

FILED
Superior Court of California
County of Los Angeles

APR 06 2021

Sherri R. Carter, ~~Assistant~~ Clerk
Alfredo Morales deputy
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

MARK PEREIDA, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

MORSCO SUPPLY, LLC, a limited liability
company; EXPRESS PIPE & SUPPLY CO.,
LLC, a limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 20STCV05543

[Handwritten Signature]
[REDACTED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: April 6, 2021
Dept.: SSC-7
Time: 11:00 a.m.

I. BACKGROUND

This is a wage and hour class action. Defendant distributes commercial and residential plumbing, waterworks, heating, and cooling equipment (HVAC), and pipe, valves and fittings (PVF), with branches and showrooms across the country and Los Angeles County.

1 On February 13, 2020, Plaintiff filed a putative Class Action alleging the
2 following labelled causes of action: (1) Failure to Pay Minimum Wage and Straight Time
3 Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime
4 Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods
5 [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal.
6 Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab.
7 Code §§ 201-203]; (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab.
8 Code § 226]; and (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et
9 seq.]. On March 12, 2020, Plaintiff filed a First Amended Complaint (“FAC”) adding a
10 cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

11 Counsel represents that the parties conducted discovery and investigation which
12 included analyzing payroll and other data pertaining to Plaintiff and the Settlement Class
13 during the relevant Settlement Period, including but not limited to the numbers of former
14 and current members of each purported subclass within the Settlement Class, average
15 workweeks, and average rate of hourly pay. It is further represented that Defendant also
16 provided documents reflecting its wage and hour policies and practices during the
17 Settlement Period and information regarding the total number of current and former
18 employees in the Settlement Class.

19 On October 21, 2020, the Parties mediated before Lisa Klerman, Esq., and were
20 able to come to a Memorandum of Understanding (“MOU”). Thereafter, the parties
21 singled a long form settlement agreement, a fully executed copy of the which is attached
22 to the Declaration of Scott Leviant (“Leviant Decl.”) as Exhibit 1.

23 On February 4, 2021, the Court issued a checklist of items for the parties to
24 address. In response, on February 19, 2021 counsel filed the Supplemental Declaration
25

1 of Scott Leviant (“Leviant Supp. Decl.”) with an Amended Settlement Agreement
2 attached thereto as Exhibit 1.

3 Now before the Court is Plaintiff’s motion for preliminary approval of the
4 settlement. For the reasons set forth below the Court preliminarily grants approval for
5 the settlement.

6
7 **II. THE TERMS OF THE SETTLEMENT**

8 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

9 “Class” means all non-exempt employees of Defendant who worked in California
10 during the Class Period, excluding those non-exempt employees that signed severance
11 and release agreements. (Settlement Agreement, ¶2.5)

12 “Class Period” means December 1, 2018 through June 30, 2021 or the date upon
13 which the Court grants Preliminary Approval of this settlement, whichever is sooner.
14 (¶2.11)

15 “PAGA Employee” means Class Members employed during the PAGA Period.
16 PAGA Employees cannot opt out of the settlement. (¶2.34)

17 “PAGA Period” means the period beginning on February 13, 2019 through June
18 30, 2021, or the date upon which the Court grants Preliminary Approval of this
19 Settlement, whichever is sooner. (¶2.38)

20 “Settlement Period” means the period from December 1, 2018 through June 30,
21 2021 or the date upon which the Court grants Preliminary Approval of this settlement,
22 whichever is sooner. (¶2.49)

23 Defendant represents there are approximately 262 Class Members who worked
24 approximately 7,770 pay periods. (¶2.5) If, as of the end of the Class Period, the actual
25 number of Class Members is more than 10% larger than the estimated number of Class

1 Members on October 21, 2020 (which is estimated to be 262 individuals), Defendant will
2 have the option of either: (a) Closing the Class Period on the date the class reaches the
3 10% threshold (26 additional individuals over the 262 estimate, i.e., the date the Class
4 reaches 288 Class Members), or (b) the Gross Settlement Amount shall be increased by
5 one percentage point for each percentage point over the 10% threshold (26 additional
6 individuals over the 262 estimate) that the actual number of Class Members exceeds the
7 estimated number (for example, if the actual number of Class Members is 11% higher
8 than the estimated number at the end of the Class Period, then the Gross Settlement
9 Amount would increase by 1%). (§2.24)

10 Defendant represents there are approximately 2,864 PAGA Pay Periods. (§2.52)

11 The Parties stipulate and agree to the conditional certification of this Action for
12 purposes of this Settlement only. (§3.1)

13 **B. THE MONETARY TERMS OF SETTLEMENT**

14 The essential monetary terms are as follows:

15 The Gross Settlement Amount (“GSA”) is \$460,000. (§2.24). This includes a
16 PAGA Settlement payment of a PAGA penalty of \$60,000 to be paid 75% to the LWDA
17 (\$45,000) and 25% to the Aggrieved Employees (\$15,000) (§2.39);

18 The Net Settlement Amount (“Net”) (\$217,166.67) is the GSA less:

- 19 • Up to **\$153,333.33** (1/3) for attorney’s fees (§2.7);
- 20 • Up to **\$15,000** for attorney’s costs (*Ibid.*);
- 21 • Up to **\$7,500** for a service award to the class representative (§2.13); and
- 22 • Estimated **\$7,000** for class administration costs (§2.2); and
- 23 • **\$60,000** allocated as PAGA Penalties. (§2.39)
- 24 • The Employer’s Taxes shall be paid separate and apart from the Gross Settlement
25 Amount. (§2.21)

- 1 • Assuming the Court approves all maximum requested deductions, approximately
2 \$217,166.67 will be available for automatic distribution to participating class
3 members. Assuming full participation, the average settlement share will be
4 approximately \$828.88. ($\$217,166.67 \text{ Net} \div 262 \text{ class members} = \828.88). In
5 addition, each class member will receive a portion of the PAGA penalty, estimated
6 to be \$57.25 per class member. ($\$15,000 \text{ (25\% of \$60,000 PAGA penalty)} \div 262$
7 $\text{class members} = \$57.25$)
- 8 • There is no Claim Requirement (§2.41).
- 9 • The settlement is not reversionary (§2.24).
- 10 • “Individual Settlement Payment” means a Class Member’s Total Class Pay
11 Periods multiplied by the Class Pay Period Value (if the Class Member is a
12 Participating Class Member) plus the Class Member’s Total PAGA Pay Periods
13 multiplied by the PAGA Pay Period Value (if the Class Member is a PAGA
14 Employee). The Individual Settlement Payment will be reduced by any required
15 legal deductions. (§2.27)
- 16 ○ “Class Pay Period Value” means the value of each pay period, as
17 determined by the Settlement Administrator, by dividing the Net
18 Settlement Amount (the PAGA Employee Payment to PAGA Employees
19 is separate from the Net Settlement Amount) by the total number of pay
20 periods available to the Participating Class Members during the Class
21 Period. (§2.10)
- 22 ■ “Individual Class Pay Periods” means the number of pay periods of
23 employment in California for each Class Member as a non-exempt
24 employee in California of Defendant, at any time in the Class Period.
25 Defendant will calculate the number of pay periods by calculating

1 the number of weeks in which each Participating Class Member was
2 employed and performed any work during the Class Period using
3 each Participating Class Member's hire date and termination date
4 and/or payroll data. (§2.25)

- 5 ■ "Total Class Pay Periods" means the total number of pay periods that
6 all Participating Class Members worked during the Class Period.
7 Any Participating Class Member with less than one complete week
8 of employment will be credited with one workweek. (§2.51)

- 9 ○ "PAGA Pay Period Value" means the value of each PAGA Pay Period, as
10 determined by the Settlement Administrator, by dividing the PAGA
11 Employee Payment by the Total PAGA Pay Periods. (§2.40)

- 12 ■ "Individual PAGA Pay Periods" means the number of pay periods
13 of employment in California for each PAGA Employee as a non-
14 exempt employee in California of Defendant, at any time in the
15 PAGA Period. Defendant will calculate the number of pay periods
16 by calculating the number of weeks in which each PAGA Employee
17 was employed and performed any work during the PAGA Period
18 using each PAGA Employee's hire date and termination date and/or
19 payroll data. (§2.26)

- 20 ■ "Total PAGA Pay Periods" means the total number of pay periods
21 that each PAGA Employee worked during the PAGA Period as
22 calculated by Defendant. (§2.52)

- 23 • Tax Allocation: 40% as wages and 60% as interest and
24 penalties. (§7.3.1)

- 1 • **Uncashed Checks:** Any settlement checks that are not claimed or not negotiated
2 within 180 days after distribution by the Settlement Administrator shall be void.
3 Any funds not distributed after the expiration of the settlement checks shall be
4 cancelled and the proceeds shall be sent to the State of California Controller's
5 Office to be held as unclaimed property in the name of the Class Member who is
6 the payee of the check. All settlement checks shall include the date of expiration
7 of on each check. (§4.9.2)
- 8 • **Funding of Settlement Account:** Within 10 calendar days after the Effective
9 Date, Defendant shall transfer to the Settlement Administrator an amount equal
10 to the Gross Settlement Amount plus its share of the Employer's Taxes. (§4.9)

11 **C. TERMS OF RELEASES**

12
13 On the later of the Effective Date or the full funding of the Settlement, and to the
14 maximum extent permitted by law, Plaintiff and all Class Members who do not timely
15 and properly opt-out hereby do, and shall be deemed to have fully, finally, and forever
16 released, settled, compromised, relinquished and discharged any and all of the Released
17 Parties of and from all of the following claims, demands, rights, liabilities and causes of
18 action that were asserted in the operative complaint in the Action or that could have been
19 asserted based on the claims and factual allegations in the operative complaint in the
20 Action, excluding the PAGA Claim but including (1) any claims, demands, rights,
21 liabilities and causes of action for damages, interest, attorney's fees and costs, injunctive
22 relief, declaratory relief, restitution, or fraudulent business practices based on unpaid
23 wages (including but not limited to minimum wages, straight time wages, and overtime
24 pay), failure to provide meal periods, failure to permit rest breaks, failure to reimburse
25 business expenses, failure to maintain accurate records; failure to furnish accurate wage

1 statements, and failure to pay all wages during employment and at the time of
2 termination; and (2) any claims, demands, rights, liabilities and causes of action for
3 damages, interest, attorney's fees and costs, injunctive relief, declaratory relief,
4 restitution, or fraudulent business practices under California Labor Code sections 201
5 through 204, 210, 212, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12,
6 1194, 1194.2, 1197, 1197.1, 1198, and related provisions contained in the California
7 Wage Orders; and the California Business and Professions Code predicated on such
8 Labor Code sections and California Wage Orders, including but not limited to Business
9 and Professions Code section 17200 et seq. With respect to the PAGA Claim, all PAGA
10 Employees, regardless of whether they opt-out of the Class Settlement, shall be deemed
11 to have fully, finally, and forever released, settled, compromised, relinquished and
12 discharged any and all of the Released Parties of and from the PAGA Claim based in
13 whole or in part on the factual or legal allegations and/or claims in the Complaint and/or
14 Plaintiff's February 11, 2020 LWDA Letter. All claims set forth in this Paragraph shall
15 be collectively referred to as the "Released Claims" or "Settled Claims." (§5.4)

16 Upon the Court's approval of the PAGA Settlement and this release of PAGA Claims,
17 Plaintiff and the PAGA Employees and all persons purporting to act on the PAGA
18 Employees' behalf or purporting to assert a claim under or through them, hereby do and
19 shall be deemed to have fully, finally, and forever released, settled, compromised,
20 relinquished and discharged any and all of the Released Parties of and from any and all
21 PAGA claims premised in whole or in part on any of the claims set forth in sections 5.4
22 above that arose at any time from February 13, 2019 (collectively, the "PAGA Claims")
23 through June 30, 2021 or the date upon which the Court grants Preliminary Approval of
24 this Settlement, whichever is sooner, to the extent the PAGA claims were alleged in the
25 Second Amended Complaint. The PAGA Employees will be issued a check for their

1 share of the PAGA Employee Payment and will not have the opportunity to opt out of,
2 or object to, the PAGA Settlement and release of the PAGA Claims set forth in this
3 Paragraph. The PAGA Employees are bound by the release of the PAGA Claims
4 regardless of whether they cash their PAGA Payment Check. (¶5.4)

5 “Released Claims” or “Settled Claims” mean all disputes, claims, and/or causes of
6 action set forth in Paragraph 5.4. Other than as provided in Paragraph 5.4, it is understood
7 and agreed that this Agreement will not release any person, party or entity from claims,
8 if any, by Class Members for workers’ compensation, unemployment, or disability
9 benefits of any nature, nor does it release any claims, actions, or causes of action which
10 may be possessed by Class Members under state or federal discrimination statutes,
11 specifically California Fair Employment and Housing Act (“FEHA”), Cal. Government
12 Code § 12940, et seq.; the Unruh Civil Rights Act, Cal. Civil Code §51, et seq.; the
13 California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et
14 seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the
15 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et
16 seq.; and all of their implementing regulations and interpretive guidelines. (¶2.45)

17 “Released Parties” means Defendant Morsco Supply, LLC (d/b/a Express Pipe &
18 Supply Co., LLC) its past or present officers, directors, shareholders, employees, agents,
19 principals, heirs, representatives, accountants, auditors, consultants, insurers and
20 reinsurers, and their respective successors and predecessors in interest, subsidiaries,
21 affiliates, parents and attorneys. (¶2.46)

22 The named Plaintiff will also provide a general release and a waiver of the protections
23 of Cal. Civ. Code §1542. (¶5.8)

24 Upon the Court’s entry of its Final Approval Order, all Participating Class Members
25 shall be bound by this Agreement, and the Action and the Settled Claims shall be

1 dismissed with prejudice and released as against the Released Parties to the greatest
2 extent permitted by law. In addition, unless a Class Member effectively opts out of the
3 Settlement, he or she shall be bound by the Court's Order enjoining all Participating Class
4 Members from pursuing or seeking to reopen Released Claims against the Released
5 Parties to the greatest extent permitted by law. Upon the Court's entry of its Final
6 Approval Order and Judgment regarding the PAGA Settlement and the release of the
7 PAGA Claims, all PAGA Employees shall be bound by the release of the PAGA Claims
8 and the PAGA Claims shall be dismissed with prejudice and released as against all the
9 Released Parties to the greatest extent permitted by law. (¶6.4)

10 The Released Claims will be released on the later of the Effective Date or the full
11 funding of the Settlement. (¶5.4)

12 **D. SETTLEMENT ADMINISTRATION**

- 13
- 14
- 15 • The proposed Settlement Administrator is Phoenix Settlement Administrators,
16 which has provided evidence that no counsel are affiliated with it and that it has
17 adequate procedure in place to safeguard the data and funds to be entrusted to it.
18 (¶2.48; Declaration of Michael Moore, *passim*.)
- 19 • Settlement administration costs are estimated to be \$7,000. (¶2.2)
- 20
- 21 • Notice: The manner of giving notice is described below.
- 22 • “Notice Period” means a 60 calendar day period which begins on the Mailing
23 Date, with up to a 14-day extension of that response period for re-mailed Class
24 Notices, and by which time Class members may submit request for exclusions,
25 objections, and/or disputes. (¶2.31)

1 ○ If 10% or more of Class Members timely opt out of the Class Settlement,
2 Defendant shall have the option to withdraw from the Settlement. (¶4.7)

- 3 • The Class Notice shall advise the Class that the Final Approval Order and
4 Judgment will be posted to a website address maintained by the Settlement
5 Administrator. (¶6.7)

6
7 **D. ATTORNEYS' FEES**

8 Counsel for the proposed class seek \$153,333.33 (33 1/3 %) in attorney's fees and
9 \$15,000 in costs. (¶2.7).

10
11 **E. SERVICE AWARDS**

12 The named plaintiff seeks an enhancement award of \$7,500. (¶2.13).

13
14 **III. SETTLEMENT STANDARDS AND PROCEDURE**

15 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
16 of an entire class action, or of a cause of action in a class action, or as to a party,
17 requires the approval of the court after hearing." "Any party to a settlement agreement
18 may serve and file a written notice of motion for preliminary approval of the settlement.
19 The settlement agreement and proposed notice to class members must be filed with the
20 motion, and the proposed order must be lodged with the motion." See Cal. Rules of
21 Court, rule 3.769(c).

22 "In a class action lawsuit, the court undertakes the responsibility to assess
23 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
24 dismissal of a class action. The purpose of the requirement [of court review] is the
25

1 protection of those class members, including the named plaintiffs, whose rights may not
2 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
3 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
4 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
5 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
6 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
7 agreement to the extent necessary to reach a reasoned judgment that the agreement is
8 not the product of fraud or overreaching by, or collusion between, the negotiating
9 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
10 concerned.”] [internal quotation marks omitted].

11 “The burden is on the proponent of the settlement to show that it is fair and
12 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
13 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
14 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
15 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
16 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

17 Notwithstanding an initial presumption of fairness, “the court should not give
18 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
19 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
20 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
21 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
22 members, the court must independently and objectively analyze the evidence and
23 circumstances before it in order to determine whether the settlement is in the best
24 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
25 In that determination, the court should consider factors such as “the strength of

1 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
2 the risk of maintaining class action status through trial, the amount offered in
3 settlement, the extent of discovery completed and stage of the proceedings, the
4 experience and views of counsel, the presence of a governmental participant, and the
5 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
6 factors is not exclusive, and the court is free to engage in a balancing and weighing of
7 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
8 245.

9 At the same time, “[a] settlement need not obtain 100 percent of the damages
10 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
11 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
12 substantially narrower than it would be if the suits were to be successfully litigated,’ this
13 is no bar to a class settlement because ‘the public interest may indeed be served by a
14 voluntary settlement in which each side gives ground in the interest of avoiding
15 litigation.’” *Id.* at 250.

16 17 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

18 19 **A. THERE IS A PRESUMPTION OF FAIRNESS**

20 The settlement is entitled to a presumption of fairness for the following reasons:

21 22 **1. The settlement was reached through arm’s-length bargaining**

23 On October 21, 2020, the Parties mediated before Lisa Klerman, Esq., and were
24 able to come to a Memorandum of Understanding (“MOU”). Thereafter, the parties
25 singled a long form settlement agreement. (Leviant Decl., ¶8.)

1
2 **2. The investigation and discovery were sufficient**

3 Counsel represents that the parties conducted discovery and investigation which
4 included analyzing payroll and other data pertaining to Plaintiff and the Settlement Class
5 during the relevant Settlement Period, including but not limited to the numbers of former
6 and current members of each purported subclass within the Settlement Class, average
7 workweeks, and average rate of hourly pay. (*Id.* at ¶6.) It is further represented that
8 Defendant also provided documents reflecting its wage and hour policies and practices
9 during the Settlement Period and information regarding the total number of current and
10 former employees in the Settlement Class. (*Ibid.*)

11
12 **3. Counsel is experienced in similar litigation**

13 Class Counsel represent that are experienced in class action litigation, including
14 wage and hour class actions. (*Id.* at ¶¶21-26.)

15
16 **4. Percentage of the class objecting**

17 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
18 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
19 the court receive objections to the proposed settlement, it will consider and either sustain
20 or overrule them at the fairness hearing.”].

21
22
23 ///

24
25 ///

1 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
2 **FAIR, ADEQUATE, AND REASONABLE**

3
4 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
5 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
6 does when it approves a settlement as in good faith under Code of Civil Procedure
7 section 877.6, the court must at least satisfy itself that the class settlement is within the
8 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
9 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
10 consider and weigh the nature of the claim, the possible defenses, the situation of the
11 parties, and *the exercise of business judgment* in determining whether the proposed
12 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
13 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

14
15 **1. Amount Offered in Settlement**

16 The most important factor is the strength of the case for plaintiffs on the merits,
17 balanced against the amount offered in settlement.” *Id.* at 130.

18 Class Counsel estimated Defendant’s maximum exposure at **\$2,068,847.60** and an
19 estimated reduced exposure at **\$485,101.75** based on the following analysis:

20

Violation	Maximum	Discounted
Unpaid Wages	\$283.80	\$70.95
Meal Periods	\$311,464.60	\$93,439.38
Rest Periods	\$317,889.20	\$31,788.92
Labor Code §226	\$350,400.00	\$87,600.00

21
22
23
24
25

1	Labor Code §203	\$345,060.00	\$86,265.00
2	PAGA	\$743,750.00	\$185,937.50
3	Totals	\$2,068,847.60	\$485,101.75

4 (Leviant Decl., ¶18.)

5 Class Counsel obtained a gross settlement valued at \$460,000. This is 22% of
6 Defendant’s maximum exposure and 95% of Defendant’s reduced exposure valuation.

7
8 **2. The Risks of Future Litigation**

9 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
10 motion practice and appeals) are also likely to prolong the litigation as well as any
11 recovery by the class members. Even if a class is certified, there is always a risk of
12 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
13 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
14 conducting class actions, which means, under suitable circumstances, entertaining
15 successive motions on certification if the court subsequently discovers that the propriety
16 of a class action is not appropriate.”].) Further, the settlement was negotiated and
17 endorsed by Class Counsel who, as indicated above, are experienced in class action
18 litigation. Based upon their investigation and analysis, the attorneys representing
19 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
20 adequate. (Leviant Decl., ¶16.)

21 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
22 which has been served with a copy of the Settlement Agreement and has not yet objected.
23 Any objection by it will be considered at the final fairness hearing. (Exhibit 2 to Leviant
24 Decl.)

1 **1. The Proposed Class is Numerous**

2 There are approximately 262 class members. (Leviant Decl., ¶35.) Numerosity
3 is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
4 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
5 *class action is liberally construed,*” and citing examples wherein classes of as little as
6 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
7 (1972) 28 Cal.App.3d 1017, were upheld).

8 **2. The Proposed Class Is Ascertainable**

9 “A class is ascertainable, as would support certification under statute
10 governing class actions generally, when it is defined in terms of objective
11 characteristics and common transactional facts that make the ultimate identification
12 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
13 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

14 The class is defined above. Class Members are ascertainable through
15 Defendant’s employee and payroll files. (Leviant Decl., ¶35.)

16 **3. There Is A Community of Interest**

17 “The community of interest requirement involves three factors: ‘(1) predominant
18 common questions of law or fact; (2) class representatives with claims or defenses typical
19 of the class; and (3) class representatives who can adequately represent the class.’”
20 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

21 Counsel contends that here, common issues include, i. Whether or not Defendant
22 paid proper wages to the Class; ii. Whether or not Defendant failed to reimburse the class
23 for necessary business expenses; iii. Whether or not Defendant provided meal periods to
24 the Class; iv. Whether or not Defendant provided rest periods to the Class; v. Whether or
25 not Defendant paid compensation timely upon separation of employment to former Class

1 Members; vi. Whether or not Defendant paid compensation timely throughout Class
2 Members' employment; vii. Whether or not Defendant provided accurate itemized wage
3 statements to the Class; viii. Whether or not waiting-time penalties are available to the
4 Class for violation of California Labor Code § 203; ix. Whether or not Defendant
5 engaged in unlawful or unfair business practices affecting the Class in violation of
6 California Business and Professions Code §§ 17200-17208; x. Whether or not Plaintiffs
7 and the Class are entitled to penalties pursuant to PAGA. (Leviant Decl., ¶37.)

8 Counsel further contends that Plaintiff is typical of the Settlement Class because
9 like all other class members he was an employee of Defendant, worked during the class
10 period, and experienced work under policies and procedures impacting wage and hour
11 compliance. No unique defenses applicable to Plaintiff have been identified that do not
12 also exist as to other Settlement Class members. (*Id.* at ¶36.)

13 Finally, counsel contends that Plaintiff is an adequate class member because he
14 has no conflicts with the class and is represented by competent counsel. (*Id.* at ¶39;
15 Declaration of Mark Pereida, *passim.*)

16 17 **4. Substantial Benefits Exist**

18 Given the relatively small size of the individual claims, a class action is superior to
19 separate actions by the class members.

20 21 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 22 OF DUE PROCESS**

23 The purpose of notice is to provide due process to absent class members. A practical
24 approach is required, in which the circumstances of the case determine what forms of
25 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California

1 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
2 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
3 stake of the individual class members; (4) the cost of notifying class members; (5) the
4 resources of the parties; (6) the possible prejudice to class members who do not receive
5 notice; and (7) the res judicata effect on class members.

6
7 **1. Method of class notice**

8 The Class Notice will be translated into Spanish and mailed to Class Members in
9 both English and Spanish language versions. (§2.9) Within 14 days after entry of the
10 Preliminary Approval of Settlement, Defendant shall provide to the Settlement
11 Administrator a list of Class Members. (§4.1) Within 10 days after receipt of the list of
12 Class Members/PAGA Employees, the Settlement Administrator shall mail the Class
13 Notices to each Class Member/PAGA Employee whose address information is known.
14 Prior to this mailing, the Settlement Administrator shall conduct a National Change of
15 Address check as to each address. The mailing shall be sent by first-class U.S. Mail,
16 postage pre-paid. The date that the Settlement Administrator mails the Class Notices is
17 the Mailing Date. It shall be conclusively presumed that each and every Class Member
18 whose Class Notice are not returned to the Settlement Administrator as undeliverable
19 within 30 calendar days after the Mailing Date has received the Class Notices. (§4.4) The
20 Settlement Administrator shall promptly re-mail any Class Notice returned by the Post
21 Office with a forwarding address. It shall be conclusively presumed that those Class
22 Members/PAGA Employees whose re-mailed Class Notice are not returned to the
23 Settlement Administrator as undeliverable within 30 calendar days after re-mailing has
24 received the Class Notice. (§4.4.1) If any Class Notice is returned as undeliverable with
25 no return address, the Settlement Administrator will perform one search using the social

1 security number of any Class Member/PAGA Employees for a more current address. If
2 an address is not found, no further action is required. It shall be conclusively presumed
3 that those Class Members/PAGA Employees whose re-mailed Class Notice are not
4 returned to the Settlement Administrator as undeliverable within 30 calendar days after
5 re-mailing has received the Class Notice. (§4.4.2)

6 **2. Content of class notice.**

7 A copy of the proposed class notice is attached to the Amended Settlement
8 Agreement as Exhibit A. The notice includes information such as: a summary of the
9 litigation; the nature of the settlement; the terms of the settlement agreement; the
10 maximum deductions to be made from the gross settlement amount (i.e., attorney fees
11 and costs, the enhancement award, and claims administration costs); the procedures and
12 deadlines for participating in, opting out of, or objecting to, the settlement; the
13 consequences of participating in, opting out of, or objecting to, the settlement; and the
14 date, time, and place of the final approval hearing. See Cal Rules of Court, rule
15 3.766(d).

16 **3. Settlement Administration Costs**

17 The Settlement Agreement provides for a maximum of \$7,000 for Settlement
18 administration costs including the cost of notice. Prior to the time of the final fairness
19 hearing, the settlement administrator must submit a declaration attesting to the total
20 costs incurred and anticipated to be incurred to finalize the settlement for approval by
21 the Court.

22 **E. ATTORNEY FEES AND COSTS**

23 California Rule of Court, rule 3.769(b) states: "Any agreement, express or
24 implied, that has been entered into with respect to the payment of attorney fees or the
25

1 submission of an application for the approval of attorney fees must be set forth in full in
2 any application for approval of the dismissal or settlement of an action that has been
3 certified as a class action.”

4 Ultimately, the award of attorney fees is made by the court at the fairness
5 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
6 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
7 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
8 1132-1136. In common fund cases, the court may use the percentage method. If
9 sufficient information is provided a cross-check against the lodestar may be conducted.
10 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
11 agreement by the parties to the contrary, “the court ha[s] an independent right and
12 responsibility to review the attorney fee provision of the settlement agreement and
13 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
14 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

15 The question of class counsel’s entitlement to **\$153,333.33** (33 1/3%) in attorney
16 fees will be addressed at the final fairness hearing when class counsel brings a noticed
17 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
18 the court with current market tested hourly rate information and billing information so
19 that it can properly apply the lodestar method and must indicate what multiplier (if
20 applicable) is being sought.

21 Class counsel should also be prepared to justify the costs sought (capped at
22 **\$15,000**) by detailing how they were incurred.

23 ///
24 ///
25 ///

1 **F. SERVICE AWARD**

2 The Settlement Agreement provides for a service award of up to \$7,500 for the
3 class representative. Trial courts should not sanction enhancement awards of thousands
4 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
5 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
6 quantification of time and effort expended on the litigation, and in the form of reasoned
7 explanation of financial or other risks incurred by the named plaintiffs, is required in
8 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
9 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
10 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

11 The Court will decide the issue of the enhancement award at the time of final
12 approval.

13
14 **V. CONCLUSION AND ORDER**

15 The Court hereby:

- 16 (1) Grants preliminary approval of the settlement as fair, adequate, and
17 reasonable;
- 18 (2) Grants conditional class certification;
- 19 (3) Appoints Mark Pereida as Class Representative;
- 20 (4) Appoints Moon & Yang, APC, as Class Counsel;
- 21 (5) Appoints tor Phoenix Class Action Administration Solutions as Settlement
22 Administrator;
- 23 (6) Approves the proposed notice plan; and
- 24 (7) Approves the proposed schedule of settlement proceedings as follows:
- 25 • Preliminary approval hearing: April 6, 2021

1 • Deadline for Defendant to provide class list to settlement administrator: April
2 20, 2021;

3 • Deadline for settlement administrator to mail notices: April 30, 2021;

4 • Deadline for class members to opt out: June 29, 2021;

5 • Deadline for class members to object: June 29, 2021;

6 • Deadline for class counsel to file motion for final approval:

7 _____, ~~2021~~ (16 court days prior to final fairness hearing)

8 • Final fairness hearing: 8/24/21, 2021, at 11:00 a.m.

9
10 Dated: 4-6-2021

11 _____
12 Amy D. Hogue

13 Judge of the Superior Court
14
15
16
17
18
19
20
21
22
23
24
25