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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

<p>Katz Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>Atticare Corp Defendant/Respondent(s) (Abbreviated Title)</p>	<p style="text-align: center;">No. <u>RG17861043</u></p> <p style="text-align: center;">Order</p> <p style="text-align: center;">Motion for Final Approval of Class Settlement Granted</p>
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The Motion for Final Approval of Class Settlement was set for hearing on 08/31/2020 at 03:00 PM in Department 19 before the Honorable Stephen Kaus. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The court's tentative ruling is that the motions of Plaintiffs Nicoberto Lorenzo ("Lorenzo") and Carmen Figueroa ("Figueroa") (Lorenzo and Figueroa are, collectively, "Plaintiffs") for Final Approval of Class Action Settlement and for Award of Attorneys' Fees and Costs and Class Representative Awards (the "Motions") are APPROVED as follows:

IF ANY PARTY WISHES TO CONTEST THIS TENTATIVE RULING, the hearing on this Motion will be conducted on Tuesday, September 1, 2020 at 9:00 a.m. in Dept. 19. If any party wishes to contest the tentative ruling, NO LATER than 4:00 PM on Friday August 28, 2020, the contesting party must email dept.19@alameda.courts.ca.gov and provide notice to all counsel of the intent to contest the tentative order.

Any requested hearing will most likely be conducted using the Blue Jeans Network, password # 5102676935. If a hearing is requested, the Court will advise the parties of the manner in which the hearing will be conducted in advance of the hearing.

If not timely contested, and the tentative ruling will become the final order of the Court.

Cal. Labor Code § 2699(1)(2) requires that the parties' proposed settlement must be submitted to the LWDA at the same time that it is submitted to the court. Implicit to this requirement is the requirement under CCP § 1005(b) that the LWDA be served at least 16 court days before the parties seek final approval of the settlement from the Court by noticed motion.

The case preliminarily settled for \$325,000. The approximate size of the class is 164. (Moving Bracy Dec. ¶ 3.) The Settlement Agreement states that attorneys' fees will be up to 30% of the settlement amount, or \$97,500, plus costs of suit, which Plaintiffs' counsel declares are \$11,747.07 (Moving Lazear Dec. ¶ 17 Exh. B) The Settlement Agreement calls for a \$2,500 class service award to each of plaintiffs Lorenzo and Figueroa and a net PAGA payment of \$3,750. Estimated administration costs are \$8,080.10. (Amended Bracy Dec. ¶ 3.) Thus, after expenses of approximately \$126,077.17, the class would receive \$198,922.83. The average payout to class members would be approximately \$1,220.39,

with the Administrator calculating the largest settlement award being \$4,999.53. (Amended Bracy Dec. ¶ 4.)

Settlement negotiations involved two full days of mediation. The first day with Judge Jamie Jacobs in December 2017 did not result in settlement. A second day of mediation with Barry Winograd on July 10, 2018 resulted in a settlement in the amount set forth above. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

The Court has previously determined that the proposed class notice form and procedure are adequate. Out of the 164 class members, 129 will be participating in the settlement, because the Administrator was unable to find a valid current address for 34 class members. (Bracy Dec. ¶¶ 3-8; Supplemental Bracy Dec.) The Administrator received one request for exclusion and no objections to the Settlement.

The proposed class at § 1.6 of the Settlement Agreement ("all persons employed by Defendants in California as workers, drivers, crew leaders and/or technicians during the Class Period") is appropriate for class certification for settlement purposes.

The motion makes an adequate analysis required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116. The scope of the release is appropriately limited to the claims arising out of the claims in the complaint. The release of claims by the class is limited by the "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].) The court notes and approves of the plan to distribute the settlement funds with no claims process.

The revised Settlement Agreement at § 13.6 appropriately provides that unclaimed funds will be deposited into the California State Controller's Unclaimed Property Fund pursuant to CCP § 1500 et seq. (See CCP § 384(c).)

The Court approves the \$3,750 allocation to PAGA claims as adequate under the circumstances. The PAGA allocation represents 1.54% of the gross Settlement amount, which is somewhat low for comparable cases.

Plaintiffs' counsel seeks fees of \$97,500, which is 30% of the total fund. When using the percentage of recovery approach, the court's benchmark for fees is 30% of a total fund. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.)

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

Plaintiffs' counsel submits evidence that they worked a total of 325.63 hours. (Moving Lazear Dec. ¶ 11.) The loadstar based on the hourly billing rates provided totals \$145,568.45 (Id. at ¶ 12.) Thus, the requested award of \$ 97,500 constitutes an approximately 0.67 multiplier on the actual fees billed by Plaintiffs' counsel.

The Court will award attorneys' fees to Plaintiffs' counsel in the amount of \$97,500, which is 30 % of the total fund, the amount requested by Plaintiffs' counsel and an appropriate award per the above analysis.

The Court will award actual litigation costs of \$11,747.07, as requested. (Lazear Dec. ¶ 17, Exh. B.)

The Court will award class service awards in the amount of \$2,500 to each of plaintiffs Lorenzo and Figueroa (\$5,000 total), as requested. Each service award is less than 0.8 % of the total settlement amount. Plaintiffs' declarations declare that each of Lorenzo and Figueroa contributed more than 20 hours of his or her time, reflecting in each case compensation of less than \$125 per hour, reasonable

rates for class representative service awards in wage and hour litigation. (See Lorenzo Dec. ¶ 2; Figueroa Dec. ¶ 2.)

The Court will approve settlement administration costs of \$8,080.10, per the Moving Bracy Dec.

The Court will order that 10% of any fee award be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court sets a compliance hearing for March 16, 2021, which should be after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384 and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

Dated: 08/31/2020

 Facsimile

Judge Stephen Kaus