¶19.)

- 9 ○ "Released Parties" means Defendant and Defendant's former and present parents,
10 subsidiaries and affiliated companies and entities and its current, former and
11 future owners, officers, directors, members, managers, employees, consultants,
12 partners, affiliates, subsidiaries, shareholders, attorneys, insurers, reinsurers,
13 accountants, investment bankers, joint venturers and agents, any predecessors,
14 successors, assigns, or legal representatives and any individual or entity who or
15 which could be jointly liable with Defendant and all persons or entities acting by,
16 through under or in concert with any of them. (¶20)
- 17 ○ The Class Representative will additionally provide a general release and §1542
18 waiver. (¶49.)

19 The releases appear to be proper. The class release is appropriately tethered to the
20 pleading and limited to the relevant time period. Although the Release is effective as of the date
21 of Final Approval, the Court retains jurisdiction to enforce the terms of the settlement.
22 Plaintiff's broader release is acceptable as he was represented by counsel when these terms were
23 negotiated.

24 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

25 **1. Standards for Final Fairness Determination**

1 "Before final approval, the court must conduct an inquiry into the fairness of the
2 proposed settlement." (Cal. Rules of Court, rule 3.769(g).) "If the court approves the settlement
3 agreement after the final approval hearing, the court must make and enter judgment. The
4 judgment must include a provision for the retention of the court's jurisdiction over the parties to
5 enforce the terms of the judgment. The court may not enter an order dismissing the action at the
6 same time as, or after, entry of judgment." (Cal. Rules of Court, rule 3.769(h).)

7 "In a class action lawsuit, the court undertakes the responsibility to assess fairness in
8 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
9 action. The purpose of the requirement [of court review] is the protection of those class
10 members, including the named plaintiffs, whose rights may not have been given due regard by
11 the negotiating parties." (See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
12 *America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also *Wershba v.*
13 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 ("*Wershba*"), disapproved on another
14 ground in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260 [Court needs to "scrutinize
15 the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the
16 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
17 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
18 concerned"] [internal quotation marks omitted].)

19 "The burden is on the proponent of the settlement to show that it is fair and reasonable.
20 However 'a presumption of fairness exists where: (1) the settlement is reached through arm's-
21 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
22 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
23 objectors is small.'" (See *Wershba, supra*, 91 Cal.App.4th at pg. 245 [citing *Dunk v. Ford Motor*
24 *Co.* (1996) 48 Cal.App.4th 1794, 1802. ("*Dunk*").) Notwithstanding an initial presumption of
25 fairness, "the court should not give rubber-stamp approval." (See *Kullar v. Foot Locker Retail,*

1 *Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent
2 class members, the court must independently and objectively analyze the evidence and
3 circumstances before it in order to determine whether the settlement is in the best interests of
4 those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should
5 consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely
6 duration of further litigation, the risk of maintaining class action status through trial, the amount
7 offered in settlement, the extent of discovery completed and stage of the proceedings, the
8 experience and views of counsel, the presence of a governmental participant, and the reaction of
9 the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not
10 exclusive and the court is free to engage in a balancing and weighing of factors depending on the
11 circumstances of each case.” (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

12 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order
13 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.
14 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it
15 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement
16 because ‘the public interest may indeed be served by a voluntary settlement in which each side
17 gives ground in the interest of avoiding litigation.’” (*Wershba, supra*, 91 Cal.App.4th at pg.
18 250.)

19 **2. Does a presumption of fairness exist?**

- 20 a. Was the settlement reached through arm’s-length bargaining? Yes. Plaintiff and
21 Defendant undertook mediation efforts, including attending a full-day mediation
22 on January 17, 2018 before Steven J. Serratore, Esq. which resulted in the Parties
23 reaching a class wide settlement. (De Sario Decl. ISO Preliminary Approval, ¶5.)
- 24 b. Were investigation and discovery sufficient to allow counsel and the court to act
25 intelligently? Yes. It is represented that Class Counsel engaged in formal and

1 informal discovery which yielded information and documentation concerning the
2 claims set forth in the Litigation, such as determining the number of corporate
3 owned restaurants, the number of putative who worked at those restaurant
4 locations, and that as of approximately January 13, 2015, Defendant ceased all
5 operations of any corporate owned restaurants. (*Id.* at ¶4.) Additionally, Plaintiff
6 obtained a sampling of time records and earning records for the putative class,
7 relevant policies that applied to the putative class, the date of employment for
8 putative class members during the class period and the average hourly rate. (*Ibid.*)
9 Plaintiff analyzed these documents and contends that they support the alleged
10 wage and hour violations. (*Ibid.*) Furthermore, counsel for the Parties have
11 investigated the law as applied to the facts discovered regarding the alleged
12 claims and potential defenses thereto, and the potential damages claimed by
13 Plaintiff. (*Ibid.*)

14
15 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced
16 in class action litigation, including wage and hour class actions. (*Id.* at ¶¶21-23.)

17 d. What percentage of the class has objected? Zero objectors. (Cita Decl., ¶10.)
18 *and representation of counsel on the record.*

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

20 **2. Is the settlement fair, adequate, and reasonable?**

21 a. Strength of Plaintiff's case. "The most important factor is the strength of the
22 case for plaintiff on the merits, balanced against the amount offered in
23 settlement." (*Kullar, supra*, 168 Cal.App.4th at pg. 130.)

24 Class Counsel's analysis of Defendant's estimated maximum potential
25 exposure on each cause of action is summarized in the table below.

Violation	Maximum Exposure
Minimum Wage/Overtime	\$24,025.50
Rest Period Violations	\$463,970.50
Meal Period Violations	\$315,504.50
Penalties	0
Total	\$803,500.50

(De Sario Decl. ISO Preliminary Approval, ¶15.).

In total, Class Counsel estimated Defendant's maximum exposure to be approximately \$803,500.50. Class Counsel obtained a gross settlement valued at \$225,000.00. This is 28% of Defendant's maximum potential exposure, which is within the "ballpark of reasonableness."

- b. 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.
- c. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (*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."].)
- d. Amount offered in settlement. As indicated above, the Gross Settlement Amount is **\$225,000.00**. Assuming that the Court approves all of the maximum requested deductions, approximately **\$122,987.02** will be available for automatic distribution to participating class members. The average settlement share will be approximately **\$530.12** [$\$122,987.02 \text{ Net} \div 232 \text{ class members} = \530.12].

1 e. Extent of discovery completed and stage of the proceedings. As discussed
2 above, at the time of the settlement, the parties had conducted discovery
3 sufficient to value the case for settlement purposes.

4 f. Experience and views of counsel. The settlement was negotiated and endorsed
5 by Class Counsel who, as indicated above, is experienced in class action
6 litigation, including wage and hour cases. Class Counsel believes that the
7 settlement is fair, reasonable and adequate for each participating Class Member.
8 (De Sario Decl. ISO Preliminary Approval, ¶16.)

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

10 h. Reaction of the class members to the proposed settlement.

11 Number of class members: 232

12 Number of notices mailed: 231

13 Number of undeliverable notices: 17

14 Number of opt-outs: 0

15 Number of objections: 0

16 Number of participating class members: 232

17 (Cita Decl., ¶¶2-12.)

18 CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.” The
19 Court finds that the notice was adequate and conforms to due process requirements.

20 **D. ATTORNEY FEES AND COSTS**

21 Class Counsel, the Nourmand Law Firm, APC, requests **\$75,000** (33 1/3%) for attorney
22 fees and **\$11,262.98** for costs. (Motion ISO Final Approval, 17:9-10.)

23 In determining the appropriate amount of a fee award, courts may use the lodestar
24 method, applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22
25 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (*Laffitte v.*

1 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the
2 contrary, courts have an independent responsibility to review an attorney fee provision and
3 award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone*
4 *Company* (2004) 118 Cal.App.4th 123, 128.)

5 In the instant case, fees are sought pursuant to the percentage method. (Motion ISO Final
6 Approval, 14:8-9.)

7 The \$75,000 fee request is 33 1/3% of the Maximum Settlement Amount, which is
8 average. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical
9 studies show that, regardless whether the percentage method or the lodestar method is used, fee
10 awards in class actions average around one-third of the recovery.”].)

11 Here, the \$75,000 fee request represents a reasonable percentage of the total funds paid
12 by Defendant. Further, the notice expressly advised class members of the fee request, and no
13 one objected. (Cita Decl. ¶10 Exhibit A thereto.) Accordingly, the Court awards fees in the
14 amount of **\$75,000**.

15 As for costs, Class Counsel requests **\$11,262.98**. (Nourmand Decl. ISO Final Approval
16 ¶27.)

17 This is less than the \$12,500 cap provided in the settlement agreement (¶¶5; 25). This
18 amount was disclosed to Class Members in the Notice, and no objections were received. (Cita
19 Decl. ¶10 and Exhibit A thereto.) Class Counsel incurred actual costs in the amount of
20 **\$11,262.98**. (Nourmand Decl. ISO Final Approval ¶27.)

21 The costs include, but are not limited to, Mediation (\$5,500), Filing Fees (\$1,615), E-
22 service Fees (2,348.80), and Consultant Fees (\$1,250). (*Ibid.*).

23 The costs appear to be reasonable and necessary to the litigation, are reasonable in
24 amount, and were not objected to by the class.

25 For all of the foregoing reasons, costs of **\$11,262.98** are approved.

1 **E. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

2 An incentive fee award to a named class representative must be supported by evidence
3 that quantifies time and effort expended by the individual and a reasoned explanation of
4 financial or other risks undertaken by the class representative. (See *Clark v. American*
5 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone*
6 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may consider in
7 determining whether to make an incentive award include: (1) the risk to the class representative
8 in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties
9 encountered by the class representative; (3) the amount of time and effort spent by the class
10 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof)
11 enjoyed by the class representative as a result of the litigation. (Citations.)”].)

12 Here, the Class Representative requests an enhancement award of **\$5,000**. (Nourmand
13 Decl. ISO Final Approval ¶18.)

14 Mr. Nava was employed by Defendant as a cook/food preparer from approximately July
15 2013 through February 2014. (Declaration of Cesar Nava, ¶3.) Mr. Nava’s contributions to this
16 litigation included providing first-hand knowledge and documentation as to Defendant’s
17 policies and practices of recording work hours, meal and rest period practices, and the day to
18 day job duties of the similarly situated employees he worked with. (*Id.* at ¶5.) Mr. Nava also
19 assisted in reviewing time and payroll records produced by Defendant, participated in telephone
20 conferences with counsel to answer questions and/or provide further clarification of issues, and
21 attended and participated in a full day of mediation. (*Id.* at ¶¶5-6.)

22 In light of the above, as well as the benefits obtained on behalf of the class, a **\$5,000**
23 award for Mr. Nava appears to be a reasonable inducement for Plaintiff’s participation in the
24 case. Accordingly, the enhancement in the amount requested is approved.

25 //

1 **F. CLAIMS ADMINISTRATION COSTS**

2 Claims administrator, Simpluris Inc., requests \$7,000 in compensation for its work in
3 administering this case. (Cita Decl. ¶13.) At the time of preliminary approval, costs of
4 settlement administration were estimated at \$7,000. (Settlement Agreement ¶¶3, 27.) Class
5 Members were provided with notice of this amount and did not object. (Cita Decl. ¶10 and
6 Exhibit A thereto.)

7 Accordingly, claims administration costs are approved in the amount of \$7,000.

8 **III. CONCLUSION AND ORDER**

9 **A. RULING**

10 The Court hereby:

- 11 (1) Grants class certification for purposes of settlement;
- 12 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 13 (3) Awards \$75,000 in attorney fees to Class Counsel, The Nourmand Law Firm, APC;
- 14 (4) Awards \$11,262.98 in litigation costs to Class Counsel;
- 15 (5) Approves payment of \$3,750 (75% of \$5,000 PAGA penalty) to the LWDA;
- 16 (6) Awards \$5,000 as a Class Representative Service Award to Cesar Nava;
- 17 (7) Awards \$7,000 in claims administration costs to Simpluris, Inc.;
- 18 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and
19 containing the class definition and the full release language by

20 _____ ^{12/19} _____, 2018;

- 21 (9) Orders class counsel to provide notice to the class members pursuant to California
22 Rules of Court, rule 3.771(b); and

23 //

24 //

25 //

by pointing on the class members' Administrative website for 30 days

1 (10) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds

2 is set for 7/30/19, at 8:30 AM

3 Final Report is to be filed by 4/23/19.

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7 Dated: 12/18/18

Maren E. Nelson

8 MAREN E. NELSON

9 Judge of the Superior Court
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