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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF CONTRA COSTA**

10 AMANDA PATTERSON, individually, and on  
behalf of other members of the general public  
11 similarly situated; MATTHEW MEDINA,  
individually, and on behalf of other aggrieved  
12 employees pursuant to the California Private  
Attorneys General Act;

13 Plaintiffs

14 vs.

15 FINISHMASTER, INC., an unknown business  
16 entity; and DOES 1 through 100, inclusive,

17 Defendants.

Case No.: MSC19-00878

Honorable Edward G. Weil  
Department 39

**CLASS ACTION**

**FINAL APPROVAL ORDER**

Date: August 26, 2021  
Time: 9:00 a.m.  
Department: 39

Complaint Filed: May 3, 2019  
FAC Filed: July 5, 2019  
SAC Filed: December 30, 2019  
Trial Date: None Set

1 This matter came before the Honorable Edward G. Weil in Department 39 of the above-  
2 entitled Court, located at Wakefield Taylor Courthouse, 725 Court Street, Martinez, California  
3 94553, on Plaintiffs Amanda Patterson and Matthew Medina’s (“Plaintiffs”) Motion for Final  
4 Approval of Class Action Settlement, Attorneys’ Fees, Costs, and Enhancement Payments  
5 (“Motion for Final Approval”), noticed for hearing on August 26, 2021 at 9:00 a.m..

6 1. Plaintiffs Amanda Patterson and Matthew Medina move for final approval of their  
7 class action and PAGA settlement in accordance with the Stipulation of Settlement and Release  
8 (“Settlement,” “Agreement,” or “Settlement Agreement”), entered by Plaintiffs and Defendant  
9 FinishMaster, Inc. (“Defendant”), as well as approval of attorney’s fees and costs, settlement  
10 expenses, and a class representative incentive payment. The motion for preliminary approval  
11 initially was heard on January 28, 2021, after which the Court requested supplemental  
12 information and continued the hearing. After that hearing, on February 18, 2021, the Court  
13 granted preliminary approval.

14 **Background and Settlement Terms**

15 2. The original complaint was filed May 3, 2019. It is a class action complaint  
16 alleging failure to pay wages and/or overtime, failure to provide meal periods and rest breaks,  
17 failure to provide appropriate wage statements and failure to reimburse necessary business  
18 expenses. A Second Amended Complaint was filed on December 30, 2019, which added the  
19 PAGA claims. Plaintiff Medina had filed a separate action in Ventura County, but that case was  
20 dismissed without prejudice, and Medina’s claims were made part of this case.

21 3. The parties undertook discovery as part of the matter, and eventually reached a  
22 resolution with the assistance of an experienced mediator.

23 4. A gross settlement amount of \$1,900,000, non-reversionary, will be paid to the  
24 Settlement Administrator.

25 5. PAGA penalties would be \$150,000, resulting in a payment to the LWDA of  
26 \$112,500, with the remainder distributed to the aggrieved employees. A class representative  
27 incentive payment would be made to each plaintiff in the amount of \$10,000, totaling \$20,000.  
28 Phoenix Settlement Administrators is the settlement administrator, and estimates costs at

1 \$15,000. Litigation costs would not exceed \$25,000. Attorney’s fees would be \$722,000, which  
2 is 38% of the settlement fund. The net amount, about \$1 million, would be divided into wages,  
3 and interest, and penalties. It would be apportioned to the employees based on their number of  
4 pay periods worked during the class period, allocated 2/3 to wages (from which ordinary  
5 deductions will be made) and 1/3 to interest, which will be reported on an IRS form 1099.

6 6. The class would be provisionally certified as employees who worked for  
7 defendant from May 3, 2015 through the date of tentative approval of the settlement, minus three  
8 employees who entered into individual settlements. Notice to the class would be provided,  
9 which would include the number of work weeks for each member, which is the basis for  
10 determining each class member’s share. The class members will not be required to file a claim.  
11 Class members may object or opt out of the settlement. Class members who dispute the number  
12 of pay periods credited to them may contest the determination. Various prescribed follow-up  
13 steps will be taken with respect to mail that is returned as undeliverable. Any checks cancelled  
14 due to failure to negotiate them will be transferred to the State Controller’s Unclaimed Property  
15 Fund.

16 7. Based on the estimated class size (about 491), the average net settlement share  
17 was estimated at time of preliminary approval at about \$2,000. It is now estimated at \$1,861.88.

18 8. Since preliminary approval, notice has been provided to the class. 543 notices  
19 were mailed. 65 were returned as undeliverable. Follow-up uncovered new addresses for 64  
20 class members, and notices were mailed to those addresses. One notice was returned as  
21 undeliverable. No objections, requests for exclusion, or pay period disputes were received  
22 within the allotted time period.

23 9. The settlement administrator seeks \$9,500 in costs.

24 **Legal Standards**

25 10. The primary determination to be made is whether the proposed settlement is “fair,  
26 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,  
27 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of  
28 further litigation, the risk of maintaining class action status through trial, the amount offered in

1 settlement, the extent of discovery completed and the state of the proceedings, the experience  
2 and views of counsel, the presence of a governmental participant, and the reaction to the  
3 proposed settlement.”

4 11. Because this matter also proposes to settle PAGA claims, the Court also must  
5 consider the criteria that apply under that statute. The Legislature’s express command that  
6 PAGA settlements be approved by the court necessarily implies that there is some substantive  
7 dimension to the review. (Labor Code § 2699(l).) The Court’s review, however, is somewhat  
8 hampered by the lack of guidance in the statute or case law concerning the basis upon which a  
9 settlement may be approved. The Court has found no binding authority, but one federal District  
10 Court has addressed the issue. In *O’Connor v. Uber Techs, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d  
11 1110, 1133, the court denied approval of class action settlements that included PAGA claims in  
12 part because the plaintiffs’ claims added up to as much as \$1 billion in PAGA penalties but  
13 parties settled those claims for \$1 million, or 0.1% of their alleged maximum value. As the court  
14 stated, “where plaintiffs bring a PAGA representative claim, they take on a special responsibility  
15 to their fellow aggrieved workers who are effectively bound by any judgment. [citation omitted]  
16 Such a plaintiff also owes responsibility to the public at large; they act, as the statute’s name  
17 suggests, as a private attorney general, and 75% of the penalties go to the LWDA ‘for  
18 enforcement of labor laws . . . and for education of employers and employees about their rights  
19 and responsibilities under this code.’” (*Id.*, at 1134.) In that case, the LWDA itself filed a brief  
20 stating that “[i]t is thus important that when a PAGA claim is settled, the relief provided for  
21 under the PAGA be genuine and meaningful, consistent with the underlying purpose of the  
22 statute to benefit the public and, in the context of a class action, the court evaluate whether the  
23 settlement meets the standards of being ‘fundamentally fair, reasonable, and adequate’ with  
24 reference to the public policies underlying the PAGA.” (*Id.*, at 1133.) The *Uber Techs* court  
25 noted that “a court may reduce the penalty when ‘to do otherwise would result in an award that is  
26 unjust, arbitrary and oppressive, or confiscatory.’” (*Id.*, at 1134, citing Labor Code § 2699(e)(2).)  
27 Nonetheless, the court noted that the plaintiff had provided no “coherent analysis” to justify the  
28 “relatively meager value” assigned to the PAGA claim.

1           12. California law provides some general guidance concerning judicial approval of  
2 any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University*  
3 *of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement  
4 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,  
5 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot  
6 surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a  
7 mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*  
8 (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not  
9 always apply, because “[w]here the rights of the public are implicated, the additional safeguard  
10 of judicial review, though more cumbersome to the settlement process, serves a salutatory  
11 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141  
12 Cal.App.4th 48, 63.)

13           **Attorney fees, litigation costs, representative plaintiff payment**

14           13. Plaintiffs seek 38% of the total settlement amount (\$722,000) as fees, relying on  
15 the “common fund” theory. Even a proper common fund-based fee award, however, should be  
16 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.  
17 5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to  
18 determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated  
19 by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider  
20 whether the percentage used should be adjusted so as to bring the imputed multiplier within a  
21 justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at  
22 505.)

23           14. Since preliminary approval, counsel has provided information to enable the Court  
24 to conduct a lodestar cross-check. Counsel attest to 745.55 hours of attorney time, and assume  
25 an hourly rate of \$725 for all of the attorney time, for a lodestar fee of \$540,523.75. This results  
26 in an implied multiplier of 1.34. The submission assumes a rate of \$725 per hour without any  
27 breakdown based on the experience level of the attorneys who provided the services. Given that  
28 much of the work on a matter is done by lower-level associates at a much lower rate. If the

1 blended rate averaged out to even \$600 per hour, the lodestar would be \$447,330. The implied  
2 multiplier would then be 1.61. This in and of itself, however, does not require an adjustment to  
3 the proposed fee.

4 15. The Court still must consider whether a fee of 38%, in contrast to the ordinary  
5 33% is appropriate. Counsel assert that plaintiffs “each agreed to a contingency fee of at least  
6 thirty eight (38%) of the recovery.” Counsel asserts that he is “aware that the common and  
7 acceptable rate for contingency representation in wage and hour class action litigation is  
8 normally 40% before trial, with the range being from 33.3% up to 50%.” (Aiwazian Dec., Par.  
9 12.) No foundation is provided for this statement, and this Court’s experience is that anything  
10 over 33% is unusual. While counsel’s description of the work, the challenges, and the results  
11 obtained in this case are sufficient to justify the ordinary one-third fee, no justification for the  
12 38% fee is provided. Accordingly, the Court approves a fee of one-third of the gross settlement  
13 amount, i.e., \$633,333.33.

14 16. Criteria for evaluation of representative payments are discussed in *Clark v.*  
15 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Ms. Patterson attests  
16 that she has worked about 49 hours. She does not indicate that she released any other non-class  
17 claims with a significant value, or indicate that the case has affected her ability to obtain work.  
18 Mr. Medina attests that he has worked about 46 hours. He does not indicate that he released any  
19 other non-class claims with a significant value, or indicate that the case has affected his ability to  
20 obtain work. Nor was it necessary to have two plaintiffs. Accordingly, each payment is reduced  
21 to \$7,500.

22 17. The settlement administrator’s costs of \$9,500 are reasonable and are approved.

23 18. Costs of \$29,155.10 are documented, but the preliminary approval capped them at  
24 \$25,000. \$25,000 is awarded.

25 **Discussion**

26 19. Plaintiffs’ initial motion provided no specific information as to the legal or factual  
27 basis for the claim, or its merit or value. The initial memorandum generally set forth a variety of  
28 claims, e.g., failure to pay overtime, failure to provide meal and rest breaks, along with a cascade

1 of violations that follow from those violations. There was little, however, from which the Court  
2 could ascertain whether there actually was any unlawful policy or practice that resulted in the  
3 violations. The supplemental declaration, however, sets forth greater analysis. With respect to  
4 each category of claim, it describes that in many instances defendant had evidence of facially  
5 compliant policies, indicating that there were relatively few violations, or at least that they  
6 involved individual facts that may not be appropriate for resolution on a class-wide basis. It sets  
7 out estimates of the value of each claim, and applies a discount for settlement purposes. (After  
8 discounts, counsel estimated values for overtime violations (\$366,000), minimum wage  
9 violations (\$198,000), meal breaks (\$244,000), rest breaks (\$212,000), waiting time penalties  
10 (\$313,000), wage statements (\$262,000), and employee reimbursements (\$65,000). These  
11 figures total \$1,660,000. They also provide sufficient information concerning the nature of the  
12 claims to enable the Court to determine that the amounts are fair, reasonable, and adequate.

13 20. As to PAGA penalties, such penalties could be deeply discounted for a variety of  
14 reasons, even if plaintiff prevails.

15 21. Accordingly, the overall settlement is fair, reasonable, and adequate.

16 **Conclusion**

17 22. The motion is granted, except that the attorney's fees are reduced to \$633,333.33,  
18 and the representative plaintiffs' awards are reduced to \$7,500 each. The reduction in fees and  
19 representative payments shall be allocated to the net settlement amount distributed to the class  
20 members.

21 23. All terms used herein shall have the same meaning as defined in the Settlement  
22 Agreement and the Preliminary Approval Order.

23 24. This Court has jurisdiction over the claims of the Class Members asserted in this  
24 proceeding and over all parties to the above-entitled action.

25 25. The Court finds that the applicable requirements of California Code of Civil  
26 Procedure section 382 and California Rule of Court 3.769, *et seq.* have been satisfied with  
27 respect to the Class and the Settlement. The Court hereby makes final its earlier provisional  
28 certification of the Class for settlement purposes, as set forth in the Preliminary Approval Order.

1 The Class is hereby defined to include:

2 All current and former hourly-paid and non-exempt employees in the State of  
3 California who worked for Defendant from May 3, 2015 through February 18,  
4 2021, excluding three individuals who have already entered into individual  
5 settlements with Defendant (“Class” or “Class Members”).

6 26. The Notice of Class Action Settlement (“Class Notice”) that was provided to the  
7 Class Members, fully and accurately informed the Class Members of all material elements of the  
8 Settlement and of their opportunity to participate in, object to or comment thereon, or to seek  
9 exclusion from, the Settlement; was the best notice practicable under the circumstances; was  
10 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the  
11 State of California, the United States Constitution, due process and other applicable law. The  
12 Class Notice fairly and adequately described the Settlement and provided the Class Members  
13 with adequate instructions and a variety of means to obtain additional information.

14 27. Pursuant to California law, the Court hereby grants final approval of the  
15 Settlement and finds that it is reasonable and adequate, and in the best interests of the Class as a  
16 whole. More specifically, the Court finds that the Settlement was reached following meaningful  
17 discovery and investigation conducted by Lawyers *for* Justice, PC (“Class Counsel”); that the  
18 Settlement is the result of serious, informed, adversarial, and arms-length negotiations between  
19 the parties; and that the terms of the Settlement are in all respects fair, adequate, and reasonable.  
20 In so finding, the Court has considered all of the evidence presented, including evidence  
21 regarding the strength of Plaintiffs’ claims; the risk, expense, and complexity of the claims  
22 presented; the likely duration of further litigation; the amount offered in the Settlement; the  
23 extent of investigation and discovery completed; and the experience and views of Class Counsel.  
24 The Court has further considered the absence of objections to and requests for exclusion from the  
25 Settlement submitted by Class Members. Accordingly, the Court hereby directs that the  
26 Settlement be affected in accordance with the Settlement Agreement and the following terms and  
27 conditions.

28 28. A full opportunity has been afforded to the Class Members to participate in the  
Final Approval Hearing, and all Class Members and other persons wishing to be heard have been



1 heard. The Class Members also have had a full and fair opportunity to exclude themselves from  
2 the Settlement. Accordingly, the Court determines that all Class Members who did not timely  
3 and validly opt out of the Settlement (“Settlement Class Members”) are bound by this Final  
4 Approval Order.

5 29. The Court finds that payment of Settlement Administration Costs in the amount of  
6 \$9,500.00 is appropriate for the services performed and costs incurred and to be incurred for the  
7 notice and settlement administration process. It is hereby ordered that the Settlement  
8 Administrator, Phoenix Settlement Administrators, shall issue payment to itself in the amount of  
9 \$9,500.00, in accordance with the terms and methodology set forth in Settlement Agreement.

10 30. The Court finds that the Enhancement Payments sought are fair and reasonable  
11 for the work performed by Plaintiffs on behalf of the Class. It is hereby ordered that the  
12 Settlement Administrator issue payment in the amount of \$7,500.00 each to Plaintiffs for their  
13 Enhancement Payments, according to the terms and methodology set forth in the Settlement  
14 Agreement.

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16 31. The Court finds that the allocation of \$150,000.00 toward penalties under the  
17 California Private Attorneys General Act of 2004 (“PAGA Penalties”), is fair, reasonable, and  
18 appropriate, and hereby approved. The Settlement Administrator shall distribute the PAGA  
19 Penalties as follows: the amount of \$112,500.00 to the California Labor and Workforce  
20 Development Agency, and the amount of \$37,500.00 to be included in the Net Settlement  
21 Amount for distribution to Settlement Class Members, according to the terms and methodology  
22 set forth in the Settlement Agreement.

23 32. The Court finds that the request for attorneys’ fees in the amount of \$633,333.33  
24 to Class Counsel falls within the range of reasonableness, and the results achieved justify the  
25 award sought. Attorneys’ fees to Class Counsel in the amount stated herein are fair, reasonable,  
26 and appropriate, and are hereby approved. It is hereby ordered that the Settlement Administrator  
27 issue payment in the amount of \$633,333.33 to Class Counsel for attorneys’ fees, in accordance  
28 with the terms and methodology set forth in the Settlement Agreement. Five percent (5%) of the

1 attorneys' fees, in the amount of \$31,666.66 shall be held in an interest-bearing account that is  
2 maintained by the Settlement Administrator pending satisfactory compliance as found by the  
3 Court.

4 33. The Court finds that reimbursement of litigation costs and expenses in the amount  
5 of \$25,000.00 to Class Counsel is reasonable, and hereby approved. It is hereby ordered that the  
6 Settlement Administrator issue payment in the amount of \$25,000.00 to Class Counsel for  
7 reimbursement of litigation costs and expenses, in accordance with the terms and methodology  
8 set forth in the Settlement Agreement.

9 34. It is hereby ordered that Defendant shall deposit the Maximum Settlement  
10 Amount with the Settlement Administrator within twenty-one (21) calendar days after the  
11 Effective Date, in accordance with the terms and methodology set forth in the Settlement  
12 Agreement.


13 35. It is hereby ordered that the Settlement Administrator shall distribute Individual  
14 Settlement Payments to the Settlement Class Members within ten (10) business days following  
15 the deposit of the Maximum Settlement Amount with the Settlement Administrator, according to  
16 the methodology and terms set forth in the Settlement Agreement.

17 36. After entry of this Final Approval Order, pursuant to California Rules of Court,  
18 Rule 3.769(h), the Court shall retain jurisdiction to construe, interpret, implement, and enforce  
19 the Settlement Agreement and this Final Approval Order, to hear and resolve any contested  
20 challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute arising  
21 from or in connection with the distribution of settlement benefits.

22 37. Notice of entry of this Final Approval Order shall be given to the Class Members  
23 by posting a copy of the Final Approval Order on Phoenix Settlement Administrator's website  
24 for a period of at least sixty (60) calendar days after the date of entry of this Final Approval  
25 Order. Individualized notice is not required.

26 38.

27 Dated: September 24, 2021

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HONORABLE EDWARD G. WEIL  
JUDGE OF THE SUPERIOR COURT

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