

1 Justin F. Marquez, Esq. (SBN 262417)
2 justin@wilshirelawfirm.com
3 Arsiné Grigoryan, (SBN 319517)
4 agrigoryan@wilshirelawfirm.com
5 **WILSHIRE LAW FIRM**
6 3055 Wilshire Blvd., 12th Floor
7 Los Angeles, California 90010
8 Telephone: (213) 381-9988
9 Facsimile: (213) 381-9989

10 *Attorneys for Plaintiff*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 CARL DAVIS, individually, and on behalf of all
14 others similarly situated,

15 *Plaintiff,*

16 v.

17 HOMETOWN AMERICA MANAGEMENT,
18 L.P., a Delaware corporation; and DOES 1
19 through 10, inclusive,

20 *Defendants.*

Case No.: 34-2022-00327467-CU-OE-GDS

CLASS ACTION

[Assigned for all purposes to *Judge Lauri A. Damrell, Dept. 22*]

**NOTICE OF MINUTE ORDER AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Complaint filed: September 29, 2022
FAC filed: January 17, 2023
Trial date: Not Set

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

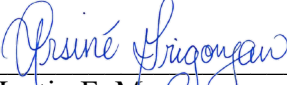
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Court in the above-referenced matter has issued a Minute Order and granted Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. A true and correct copy of the Minute Order and Order Granting Plaintiff’s Motion for preliminary Approval of Class Action Settlement is attached hereto as **Exhibit A** and **Exhibit B**.

Respectfully submitted,

Dated: May 7, 2024

WILSHIRE LAW FIRM

By: 
Justin F. Marquez
Arsiné Grigoryan

Attorneys for Plaintiff

Exhibit A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 22

JUDICIAL OFFICER: HONORABLE LAURI A. DAMRELL

Courtroom Clerk: V. Aleman
Court Attendant: J. Flores

CSR: NONE

34-2022-00327467-CU-OE-GDS

May 3, 2024
9:00 AM

Carl Davis vs. Hometown America Management L.P.

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Case Management Conference; Hearing on Motion for Preliminary Approval of Settlement

There being no request for oral argument the Court affirmed the tentative ruling.

TENTATIVE RULING:

NO APPEARANCE REQUIRED.

FURTHER CONFERENCE

A Case Management Conference is scheduled for 10/11/2024 at 09:00 AM in Department 22.

Please check your tentative ruling prior to the next Court date at www.saccourt.ca.gov prior to the above referenced hearing date.

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at <https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx>. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.

TENTATIVE RULING:

Plaintiff Carl Davis' ("Plaintiff") motion for preliminary approval of class and Private Attorneys General Act ("PAGA") is UNOPPOSED and GRANTED.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Hearing on Motion for Final Approval of Settlement is scheduled for 10/11/2024 at 9:00 AM in Department 22 at Gordon D. Schaber Superior Court.

Moving counsel's Notice of Motion does not provide notice of the Court's tentative ruling system, as required by Local Rule 1.06. Moving counsel is directed to contact opposing counsel and advise them of Local Rule 1.06, the Court's tentative ruling procedure, and the manner to request a hearing.

The Court has provided specific direction on the information and argument the Court requires to grant a motion for final approval of a class action settlement. The Parties are urged to carefully review the Checklist for Approval of Class Action Settlements and fully comply with each applicable item to ensure a prompt ruling from the Court.

Background

On September 29, 2022, Plaintiff filed a class action complaint, individually and on behalf of others similarly situated, against Defendant alleging claims of: failure to pay minimum and straight time wages pursuant to Labor Code sections 204, 1194, 1194.2, and 1197; failure to pay overtime wages pursuant to Labor Code sections 1194 and 1198; failure to provide meal periods pursuant to Labor Code sections 226.7 and 512; failure to authorize and permit rest periods pursuant to Labor Code section 226.7; failure to timely pay final wages at termination pursuant to Labor Code sections 201-203; failure to provide accurate itemized wage statements pursuant to Labor Code section 226; failure to indemnify employees for expenditures pursuant to Labor Code section 2802; and unfair business practices in violation of Business and Professions Code section 17200, *et seq.* (Marquez Decl., ¶ 4.) On the same day, Plaintiff sent a letter to the Labor and Workplace Development Agency ("LWDA") alleging violations of PAGA asserting similar wage and hour violations. (*Ibid*; Grigoryan Decl., ¶ 3, Exh. 1.) On January 13, 2023, Plaintiff filed a first amended complaint adding a cause of action for penalties under PAGA. (Marquez Decl., ¶ 4.)

Plaintiff now moves for preliminary approval of the Parties' Amended Joint Stipulation of Class Action and PAGA Settlement and Release Between Plaintiff and Defendant ("Settlement Agreement" or "Agreement"). (Grigoryan Decl., ¶ 4, Exh. 2 ("SA").) Defendant does not oppose Plaintiff's motion. (2-2-24 Stmt of Non-Opp.) Counsel attests to submitting the proposed Agreement to the LWDA before filing the instant motion. (*Id.*, ¶ 9.) Concurrent with the filing of the instant motion, Plaintiff also provided the moving papers to the LWDA. (1-24-24 Proof of Service.)

On February 16, 2024, the Court continued Plaintiff's motion to address several issues. (2-16-24 Minute Order.) Plaintiff was instructed to address the concerns raised in the Court's February 16, 2024 Minute Order no later than April 4, 2024; however, Counsel did not file the requested supplemental declaration until April 23, 2024. Accordingly, the Court continued the motion to May 3, 2024.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Legal Standard

The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed, compromised, or settled without approval of the court, and the decision to approve or reject a proposed settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).)

In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement because the rights of the class members, including the named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 60.) The court must independently determine "whether the settlement is in the best interests of those whose claims will be extinguished" and "make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent. (*Wershba, supra*, 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 1165-66.)

The Court does not rubber stamp these motions, but rather serves as a guardian of absent class members' rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.'" (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at p. 250, citations omitted.) The court's primary objective for preliminary approval is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing. (Rubenstein et al., *Newberg on Class Actions* (6th ed. 2023) § 13:10.)

Provisional Class Certification

If the class has not yet been certified, part of the motion for preliminary approval will include a request for provisional certification for purposes of settlement only. (See Cal. Rule of Court, Rule 3.769.) Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

have been met. (See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.)

Here, Plaintiff seeks provisional certification of the following class: “all persons employed by Defendant in California as a non-exempt employee from April 4, 2018 through preliminary approval of the Settlement.” (SA, ¶ 6.) However, the Settlement Class shall not include any person who previously settled or released any of the claims covered by this Settlement, any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement, or any person who submits a timely and valid Request for Exclusion as provided in this Settlement. (*Ibid.*)

Plaintiff argues that provisional class certification is appropriate because (1) the Class is easily ascertainable from the regular business records of Defendant and includes approximately 189 individuals; (2) the factual and legal issues are the same for the identified Class Members and concerns Defendant’s common employment practices; (3) Plaintiff’s claims are typical of the claims of the Class as he alleges he was subject to the same policies and practices as other similarly situated employees; (4) Plaintiff’s interests are not antagonistic and Plaintiff has retained qualified, experienced Counsel; and (5) a class action is superior to a multiplicity of litigation. (Mot., pp. 15:24-18:9.) The Court finds Plaintiff’s arguments persuasive and provisionally certifies the Class for settlement purposes for the reasons specified in Plaintiff’s moving papers.

Class Representative and Class Counsel

Plaintiff is preliminarily appointed as Class Representative. (SA, ¶ 15(iv).) Justin F. Marquez and Arsiné Grigoryan of Wilshire Law Firm are preliminarily appointed as Class Counsel (“Counsel”). (*Id.*, ¶ 7(d).)

Fair, Adequate, and Reasonable Settlement

Before approving a class action settlement, the Court must find that the settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The Court considers such factors as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement.” (*Ibid.*) “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Id.* at p. 1802.)

Under the terms of the Settlement Agreement, Defendant denies liability but agrees to pay a non-reversionary Maximum Settlement Amount (“MSA”) of \$495,000 to resolve

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

the claims. (SA, ¶¶ 9, 14, 15(c).) Defendant will also separately pay the employer payroll taxes for the wage portion of the Settlement Awards. (*Id.*, ¶¶ 14, 15(c).) Within 30 calendar days after the Settlement becomes effective, Defendant will pay the MSA. (*Id.*, ¶ 21.)

The following amounts will be paid from the MSA:

- Attorneys' fees not to exceed 33.3% of the MSA (\$165,000) and the reimbursement of Counsel's costs not to exceed \$20,000 (SA, ¶ 17);
- A Class Representative enhancement award not to exceed \$10,000 (*id.*, ¶ 15(c)(iv));
- Settlement administration costs not to exceed the quote provided by the Parties' agreed upon administrator (*id.*, ¶ 15(c)(vii)); and
- A PAGA Payment in the amount of \$30,000, 75% of which (\$22,500) will be paid to the LWDA and 25% of which (\$7,500) will be paid to the Aggrieved Employees (*id.*, ¶ 15(c)(ii)).

Counsel attests that the Parties accepted the bid of CPT Group, Inc. ("CPT") to serve as Settlement Administrator. CPT agreed to cap its costs at \$10,250. (Marquez Decl., ¶ 10, Exh. 2.) The remaining amount, plus the Aggrieved Employees' portion of the PAGA Payment, is the Net Settlement Amount ("NSA"). (SA, ¶ 15(c).) The NSA is approximately \$267,250. Counsel attests that the NSA is approximately \$255,000; however, Counsel includes the entire PAGA Payment and allocates \$15,000 for settlement administration costs. (See Marquez Decl., ¶ 28, fn 3.)

The entire Net Settlement Amount will be paid out pro rata to Class Members who do not opt out and to PAGA Members. (SA, ¶ 15(c).) The Class portion of the NSA will be allocated based on the number of weeks worked by all Class Members as a non-exempt employee of Defendant in California during the Class Period. The workweeks will be calculated by dividing the total days employed as a non-exempt employee during the Class Period by 7. (*Id.*, ¶ 15(c)(i).) Partial workweeks will not be counted, meaning incomplete workweeks and/or incomplete pay periods, will be rounded down; however, if a Class Member or PAGA Member worked only one day as a non-exempt employee, such Class Member will be credited with having worked one workweek for purposes of the Settlement. (*Ibid.*) The Aggrieved Employees' portion of the PAGA Payment will similarly be paid on a pro-rata basis to the Aggrieved Employees (aka PAGA Members). (*Id.*, ¶ 15(c)(ii).)

The individual Settlement Awards payable to eligible Class Members will be allocated as follows: one-third (1/3) to alleged unpaid wages for which IRS Forms W-2 will be issued; two-thirds (2/3) to alleged unpaid interest and penalties for which IRS Forms 1099-MISC will be issued. (SA, ¶ 15(c)(iii).) Individual PAGA Awards for the PAGA Members will be paid from the Net PAGA Settlement Amount, after the required payment to the LWDA, as alleged penalties for which IRS Form 1099 will be issued. (*Ibid.*) Settlement checks will remain valid and negotiable for 180 calendar days from the date of their issuance. (*Id.*, ¶ 21.) Upon the deadline to cash the settlement checks, the checks will be cancelled by the Settlement Administrator and the associated funds

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

will be paid within 14 days after the 180-day check-cashing period to Koinonia Family Services as a cy pres recipient. (*Ibid.*) Koinonia Family Services is a non-profit 501(c)(3) organization with child advocacy programs in the State of California. (*Ibid.*; Marquez Decl., ¶ 31.) Counsel attests that neither Plaintiff nor Counsel have any interest, financial or otherwise, in the cy pres recipient. (Marquez Decl., ¶ 32-34.)

Within 30 calendar days after preliminary approval of the Settlement, Defendant shall provide the Settlement Administrator with the Class Members' and PAGA Members' Class Data. (SA, ¶ 19(a).) The Settlement Administrator will run a check of the Class Members' and PAGA Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. (*Ibid.*) Within 30 calendar days of receiving the Class Data, the Settlement Administrator will mail the Class Notice to Class Members and PAGA Members. (*Ibid.*) Class Notices returned to the Settlement Administrator as non-delivered shall be resent to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the Settlement Administrator will do an NCOA check and will skip-trace return mail using the Class Member's and PAGA Member's, as applicable, Social Security Number and re-mail within 5 calendar days of receipt. (*Id.*, ¶ 19(b).) Class Members will have 60 calendar days from the date of mailing to submit requests for exclusion, objections, or disputes to the number of workweeks. (*Id.*, ¶¶ 15(c)(i) and (ii), 20, 22, 23.) Class Members whose notices are re-mailed shall have 10 calendar days from the re-mailing or until the end of the initial 60-day period to opt-out, whichever comes later. (*Id.*, ¶ 20.)

In response to the concerns raised in the Court's February 16, 2024 Minute Order, the Parties met and conferred and revised the Class release provision. (Grigoryan Decl., ¶ 4.) "Effective upon the date of final approval by the Court of this Stipulation of Settlement [...] the Settlement Class and each member of the Settlement Class who has not submitted a valid Request for Exclusion fully release and discharge the Released Parties from *all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto*, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, California Industrial Commission Wage Orders, Cal. Code Regs., Title 8, section 11040, et seq., California Code of Civil Procedure section 1021.5, and Business and Professions Code sections 17200, et seq., and including all claims for or related to alleged unpaid wages, overtime or double time wages, minimum wages, regular rate of pay, timely payment of wages during employment, timely payment of wages at separation, meal periods and meal period premiums, rest periods and rest period premiums, off-the-clock work, payroll deductions, wage statements, payroll records and recordkeeping, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, conversion, civil penalties, waiting-time penalties, interest, fees, costs, as well as all other claims and allegations alleged in the Action (collectively 'Released Class Claims'), from April 4, 2018 through the date the Court preliminarily approves the Settlement ('Class Release

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Period'). Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers' compensation, and claims outside the Released Claims." (SA, ¶ 24, emphasis added.)

Similarly, "[e]ffective upon the date of final approval by the Court of this Stipulation of Settlement, the claims to be released by the PAGA Members include all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Action and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code including, but not limited to, sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2699, 2802 (as alleged in the Complaint) and the wage orders of the California Industrial Welfare Commission and any other Labor Code section or Wage Order based the facts alleged in the Action (collectively 'Released PAGA Claims')." (SA, ¶ 25.) Only Plaintiff is subject to a general release. (*Id.*, ¶ 26.)

The moving papers demonstrate that the settlement was reached after extensive investigation and arms-length negotiations by the Parties. Following the filing of the Complaint, the Parties informally exchanged documents and information before mediating this action. (Marquez Decl., ¶ 5.) Defendant produced a sample of time and pay records for class members, documents of its wage and hour policies and practices during the class period, and information regarding the total number of current and formal discovery responses. (*Ibid.*) After reviewing documents regarding Defendant's wage and hour policies and practices, and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.*, ¶ 6.) On July 6, 2023, the Parties participated in private mediation with experienced class action mediator, Hon. Raul A. Ramirez (Ret.) via Zoom. (*Id.*, ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Ibid.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendants' defenses, the Parties were able to reach a resolution, the material terms of which are encompassed within the Settlement Agreement. (*Id.*, ¶ 8.)

Based on an analysis of the facts and legal contentions in this case, Counsel created a damages model to evaluate the realistic range of potential recovery for the class. (Marquez Decl., ¶ 16.) The damages model is based upon a total number of 189 Class Members, 91 terminated Class Members, 18,249 total workweeks, 81,648 total shifts, 4,081 PAGA pay periods, 126 PAGA employees, and an average hourly rate of \$20.58. (*Ibid.*) For Plaintiff's unpaid wages claim, Counsel estimated Defendant's maximum exposure to be \$563,346.63 (18,249 weeks * \$20.58 hourly overtime rate * 1.5 overtime rate * 1 hour of unpaid work per week), but discounted this figure by 80% to account for the difficulty of prevailing on a motion for class certification and on the merits at trial, resulting in a realistic damage estimate of \$112,669.33. (*Id.*, ¶ 18.) For Plaintiff's meal

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

period claims, assuming a 50% violation rate, Counsel estimated Defendant's maximum exposure to be \$938,911.05 (18,249 weeks * 50% * \$20.58 * reasonably estimated 5 shifts per workweek). (Grigoryan Decl., ¶ 10.) However, the data showed that Defendant paid approximately \$78,728, so Counsel reduced the exposure by that amount and further discounted the figure by 80% to account for the difficulty of prevailing on a motion for class certification and on the merits at trial, resulting in a realistic damage estimate of \$172,036.61. (*Ibid.*) For Plaintiff's rest period claim, assuming a violation rate of 50%, Counsel estimated Defendant's maximum exposure to be \$938,911.05 (18,249 weeks * 50% * \$20.58 hourly rate * reasonably estimated 5 shifts per workweek); however, Counsel discounted this figure by 90% to account for the difficulty of prevailing on a motion for class certification and on the merits at trial, resulting in a realistic damage estimate of \$93,891.11. (*Id.*, ¶ 11.) For Plaintiff's unreimbursed business expenses claims, Counsel estimated Defendant's maximum exposure to be \$220,290 (estimating \$40 per month in unreimbursed cell phone expenses and \$200 for each employee for uniform and work-related materials); however, Counsel discounted this figure by 80% to account for the difficulty of prevailing on a motion for class certification and on the merits at trial, resulting in a realistic damage estimate of \$44,058. (*Id.*, ¶ 12.) For Plaintiff's regular rate of pay claim, Plaintiff's expert determined that there was \$46,439 in unpaid overtime based on Defendant's failure to calculate overtime at the appropriate rate of pay, and underpayment of \$144,411 in sick pay on the same basis, resulting in a total of \$190,850; however, Counsel discounted this figure by 80% to account for the difficulty of certifying and proving the regular rate of pay claims, for a total of \$38,170. (*Id.*, ¶ 13.) Accordingly, Defendant's maximum exposure on the class claims is \$2,852,308.73, but after factoring in the risk and uncertainty of prevailing at certification and trial, Defendant's realistic estimated exposure for the non-penalty claims is \$460,825.04. (*Id.*, ¶ 14 [the Court notes that Counsel attests that the total maximum exposure is \$2,773,580.73, which appears to be an error].)

For Plaintiff's derivate claims for statutory and civil penalties, Plaintiff estimated Defendant's maximum exposure to be \$1,208,802.14, including waiting time penalties of \$398,902.14 (91 class members * \$20.58 * 7.1 average hours per shift * 30 days); wage statement penalties of \$401,800 (((\$50 * 126 class members) + (\$100 * (4,081 pay periods – 126 class members))); and PAGA penalties of \$408,100 (\$100 * 4,081 pay periods). (Grigoryan Decl., ¶ 15.) However, considering Defendant's defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties, and considering that the underlying claims are realistically estimated to be \$460,825.04, such a disproportionate award would also raise due process concerns. Weighing these factors and applying a discount of 80% to account for the risk and uncertainty of prevailing at trial, Counsel arrived at \$241,760.43 for statutory and civil penalties. (*Ibid.*)

Accordingly, Defendants total realistic exposure is \$702,585.47. (Grigoryan Decl., ¶ 16.) The GSA of \$495,000 represents approximately 70% of the realistic recovery. (*Ibid.*) Counsel attests to their extensive experience in similar cases. (Marquez Decl., ¶¶ 46-53, 56-57.) Counsel attests to their belief that the settlement is fair, reasonable, and adequate. (*Id.*, ¶ 15; Grigoryan Decl., ¶ 6.) Based on the foregoing, the Court preliminarily finds, subject to the final fairness hearing, that the Settlement is within the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

ballpark of reasonableness and is entitled to a presumption of fairness and that all relevant factors support preliminary approval.

PAGA Payment

The Agreement provides for a PAGA Payment in the amount of \$30,000, 75% of which (\$22,500) will be paid to the LWDA and 25% of which (\$7,500) will be paid to the Aggrieved Employees. (SA, ¶ 15(c)(ii).) Aggrieved Employees, also referred to as PAGA Members, are all Class Members who worked any hours for Defendant in California during any pay period from April 4, 2021 through the date the Court preliminarily approves the Settlement. (SA, ¶ 6.) As discussed above, the Aggrieved Employees will receive a pro-rata share of the Aggrieved Employees' portion of the PAGA Payment and are subject to a separate release. (*Id.*, ¶¶ 15(c)(ii), 25.) The Agreement makes clear that Aggrieved Employees cannot opt-out of the PAGA portion of the settlement. (*Id.*, ¶¶ 6, 20.)

Plaintiff estimates Defendant's maximum exposure for PAGA penalties to be \$408,100 (\$100 * 4,081 pay periods). (Grigoryan Decl., ¶ 15.) However, considering Defendant's defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties, Counsel applied a discount of 80% to account for the risk and uncertainty of prevailing at trial. This results in a realistic PAGA exposure of \$81,620. The PAGA allocation of \$30,000 represents approximately 36.8% of Defendant's realistic exposure. The Court finds the PAGA allocation reasonable under the circumstances and it is preliminarily approved.

Proposed Class Notice

The notice to Class Members must fairly apprise the prospective members of the terms of the settlement without expressing an opinion on the merits of the settlement. (7-*Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164; see also Cal. Rule of Court, Rule 3.769.) "Whether a claimant would want to accept or reject the proposed settlement is a decision to be made by him independently and without influence or pressure from those competing parties who either favor or oppose the settlement." (*Phila. Hous. Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323 F.Supp. 364, 378.)

Here, the Court finds that Plaintiff's proposed Notice fairly apprises the Class Members of the terms of the proposed settlement and their rights as prospective Class Members. (SA, Exh. A ("Notice").) The Parties reviewed the Court's concerns and revised the Notice accordingly. (Grigoryan Decl., ¶ 5, Exhs. 4 and 5.) Accordingly, the Notice is approved.

Class Counsel Fees and Costs

The Agreement provides for the payment of attorneys' fees not to exceed 33.3% of the MSA (\$165,000) and the reimbursement of Counsel's costs not to exceed \$20,000. (SA,

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

¶ 17.) Plaintiff argues that the requested award is (1) reasonable as a percentage of the common fund, (2) in line with typical cases, (3) supported by the contingent nature of the representation and the fact that it involves a “fee-shifting” provision of the Labor Code, and (4) supported by the experience, reputation, and ability of Counsel. (Mot., pp. 10:18-13:11.)

The requested award is preliminarily approved. In moving for final approval, the Court expects Counsel to support their arguments with respect to this amount, including by providing information necessary to perform a lodestar analysis. (See *In re Activision Sec. Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1379; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 & fn. 13.; *Martin v. Ameripride Servs.* (S.D. Cal. June 9, 2011), 2011 WL 2313604 at *22 (collecting cases); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal 2010) 266 F.R.D. 482, 491 (same); see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 & n.11.)

The Court also preliminarily approves the Agreement’s allocation for the reimbursement of Counsel’s litigation costs with the expectation that Counsel will provide a declaration, in moving for final approval, that shows actual costs.

Settlement Administrator

The Agreement provides for the payment of settlement administration costs not to exceed the quote provided by the Parties’ agreed upon administrator. (SA, ¶ 15(c)(vii).) Counsel attests that the Parties accepted the bid of CPT Group, Inc. (“CPT”) to serve as Settlement Administrator. CPT agreed to cap its costs at \$10,250. (Marquez Decl., ¶ 10, Exh. 2.) CPT is appointed as Settlement Administrator and the allocation is reasonable and preliminarily approved.

Class Representative Enhancement Payment

The Agreement provides for a Class Representative enhancement award not to exceed \$10,000. (SA, ¶ 15(c)(iv).) Plaintiff describes his efforts and estimates that he spent approximately 45 hours prosecuting this case. (Davis Decl., ¶¶ 6-9.) This enhancement payment is preliminarily approved.

Final Approval Hearing

The Court will again review and consider the terms of this settlement at the time of the final approval hearing. The Court sets a Final Approval Hearing for **October 11, 2024 at 9:00 a.m.** If either party is unavailable on that date, the parties shall meet and confer to identify three other Fridays at 9:00 a.m. that work for the parties to schedule the hearing. They shall then submit those dates to the Court via email at Dept22@saccourt.ca.gov, and the Court will reschedule the hearing accordingly.

The briefing shall be filed in conformity with Code of Civil Procedure section 1005.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

The Court will sign the Proposed Order submitted with Plaintiff's supplemental briefing, adding the September 18, 2024 deadline to file Plaintiff's Motion for Final Approval.

To request oral argument on this matter, you must call Department 22 at (916) 874-5762 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Parties requesting services of a court reporter may arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. The list of Court Approved Official Reporters Pro Tempore is available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>.

If you are not using a reporter from the Court's Approved Official Reporter Pro Tempore list, a Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by each party, the private court reporter, and the Judge. The signed form must be filed with the clerk prior to the hearing.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211). The form must be filed with the clerk at least 10 days prior to the hearing or at the time the hearing is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

If oral argument is requested, the Parties are encouraged to appear via Zoom with the links below:

*To join by Zoom link - <https://saccourt-ca-gov.zoomgov.com/my/sscdept22>
To join by phone dial (833) 568-8864 ID 16184738886*

Counsel for Plaintiff is directed to notice all parties of this order.

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at <https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx>. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

/s/ V. Aleman

By: V. Aleman, Deputy Clerk

Minutes of: 05/03/2024
Entered on: 05/03/2024

Exhibit B

Electronically Received 04/23/2024 05:44 PM

Electronically Received 04/23/2024 05:44 PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Arsiné Grigoryan (SBN 319517)
agrigoryan@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

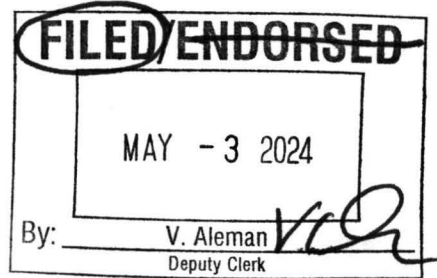
CARL DAVIS, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

HOMETOWN AMERICA MANAGEMENT,
L.P., a Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.



Case No.: 34-2022-00327467-CU-OE-GDS

CLASS ACTION

[Assigned for all purposes to: Hon. Lauri A.
Damrell, Dept. 22]

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed with the Supplemental Declaration of
Arsiné Grigoryan in Support of Plaintiff's
Motion for Preliminary Approval of Class
Action Settlement]

PRELIMINARY APPROVAL HEARING

Date: April 26, 2024

Time: 9:00 a.m.

Dept: 22

Complaint filed: September 29, 2022

FAC filed: January 13, 2023

Trial date: Not set

1 The Court has before it Plaintiff Carl Davis' ("Plaintiff") Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declaration of Justin F. Marquez, the Class Action and PAGA
4 Settlement Agreement and Class Notice (which is referred to here as the "Settlement
5 Agreement"), and good cause appearing, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
7 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
8 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
9 the terms set forth in the Settlement Agreement between Plaintiff Carl Davis and Defendant
10 Hometown America Management, L.P. ("Defendant"), attached to the Declaration of Justin F.
11 Marquez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement
12 as Exhibit 1.

13 2. The Settlement falls within the range of reasonableness of a settlement which
14 could ultimately be given final approval by this Court, and appears to be presumptively valid,
15 subject only to any objections that may be raised at the Final Approval Hearing and final
16 approval by this Court. The Court notes that Defendant has agreed to create a common fund of
17 \$495,000.00 to cover (a) settlement payments to class members who do not validly opt out; (b)
18 a \$30,000.00 payment to the State of California, Labor & Workforce Development Agency for
19 its share of the settlement of claims for penalties under the Private Attorneys General Act, with
20 75% of which (\$22,500.00) will be paid to the LWDA and 25% (\$7,500.00) will be paid to
21 eligible Aggrieved Employees; (c) Class Representative service payment of up to \$10,000.00
22 for Plaintiff Carl Davis; (d) Class Counsel's attorneys' fees, not to exceed 33 1/3% of the Gross
23 Settlement Amount (\$165,000.00), and up to \$20,000.00 in costs for actual litigation expenses
24 incurred by Class Counsel; and (e) Settlement Administration Costs of up to \$10,250.00.

25 3. The Court preliminarily finds that the terms of the Settlement appear to be within
26 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
27 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair
28 and reasonable to the class members when balanced against the probable outcome of further

1 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
2 significant informal discovery, investigation, research, and litigation have been conducted such
3 that counsel for the parties at this time are able to reasonably evaluate their respective positions;
4 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
5 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
6 the result of intensive, serious, and non-collusive negotiations between the Parties with the
7 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
8 that the Settlement Agreement was entered into in good faith.

9 4. A final fairness hearing on the question of whether the proposed settlement,
10 attorneys' fees and costs to Class Counsel, payment to the State of California, Labor &
11 Workforce Development Agency for its share of the settlement of claims for penalties under the
12 Private Attorneys General Act, and the class representative's enhancement award should be
13 finally approved as fair, reasonable and adequate as to the members of the class is hereby set in
14 accordance with the Implementation Schedule set forth below.

15 5. The Court provisionally certifies for settlement purposes only the following class
16 (the "Settlement Class"): "all persons employed by Defendants in California and classified as a
17 non-exempt employee from April 4, 2018 through preliminary approval of the Settlement."

18 6. "Class Period" means the period from April 4, 2018 through the date of
19 preliminary approval of the Settlement.

20 7. The Court finds, for settlement purposes only, that the Settlement Class meets the
21 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
22 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
23 of law and fact that are common, or of general interest, to all Settlement Class Members, which
24 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
25 Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and adequately protect
26 the interests of the Settlement Class Members; and (5) a class action is superior to other
27 available methods for the fair and efficient adjudication of the controversy.

28 8. The Court appoints as Class Representative, for settlement purposes only,

1 Plaintiff Carl Davis. The Court further preliminarily approves Plaintiff's ability to request an
2 incentive award up to \$10,000.00.

3 9. The Court appoints, for settlement purposes only, Justin F. Marquez and Arsiné
4 Grigoryan of Wilshire Law Firm, PLC as Class Counsel. The Court further preliminarily
5 approves Class Counsel's ability to request attorneys' fees of up to one-third of the Total
6 Settlement Amount (\$165,000.00), and costs not to exceed \$20,000.00.

7 10. The Court appoints CPT Group, Inc. as the Settlement Administrator with
8 reasonable administration costs estimated not to exceed \$10,250.00.

9 11. The Court approves, as to form and content the Class Notice, attached to the
10 Settlement Agreement. The Court finds on a preliminary basis that plan for distribution of the
11 Notice to Settlement Class Members satisfies due process, provides the best notice practicable
12 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
13 thereto.

14 12. The parties are ordered to carry out the Settlement according to the terms of the
15 Settlement Agreement.

16 13. Any class member who does not timely and validly request exclusion from the
17 settlement may object to the Settlement Agreement.

18 14. The Court orders the following Implementation Schedule:

19

20 Defendants to provide Class List to the 21 Settlement Administrator	14 days after notice of entry of the Court's order granting Motion for Preliminary 22 Approval
23 Settlement Administrator to mail the Notice 24 Packets	14 days after receipt of the Class List from the Defendant
25 Response Deadline	60 days after Notice is mailed out by the 26 Settlement Administrator
27 Deadline to Provide Written Objections, if	60 days after Notice is mailed out by the

28

1 any	Settlement Administrator
2 Deadline to file Motion for Final Approval, 3 Request for Attorney's Fees and Costs, and 4 Service Award to Plaintiff	16 court days before hearing on Motion for Final Approval, which is <u>9/18/24</u> ; LAURI A. DAMRELL
5 6 7 Final Approval Hearing	October 11, 2024 at 9:00 a.m., or first available date thereafter, in Department 22. The hearing may be continued to another date without further notice to the Class Members.

10 15. The Court further ORDERS that, pending further order of this Court, all
11 proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

12 **IT IS SO ORDERED.**

14
15 DATE: 5/3/24



16
17 [Signature]
18 Hon. Lauri A. Damrell
19 Sacramento County Superior Court

20 LAURI A. DAMRELL

PROOF OF SERVICE

Carl Davis v. Hometown America Management, L.P.
34-2022-00327467-CU-OE-GDS

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Cristina Kennedy, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ckennedy@wilshirelawfirm.com

On May 7, 2024, I served the foregoing **NOTICE OF MINUTE ORDER AND ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Cary G. Palmer (SBN 186601)
cary.palmer@jacksonlewis.com

Erika M. Barbara (SBN 215702)
erika.barbara@jacksonlewis.com

Gail K. Baum
Gail.Baum@jacksonlewis.com

JACKSON LEWIS, P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorneys for Defendant

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 7, 2024, at Los Angeles, California.


Cristina Kennedy

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137