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11 Attorneys for Plaintiff,
12 MARIA ELENA DIAZ HERNANDEZ, and all others similarly situated

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SACRAMENTO
15 (UNLIMITED JURISDICTION)

16 MARIA ELENA DIAZ HERNANDEZ, on
17 behalf of herself, all others similarly situated, the
18 general public, and as an "aggrieved employee"
19 on behalf of other "aggrieved employees" under
20 the Labor Code Private Attorneys General Act of
21 2004,

22 *Plaintiff(s),*

23 vs.

24 GUITRON ALCAZAR ALCAZAR INC., a
25 California corporation doing business as El
26 Tapatio Mexican Cuisine; GUITRON
27 ALCAZAR III, INC, a California corporation;
28 GUITRON ALCAZAR IV, LLC, a California
limited liability company; and DOES 3-50,
inclusive,

Defendant(s).

FILED/ENDORSED
APR 11 2024
By: V. Aleman *VA*
Deputy Clerk

Case No. 34-2021-00306648

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: March 1, 2024
Hearing Time: 9:00 a.m.
Reservation No: A-306648-001
Hearing Dept.: ~~28~~, The Honorable
22 Lauri A. Damrell

Action filed: August 23, 2021

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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1 The Motion of Plaintiff Maria Elena Diaz Hernandez (hereafter referred to as "Plaintiff")
2 for Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the
3 Court, The Honorable Lauri A. Damrell presiding. The Court having considered the Motion, the
4 Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement
5 Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
8 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
9 has determined only that there is sufficient evidence to suggest that the proposed settlement
10 might be fair, adequate, and reasonable, and that any final determination of those issues
11 will be made at the final hearing. The Court will make a determination at the hearing on the
12 motion for final approval of class action settlement (the "Final Approval Hearing") as to whether
13 the Settlement is fair, adequate and reasonable to the Settlement Class.

14 2. For purposes of this Preliminary Approval Order, the "Settlement Class" means
15 all persons employed by Defendants in California and classified as non-exempt, hourly employees
16 who worked for Defendants (collectively "Class Members"), who worked anytime during the
17 Class Period. The "Class Period" shall mean the period from August 23, 2017 through the date of
18 the order preliminarily approving the Settlement.

19 3. Based on its records, Defendants estimate that, as of the date of the Settlement
20 Agreement, (1) there are 611 Class Members and 23,061.00 Total Work Weeks during the Class
21 period and (2) there were 305 Aggrieved Employees who received 8,474 Pay Period during the
22 PAGA Period. If the Work Weeks and/or Class Members as of the date the Court approves the
23 settlement exceeds the referenced 23,061 Work Weeks and/or 611 Class Members by more than
24 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
25 Representative Service Payment, and the LWDA payment, will increase proportionally according
26 to the number of additional Work Weeks or Class Members, whichever results in a higher increase
27 in the Gross Settlement Amount. In the alternative, in the event that this escalator provision is
28 triggered, then Defendants have the option to elect to end the Class Period so as to have an earlier



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1 end date at the Defendants' discretion in order to limit the covered workweeks to 25,368 in lieu
2 of paying an increase to the Settlement Amount. The Settlement Administrator will calculate the
3 workweeks worked by the Class Members during the Class Period, the amount to be paid pro
4 rata, and the individual settlement payments to eligible Class Members. Defendants' data will be
5 presumed to be correct, unless a particular Class Member proves otherwise to the Settlement
6 Administrator by credible evidence. All disputes as to workweeks worked will be resolved and
7 decided by the Settlement Administrator and the Settlement Administrator's decision on all
8 disputes as to workweeks worked will be final and non-appealable.

9 4. "Effective Date" means the date by when both of the following have occurred: (a)
10 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
11 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
12 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
13 one or more Participating Class Members objects to the Settlement, the day after the deadline for
14 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
15 seventh calendar day after any appellate proceeding opposing the settlement has been finally
16 dismissed with no material changes to the terms of this settlement and there is no right to pursue
17 further remedies.

18 5. This action is provisionally certified pursuant to section 382 of the California Code
19 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
20 purposes of settlement only with respect to the proposed Settlement Class.

21 6. Not later than 15 days after the Court grants Preliminary Approval of the
22 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
23 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
24 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
25 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator
26 employees who need access to the Class Data to effect and perform under the Settlement
27 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
28 discover that the Class Data omitted class member identifying information and to provide



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1 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
2 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
3 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
4 issues related to missing or omitted Class Data.

5 7. No later than three (3) business days after receipt of the Class Data, the
6 Administrator shall notify Class Counsel that the list has been received and state the number of
7 Class Members, PAGA Members, Work Weeks, and PAGA Paychecks in the Class Data.

8 8. Using best efforts to perform as soon as possible, and in no event later than 14
9 days after receiving the Class Data, the Administrator will send to all Class Members identified
10 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice
11 with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The
12 first page of the Class Notice shall prominently estimate the dollar amounts of any Individual
13 Class Payment and/or Individual PAGA payment payable to the Class Member, and the number
14 of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
15 mailing Class Notices, the Administrator shall update Class Member addresses using the National
16 Change of Address database.

17 9. Not later than 3 business days after the Administrator's receipt of any Class Notice
18 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
19 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
20 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice
21 to the most current address obtained. The Administrator has no obligation to make further
22 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
23 USPS a second time.

24 10. Class Counsel's contact information is David G. Spivak, Esq., The Spivak Law
25 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's
26 contact information is Laura C. McHugh, Esq., Dugan McHugh Law Corporation, 641 Fulton
27 Ave, Ste 100, Sacramento, CA 95825.



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1 11. The deadlines for Class Members' written objections, Challenges to Work Weeks
2 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond
3 the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
4 mailed. The Administrator will inform the Class Member of the extended deadline with the re-
5 mailed Class Notice.

6 12. If the Administrator, any of the Defendants or Class Counsel is contacted by or
7 otherwise discovers any persons who believe they should have been included in the Class Data
8 and should have received Class Notice, the Parties will expeditiously meet and confer in person
9 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
10 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
11 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
12 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
13 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

14 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
15 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
16 Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus
17 an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for
18 Exclusion is a letter from a Class Member or her representative that reasonably communicates the
19 Class Member's election to be excluded from the Settlement and includes the Class Member's
20 name, address and email address or telephone number. To be valid, a Request for Exclusion must
21 be timely faxed, emailed, or postmarked by the Response Deadline.

22 14. The Administrator may not reject a Request for Exclusion as invalid because it
23 fails to contain all the information specified in the Class Notice. The Administrator shall accept
24 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
25 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
26 determination shall be final and not appealable or otherwise susceptible to challenge. If the
27 Administrator has reason to question the authenticity of a Request for Exclusion, the
28 Administrator may demand additional proof of the Class Member's identity. The Administrator's



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1 determination of authenticity shall be final and not appealable or otherwise susceptible to
2 challenge.

3 15. Every Class Member who does not submit a timely and valid Request for Exclusion
4 is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
5 bound by all terms and conditions of the Settlement, including the Participating Class Members'
6 Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating
7 Class Member actually receives the Class Notice or objects to the Settlement.

8 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating
9 Class Member and shall not receive an Individual Class Payment or have the right to object to the
10 class action components of the Settlement. Because future PAGA claims are subject to claim
11 preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved
12 Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and
13 are eligible for an Individual PAGA payment.

14 16. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days
15 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
16 whose Class Notice is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay
17 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
18 challenge the allocation by communicating with the Administrator via fax, email or mail. The
19 Administrator must encourage the challenging Class Member to submit supporting
20 documentation. In the absence of any contrary documentation, the Administrator is entitled to
21 presume that the Work Weeks contained in the Class Notice are correct so long as they are
22 consistent with the Class Data. The Administrator's determination of each Class Member's
23 allocation of Work Weeks and/or Pay Periods shall be final and not appealable or otherwise
24 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
25 calculation of Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel and the
26 Administrator's determination the challenges.

27 17. Objections to Settlement. Only Participating Class Members may object to the
28 class action components of the Settlement and/or this Agreement, including contesting the



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1 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
2 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

3 18. Participating Class Members may send written objections to the Administrator,
4 by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or
5 hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
6 A Participating Class Member who elects to send a written objection to the Administrator must
7 do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an
8 additional 14 days for Class Members whose Class Notice was re-mailed).

9 19. Non-Participating Class Members have no right to object to any of the class action
10 components of the Settlement.

11 20. Not later than 14 days before the date by which Plaintiff is required to file the
12 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
13 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
14 compliance with all of its obligations under this Agreement, including, but not limited to, its
15 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class
16 Notices, attempts to locate Class Members, the total number of Requests for Exclusion from
17 Settlement it received (both valid or invalid), the number of written objections and attach the
18 Exclusion List. The Administrator will supplement its declaration as needed or requested by the
19 Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s)
20 in Court.

21 21. The Court approves, as to form and content, the Class Notice in substantially the
22 form attached as ~~Exhibit A~~ to this Order. *to counsel's 3/29/27 Supplemental Declaration*

23 LAURI A. DAMRELL

24 22. The Court approves, for settlement purposes only, David G. Spivak of The Spivak
25 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

26 23. The Court approves, for settlement purposes only, Maria Elena Diaz as the Class
27 Representative.

28 24. The Court approves CPT Group, Inc. as the Administrator.



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1 25. The Court preliminarily approves Class Counsel’s request for attorneys’ fees and
2 costs subject to final review by the Court.

3 26. The Court preliminarily approves the estimated Administrator costs payable to the
4 Administrator subject to final review by the Court.

5 27. The Court preliminarily approves Plaintiff’s Class Representative Service
6 Payment subject to final review by the Court.

7 28. A Final Approval Hearing shall be held on 08/16/2024 at
8 9:00 a.m. in Department ²⁷ of the Superior Court for the State of California, County of
9 Sacramento, located at the ^{LAURI A. DAMRELL} Gordon D. Schaber Sacramento County Courthouse, 720 9th St,
10 Sacramento, CA 95814, to consider the fairness, adequacy and reasonableness of the proposed
11 Settlement preliminarily approved by this Preliminary Approval Order, and to consider the
12 application of Class Counsel for attorneys’ fees and costs and the Class Representative Service
13 Payment to the Class Representative. The notice of motion and all briefs and materials in support
14 of the motion for final approval of class action settlement and motion for attorneys’ fees and
15 litigation costs shall be served and filed with this Court ~~on or before~~ per code.
16 ^{LAURI A. DAMRELL} Plaintiff’s counsel must give notice to any objecting party of any continuance of the hearing of
17 the motion for final approval.

18 29. If for any reason the Court does not execute and file a Final Approval Order and
19 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
20 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
21 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
22 litigation, as more specifically set forth in the Settlement.

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30. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiff shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

4/11/24



DATE

**THE HONORABLE LAURI A. DAMRELL
JUDGE OF THE SUPERIOR COURT**



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