

FILED
Superior Court of California
County of Los Angeles

JAN 21 2022

Sherril R. Carter, Deputy Clerk
Alfredo Morales dep
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

ALFREDO ANGULO, on behalf of himself
and others similarly situated,

Plaintiff,

v.

FIVE STAR PLASTERING; FIVE STAR
PLASTERING, INC., and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 19STCV10957

~~[TENTATIVE]~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS

Date: January 21, 2022
Time: 10:00 a.m.
Dept.: SSC-7

I. BACKGROUND

Plaintiff Alfredo Angulo sues his former employer, Defendant Five Star Plastering, Inc. (erroneously also sued as Five Star Plastering), for alleged wage and hour violations. Defendant provides exterior finishes, such as lath and plaster work, on

1 construction projects. Plaintiff seeks to represent a class of Defendant's current and
2 former non-exempt employees.

3 On March 29, 2019, Plaintiff filed his initial class action complaint alleging
4 claims for: (1) failure to pay wages for all hours of work at the minimum wage rate
5 (Labor Code §§ 1194, 1194.2, 1197); (2) failure to pay wages for all hours of work at
6 the overtime wage rate (Labor Code §§ 510, 1194); (3) failure to include all
7 remuneration when calculating the overtime rate of pay (Labor Code §§ 510, 1194); (4)
8 failure to provide meal periods and meal period premium wages (Labor Code §§ 226.7,
9 512); (5) failure to provide rest breaks and rest break premium wages (Labor Code §
10 226.7); (6) failure to provide complete and accurate wage statements (Labor Code §
11 226); (7) failure to timely pay wages due at time of separation of employment (Labor
12 Code §§ 201, 202, 203); and (8) violation of Business and Professions Code section
13 17200, et seq. On June 19, 2019, Plaintiff filed a First Amended Complaint ("FAC")
14 adding a cause of action for: (9) civil penalties pursuant to California's Private
15 Attorneys General Act, Labor Code Section 2698, et seq. ("PAGA").

16 On February 19, 2021, the parties attended a private mediation session with
17 Todd A. Smith, Esq., and ultimately agreed on settlement. The terms are finalized in
18 the *Joint Stipulation for Class Action and PAGA Settlement and Release* ("Settlement
19 Agreement"), a copy of which was filed with the Court.

20 On November 10, 2021, the Court issued a "checklist" to the parties pertaining
21 to deficiencies in Plaintiff's motion for preliminary approval. In response, the parties
22 filed further briefing, including the fully-executed copy of the revised Settlement
23 Agreement attached to the Declaration of Melissa A. Huether ("Huether Decl.") as
24 Exhibit 3.

1 Now before the Court is Plaintiff's motion for preliminary approval of the
2 settlement. The Court previously issued a tentative ruling to grant approval for the
3 settlement on several condition: Notice pg. 2, Section 3 - Update the description of the
4 funding date to "ten (10) calendar days following the Effective Date", to be consistent
5 with the revised agreement. It currently still says "thirty (30) days".

- 6 1. Notice pg. 3, Section 3 – Amend the typo in the "Service Payment" amount
7 (currently says "\$8,9000.00").
- 8 2. Notice pg. 5, Section 7 – The revised opt-out procedure language now ends
9 with "... that you wish to *object*." It is supposed to say "opt-out."
- 10 3. Notice pg. 6, Section 8 – Make clear that a Class Member may also appear at
11 the Final Approval hearing to present his or her objection *regardless* of
12 whether they submitted a written objection.
- 13 4. In general – Carefully review and confirm that all terms in the settlement
14 agreement and notice are consistent.

15 The parties have not fully complied with these conditions and so the Court grants
16 preliminary approval.

17 18 **II. THE TERMS OF THE SETTLEMENT**

19 20 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

21 "Class" means all persons who worked for Defendant as non-exempt employees
22 in the State of California at any time during the Class Period. Defendant estimates that
23 there are approximately 365 Class Members during the Class Period and approximately
24 15,100 Workweeks during the class period. (§5)

1 “Class Period” means the period of time from March 29, 2015, through April 19,
2 2021. (¶10)

3 “Aggrieved Employees” means all persons who worked for Defendant as non-
4 exempt employees in the State of California at any time during the PAGA Period. (¶2)

5 “PAGA Period” means March 29, 2018, to April 19, 2021. (¶24)

6 7 **B. THE MONETARY TERMS OF SETTLEMENT**

8 The essential monetary terms are as follows:

9 The Gross Settlement Amount (“GSA”) is \$450,000 (¶17). This includes payment
10 of a PAGA penalty of \$30,000 to be paid 75% to the LWDA (\$22,500) and 25% to the
11 Aggrieved Employees (\$7,500) (*Ibid.*).

12 Five Star estimates the class consists of approximately 365 hourly non-exempt
13 employees and approximately 15,100 Workweeks during the Class Period. This estimate
14 serves as the basis for Plaintiff accepting the terms of this settlement. Should the class
15 increase by more than 10%, the payout will increase proportionately over the Ten Percent
16 (10%) grace. For example, if the class increases Eleven Percent (11%), then the Gross
17 Settlement Amount would increase by One Percent (1%). (¶¶ 17, 48.E)

18 The Net Settlement Amount (“Net”) (\$241,100) is the GSA less:

- 19 ○ Up to \$150,000 (33 1/3%) for attorney fees (¶4);
 - 20 ○ Up to \$10,000 for attorney costs (*Ibid.*);
 - 21 ○ Up to \$8,900 for a service award to the proposed class representative
22 (¶32); and
 - 23 ○ Estimated \$10,000 for settlement administration costs (¶35).
- 24 • Employer-side payroll taxes will be paid by Defendant separately and in addition
25 to the Gross Settlement Amount. (¶17)

- 1 • Assuming the Court approves all maximum requested deductions, approximately
2 \$241,100 will be available for automatic distribution to participating class
3 members. Assuming full participation, the average settlement share will be
4 approximately \$660.54. ($\$241,100 \text{ Net} \div 365 \text{ class members} = \660.54). In
5 addition, each Aggrieved Employee will receive a portion of the PAGA penalty
6 (\$7,500, or 25% of the \$30,000 PAGA penalty).
- 7 • There is no Claim Requirement (§46).
- 8 • The settlement is not reversionary (§46).
- 9 • Individual Settlement Share Calculation: The Settlement Share for each
10 Participating Class Member will be calculated by dividing the Net Settlement
11 Amount by the number of Workweeks of all Participating Class Members to
12 yield a “Weekly Settlement Value”; and then multiplying the Weekly Settlement
13 Value by each individual Participating Class Member’s number of Workweeks.
14 (§48.B)
- 15 ○ “Workweeks” means the number of weeks that each Class Member
16 worked for Defendant as a non-exempt employee in the State of
17 California during the Class Period, calculated by taking the timekeeping
18 and payroll data for each Class Member during the Class Period, and then
19 identifying the number of weeks in which said Class Member worked at
20 least one hour. Each of these weeks was then summed together to get the
21 total number of weeks worked by each Class Member. Each Class
22 Member will be credited with at least one Workweek. (§37)
- 23 ○ Non-Participating Class Members will not receive payment of their
24 Settlement Shares. Their respective Settlement Shares will remain a part
25

1 of the Net Settlement Amount for distribution to Participating Class
2 Members on a pro rata basis relative to their Settlement Shares. (¶48.D)

- 3 ○ PAGA Payment: \$7,500, or 25% of the \$30,000 PAGA penalty
4 (“Aggrieved Employees’ Portion”) will be distributed to Aggrieved
5 Employees, based upon the number of pay periods each worked during
6 the PAGA period (“Individual PAGA Payment”). Each Aggrieved
7 Employee will be credited with at least 1 pay period. The Individual
8 PAGA Payment for each Aggrieved Employee will be calculated as
9 follows: by dividing the Aggrieved Employees’ Portion by the number of
10 pay periods worked by all Aggrieved Employees; and then multiplying
11 the result by each individual Aggrieved Employees’ number of pay
12 periods. (¶47.D)

- 13 ■ Aggrieved Employees cannot opt out of the PAGA portion of this
14 Settlement and will receive an Individual PAGA Payment
15 regardless of whether they exclude themselves from the Settlement
16 or not. (¶48.C.iii)

- 17 ● Tax Withholdings: Each Participating Class Member’s Settlement Share will be
18 allocated: 10% as wages, 45% as penalties, 45% as interest. (¶¶ 48.C.i-ii).

19 Individual PAGA Payments issued to Aggrieved Employees will be allocated as
20 One Hundred Percent (100%) non-wage penalties and will reported on an IRS
21 Form 1099. (¶48.C.iii)

- 22 ● Uncashed Settlement Payment Checks: A Participating Class Member shall have
23 one hundred eighty (180) calendar days from the date of issuance of the
24 Individual Settlement Payments and/or Individual PAGA Payments to cash their
25 checks. For any checks not cashed after one hundred eighty (180) calendar days,

1 the Settlement Administrator shall transfer the amount represented by the checks
2 to the **State of California Controller** pursuant to the Unclaimed Property Law,
3 Code of Civil Procedure Section 1500, et seq. with the identity of the
4 Participating Class Member or Aggrieved Employee to whom the funds belong,
5 to be held for the Participating Class Member pursuant to the California
6 Unclaimed Property Law. (§50.J)

- 7 • Settlement Funding and Distribution: Defendant will fund the Gross Settlement
8 Amount by depositing the money with the Settlement Administrator. Defendant
9 shall fund the Gross Settlement Amount and amount sufficient to pay employer's
10 share of payroll taxes with respect to the wages portion of Settlement Share
11 within ten **(10) calendar days following the Effective Date**. Within fifteen **(15)**
12 **calendar days after Defendant funds** the Gross Settlement Amount, the
13 Settlement Administrator will pay to Participating Class Members, their
14 Individual Settlement Payments and to Aggrieved Employees, their Individual
15 PAGA Payments, along with all other payments under the settlement. (§50.I)

16 17 **C. TERMS OF RELEASES**

- 18 • Release of Claims by Participating Class Members: Upon the date the Court
19 enters a judgment order granting final approval of the Settlement and upon full
20 funding of the Gross Settlement Amount, all Class Members who do not timely
21 submit a valid Request for Exclusion do and will be deemed to have fully,
22 finally, and forever released, settled, compromised, relinquished and discharged
23 any and all of the Released Parties of and from any and all Released Claims
24 accruing during the Class Period. (§51.A)

- 1 • “Released Class Claims” means all claims and causes of action that were
2 asserted or reasonably could have been asserted against the Released Parties in
3 the Operative Complaint, as well as any claims that could have been asserted in
4 the Action based on the facts, legal theories, or causes of action alleged in the
5 Operative Complaint and any actual or proposed amendment thereto, including
6 but not limited to: (a) failure to pay minimum wages for all hours worked; (b)
7 failure to pay overtime wages for all time worked at overtime rate; (c) failure to
8 include all remuneration when calculating the overtime rate of pay; (d) failure to
9 provide compliant meal breaks and to provide premium pay in lieu thereof; (e)
10 failure to provide compliant rest breaks and to provide premium pay in lieu
11 thereof; (f) failure to provide complete, accurate, or properly formatted wage
12 statements; (g) waiting time penalties; (h) unfair business practices claims; (i)
13 PAGA as to said claims and facts alleged in the Operative Complaint; (j) any
14 other claims or penalties under the wage and hour laws pleaded in the Operative
15 Complaint; and (k) all damages, penalties, interest and other amounts
16 recoverable under said causes of action or legal theories of relief under
17 California and federal law, to the extent permissible, including but not limited to
18 the California Labor Code, the applicable Wage Orders, and the California
19 Business and Professions Code section 17200, et seq.. The Released Claims
20 include all claims for compensatory, consequential, incidental, liquidated,
21 punitive, and exemplary damages; restitution; interest; costs and fees; injunctive
22 or equitable relief; and any other remedies available at law or equity for the time
23 period from March 29, 2015, through April 19, 2021. (¶28)
- 24 • PAGA Release: Upon the date the Court enters a judgment order granting final
25 approval of the Settlement and upon full funding of the Gross Settlement

1 Amount, each Aggrieved Employee hereby fully, finally, and forever releases
2 and discharges each and every one of the Released Parties from all PAGA
3 claims, arising in whole or in part, during the PAGA Period, which in any
4 manner: (a) derive from any of the foregoing Released Class Claims; or (b) in
5 any manner arise out of any of the other facts or legal theories alleged or asserted
6 in: (i) the Action, whether formally raised in the operative complaint or (ii)
7 Plaintiff's PAGA letter to the LWDA on March 27, 2019 letter ("Released
8 PAGA Claims"). (together the Released Class Claims and Released PAGA
9 Claims are referred to as the "Released Claims"). (§51.B)

- 10 • "Released Parties" means Five Star and all of Five Star's current or former
11 parent companies, subsidiary companies and/or related companies, partnerships,
12 joint ventures, and/or staffing agencies, customers, and, with respect to each of
13 them, all of their and/or such related entities' predecessors and successors, and,
14 with respect to each such entity, all of its past, present, and future employees,
15 direct and/or indirect officers, partners, principals, members, managers,
16 consultants, directors, stockholders, owners, including but not limited to Tom
17 Blythe, representatives, assigns, attorneys, agents, insurers, employee benefit
18 programs (and the trustees, administrators, fiduciaries, and insurers of such
19 programs), and any other persons acting by, through, under, or in concert with
20 any of the persons or entities listed herein, and their successors. (§29)
- 21 • The named Plaintiff will also provide a general release. (§51.C)
- 22 • The releases are effective upon the date the Court enters a judgment order
23 granting final approval of the Settlement and upon full funding of the Gross
24 Settlement Amount (§51.A), to occur within ten (10) calendar days following the
25 Effective Date. (§50.I)

1 **D. SETTLEMENT ADMINISTRATION**

- 2 • The proposed Settlement Administrator is Phoenix Settlement Administrators
3 (¶34), which has provided evidence that no counsel are affiliated with it and that it
4 has adequate procedures in place to safeguard the data and funds to be entrusted to
5 it. (See Declaration of Jodey Lawrence, attached as Exhibit 8 to Huether Decl.)
- 6 • Settlement administration costs are estimated to be \$10,000 (¶35).
- 7 • Notice: The manner of giving notice is described below.
- 8 • Opt Out/Objection Dates: “Response Deadline” means the deadline by which
9 Class Members must fax or postmark to the Settlement Administrator a valid
10 Request for Exclusion or submit objections to the Settlement. The Response
11 Deadline will be 45 calendar days from the initial mailing of the Class Notice. The
12 Response Deadline will be extended 15 calendar days for any Class Member who
13 is re-mailed a Class Notice by the Settlement Administrator. (¶30) The deadline
14 also applies to the submission of workweek disputes. (¶50.C.ii)
- 15 ○ Participating Class Members may submit objections to the Settlement.
16 Aggrieved Employees shall not be permitted to object or request exclusion
17 from the PAGA portion of the Settlement and will receive an Individual
18 PAGA Payment regardless of whether they request exclusion or object to
19 the Settlement. (¶50.C)
- 20 ○ If more than ten percent (10%) of the Class Members timely submit valid
21 Requests for Exclusion, Five Star will have the sole right, but not the
22 obligation, to void the Settlement. (¶50.D)
- 23 • Notice of Final Judgment will be posted on the Settlement Administrator’s website
24 (Notice pg. 7).
- 25

1 **III. SETTLEMENT STANDARDS AND PROCEDURE**

2 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
3 of an entire class action, or of a cause of action in a class action, or as to a party,
4 requires the approval of the court after hearing.” “Any party to a settlement agreement
5 may serve and file a written notice of motion for preliminary approval of the settlement.
6 The settlement agreement and proposed notice to class members must be filed with the
7 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
8 Court, rule 3.769(c).

9 “In a class action lawsuit, the court undertakes the responsibility to assess
10 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
11 dismissal of a class action. The purpose of the requirement [of court review] is the
12 protection of those class members, including the named plaintiffs, whose rights may not
13 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
14 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
15 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
16 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
17 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
18 agreement to the extent necessary to reach a reasoned judgment that the agreement is
19 not the product of fraud or overreaching by, or collusion between, the negotiating
20 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
21 concerned.”] [internal quotation marks omitted].

22 “The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
24 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
25 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

1 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
2 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

3 Notwithstanding an initial presumption of fairness, “the court should not give
4 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
5 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
6 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
7 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
8 members, the court must independently and objectively analyze the evidence and
9 circumstances before it in order to determine whether the settlement is in the best
10 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
11 In that determination, the court should consider factors such as “the strength of
12 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
13 the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the
16 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
17 factors is not exclusive and the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
19 245.

20 At the same time, “[a] settlement need not obtain 100 percent of the damages
21 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
22 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated,’
24 this is no bar to a class settlement because ‘the public interest may indeed be served by
25

1 a voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.” *Id.* at 250.

3
4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5
6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

8
9 **1. The settlement was reached through arm’s-length bargaining**

10 On February 19, 2021, the parties attended a private mediation session with
11 Todd A. Smith, Esq., and ultimately agreed on settlement. (Declaration of Vincent C.
12 Granberry (“Granberry Decl.”) ¶¶ 7, 10.)

13
14 **2. The investigation and discovery were sufficient**

15 Class Counsel represents that their investigation included the review of
16 information from Plaintiff, information informally produced by Defendant including,
17 but not limited to a sampling of time records for approximately 49 employees and wage
18 records for approximately all putative class members, calculation of the total number of
19 workweeks worked by class members, as well as information regarding number of
20 current and former employees; number of pay periods; average rate of pay; and
21 Defendant’s relevant policies and procedures and employee handbooks. (*Id.* at ¶8.)
22 This is sufficient to value the case for settlement purposes.

23 //

24 //

25 //

1 **3. Counsel is experienced in similar litigation**

2 Class Counsel represent that they are experienced in class action litigation,
3 including wage and hour class actions. (*Id.* at ¶23.)
4

5 **4. Percentage of the class objecting**

6 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
7 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
8 the court receive objections to the proposed settlement, it will consider and either sustain
9 or overrule them at the fairness hearing.”].
10

11 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
12 **FAIR, ADEQUATE, AND REASONABLE**
13

14 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
15 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
16 does when it approves a settlement as in good faith under Code of Civil Procedure
17 section 877.6, the court must at least satisfy itself that the class settlement is within the
18 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
19 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
20 consider and weigh the nature of the claim, the possible defenses, the situation of the
21 parties, and *the exercise of business judgment* in determining whether the proposed
22 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
23 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).
24

25 //

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1 **1. Amount Offered in Settlement**

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

4 Class Counsel estimated Defendant’s maximum exposure at \$17,627,029 and
5 realistic exposure at \$985,044.53, based on the following analysis:

6

| Violation | Maximum Exposure | Maximum Exposure |
|------------------------------|-------------------------|-------------------------|
| 7 Unpaid Wages | \$3,873,354.00 | \$387,335.40 |
| 8 Meal Period Violations | \$1,613,897.50 | \$403,474.38 |
| 9 Rest Period Violations | \$1,613,897.50 | \$161,389.75 |
| 10 Wage Statement Violations | \$1,460,000.00 | No value |
| 11 Waiting Time Penalties | \$1,228,080.00 | No value |
| 12 PAGA Penalties | \$7,837,800.00 | \$32,845.00 |
| 13 Total | \$17,627,029.00 | \$985,044.53 |

14 (Granberry Decl. ¶¶ 11-20; Huether Decl. ¶¶ 7-13.)

15 Class Counsel obtained a gross settlement valued at \$450,000. This is
16 approximately 2.5% of Defendant’s maximum exposure and 45.7% of Defendant’s
17 realistic exposure.

18

19 **2. The Risks of Future Litigation**

20 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
21 motion practice and appeals) are also likely to prolong the litigation as well as any
22 recovery by the class members. Even if a class is certified, there is always a risk of
23 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
24 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
25 conducting class actions, which means, under suitable circumstances, entertaining

1 successive motions on certification if the court subsequently discovers that the propriety
2 of a class action is not appropriate.”].) Further, the settlement was negotiated and
3 endorsed by Class Counsel who, as indicated above, are experienced in class action
4 litigation. Based upon their investigation and analysis, the attorneys representing
5 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
6 adequate. (Granberry Decl. ¶22.)

7 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
8 which was sent a copy of the revised Settlement Agreement on December 28, 2021 and
9 has not yet objected. (See Proof of Service attached to Huether Decl.) Any objection by
10 it will be considered at the final fairness hearing.

11 **3. The Releases Are Limited**

12
13 The Court has reviewed the Releases to be given by the absent class members and
14 the named plaintiff. The releases, described above, are tailored to the pleadings and
15 release only those claims in the pleadings. There is no general release by the absent
16 class. The named plaintiff’s general release is appropriate given that he was represented
17 by counsel in its negotiation.

18 **4. Conclusion**

19
20 Class Counsel estimated Defendant’s maximum exposure at \$17,627,029 and
21 realistic exposure at \$985,044.53. Class Counsel obtained a gross settlement valued at
22 \$450,000. This is approximately 2.5% of Defendant’s maximum exposure and 45.7% of
23 Defendant’s realistic exposure, which, given the uncertain outcomes, including the
24 potential that the class might not be certified, that liability is a contested issue, and that
25

1 the full amount of penalties would not necessarily be assessed even if the class is certified
2 and liability found, the settlement is within the “ballpark of reasonableness.”

3
4 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

5 A detailed analysis of the elements required for class certification is not required,
6 but it is advisable to review each element when a class is being conditionally certified.

7 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
8 advocating class treatment must demonstrate the existence of an ascertainable and
9 sufficiently numerous class, a well-defined community of interest, and substantial
10 benefits from certification that render proceeding as a class superior to the alternatives.”

11 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

13 There are 365 putative Class Members. (Motion at 17:6-8.) Numerosity is
14 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
15 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
16 *class action is liberally construed,*” and citing examples wherein classes of as little as
17 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
18 (1972) 28 Cal.App.3d 1017, were upheld).

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

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

1 The class is defined above. Class Members are ascertainable through
2 Defendant's payroll records. (Motion at 17:18-19.)

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

4 "The community of interest requirement involves three factors: '(1) predominant
5 common questions of law or fact; (2) class representatives with claims or defenses typical
6 of the class; and (3) class representatives who can adequately represent the class.'"

7 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

8 As to predominant questions of law or fact, Plaintiff asserts that common questions
9 of law and fact unite the class, which include, but are not limited to: (1) Whether
10 Defendant failed to pay Class Members at the minimum wage; (2) Whether Defendant
11 failed to pay Class Members at their overtime wage; (3) Whether Defendant failed to
12 provide the Class Members meal period premium wages for missed meal periods; (4)
13 Whether Defendant failed to provide the Class Members rest period premium wages for
14 missed rest periods; (5) Whether Defendant failed to provide the Class Members
15 complete and accurate wage statements; (6) Whether Class Members are entitled to
16 waiting time penalties for Defendants' failure to pay all wages upon separation of
17 employment; and (7) Whether Defendant violated Business and Professions Code section
18 17200. (Motion at 18:3-12.)

19 As to typicality, Plaintiff asserts that he suffered the same alleged violations as the
20 class as a whole (e.g. failure to pay wages for all hours of work at the minimum wage
21 rate, failure to pay wages for all hours of work at the overtime wage rate, failure to
22 include all remuneration when calculating the overtime rate of pay, failure to provide
23 meal periods and meal period premium wages, failure to pay rest period premium wages
24 for missed and/or non-compliant rest periods, failure to provide complete and accurate
25

1 wage statements, and failure to pay all wages due upon separation of employment).
2 (Motion at 17:9-17.)

3 As to adequacy, Plaintiff represents that he understands he must protect the interest
4 of the class above his own, has participated in the litigation, and is aware of the risks of
5 serving as class representative. (Declaration of Alfredo Angulo ¶¶ 6-9.) As previously
6 stated, Class Counsel have experience in class action litigation.

7
8 **4. Substantial Benefits Exist**

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

11
12 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS
13 OF DUE PROCESS**

14 The purpose of notice is to provide due process to absent class members. A practical
15 approach is required, in which the circumstances of the case determine what forms of
16 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
17 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
18 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
19 stake of the individual class members; (4) the cost of notifying class members; (5) the
20 resources of the parties; (6) the possible prejudice to class members who do not receive
21 notice; and (7) the res judicata effect on class members.

22 **1. Method of class notice**

23 No later than seven (7) calendar days after the Court enters the Preliminary
24 Approval Order, Defendant will provide to the Settlement Administrator the Class Data.
25 The Parties agree that the contents of the Class Data are confidential but may be

1 disclosed to the Settlement Administrator and Class Counsel solely for the purpose of
2 effectuating the terms of the Settlement, and shall not be shared with anyone other than
3 the Settlement Administrator for any purpose. All Class Data will be used for
4 settlement notification and settlement administration only, and shall not be used for any
5 other purpose by Class Counsel or any other individual or entity. (§50.B.i)

6 Using best efforts to mail it as soon as possible, and in no event later than
7 fourteen (14) calendar days after receiving the Class Data, the Settlement Administrator
8 will conduct a search via the National Change of Address Database on all Class
9 Member's address and mail the Class Notice to all Class Members via first-class U.S.
10 mail using the mailing address provided by Five Star, unless modified by any updated
11 address information that the Settlement Administrator obtains in the course of
12 administration of the Settlement. (§50.B.iii)

13 In the event that a Class Notice is returned as undeliverable with a forwarding
14 address, the Settlement Administrator will promptly re-mail the Class Notice within
15 three (3) business days. If a Class Notice is returned as undeliverable without a
16 forwarding address, the Settlement Administrator will promptly conduct a skip trace
17 and re-mail the Class Notice to any updated address obtained within three (3) business
18 days. (§50.B.iv) Those Class Members who receive a re-mailed Class Notice will have
19 (i) an additional fifteen (15) calendar days from the original Response Deadline to fax
20 or postmark a Request for Exclusion or submit an objection to the Settlement. (§49)

21 **2. Content of class notice.**

22 A copy of the proposed class notice is attached to the Settlement Agreement as
23 Exhibit A. The notice includes information such as: a summary of the litigation; the
24 nature of the settlement; the terms of the settlement agreement; the maximum
25 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,

1 the enhancement award, and claims administration costs); the procedures and deadlines
2 for participating in, opting out of, or objecting to, the settlement; the consequences of
3 participating in, opting out of, or objecting to, the settlement; and the date, time, and
4 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
5 given in both English and Spanish (§35).

6 **3. Settlement Administration Costs**

7 Settlement administration costs are estimated at **\$10,000**, including the cost of
8 notice (§35). Prior to the time of the final fairness hearing, the settlement administrator
9 must submit a declaration attesting to the total costs incurred and anticipated to be
10 incurred to finalize the settlement for approval by the Court.

11 12 **E. ATTORNEY FEES AND COSTS**

13 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
14 implied, that has been entered into with respect to the payment of attorney fees or the
15 submission of an application for the approval of attorney fees must be set forth in full in
16 any application for approval of the dismissal or settlement of an action that has been
17 certified as a class action.”

18 Ultimately, the award of attorney fees is made by the court at the fairness
19 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
20 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
21 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
22 1132-1136. In common fund cases, the court may use the percentage method. If
23 sufficient information is provided a cross-check against the lodestar may be conducted.
24 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
25 agreement by the parties to the contrary, “the court ha[s] an independent right and

1 responsibility to review the attorney fee provision of the settlement agreement and
2 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
3 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

4 The question of class counsel’s entitlement to **\$150,000 (33 1/3%)** in attorney
5 fees will be addressed at the final fairness hearing when class counsel brings a noticed
6 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
7 the court with current market tested hourly rate information and billing information so
8 that it can properly apply the lodestar method and must indicate what multiplier (if
9 applicable) is being sought.

10 Class counsel should also be prepared to justify the costs sought (capped at
11 **\$10,000**) by detailing how they were incurred.

12
13 **F. SERVICE AWARD**

14 The Settlement Agreement provides for a service award of up to **\$8,900** for the
15 class representative (¶32). Trial courts should not sanction enhancement awards of
16 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
17 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the
18 form of quantification of time and effort expended on the litigation, and in the form of
19 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
20 required in order for the trial court to conclude that an enhancement was ‘necessary to
21 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
22 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
23 original.

1 In connection with the final fairness hearing, the named Plaintiffs must submit a
2 declaration attesting to why they should be compensated for the expense or risk they
3 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

4 The Court will decide the issue of the enhancement award at the time of final
5 approval.

6
7 **V. CONCLUSION AND ORDER**

8 (1) Grants preliminary approval of the settlement as fair, adequate, and
9 reasonable;

10 (2) Grants conditional class certification;

11 (3) Appoints Alfredo Angulo as Class Representative;

12 (4) Appoints Lavi & Ebrahimian, LLP as Class Counsel;

13 (5) Appoints Phoenix Settlement Administrators as Settlement Administrator;

14 (6) Approves the proposed notice plan; and

15 (7) Approves the proposed schedule of settlement proceedings as follows:

- 16 • Preliminary approval hearing: January 21, 2022
 - 17 • Deadline for Defendant to provide class list to settlement administrator:
18 February 1, 2022 (within 7 business days from preliminary approval)
 - 19 • Deadline for settlement administrator to mail notices: February 15, 2022 (within
20 14 calendar days after receiving the Class Data)
 - 21 • Deadline for class members to opt out: April 1, 2022 (45 calendar days from the
22 initial mailing of the Notice Packets)
 - 23 • Deadline for class members to object: April 1, 2022 (45 calendar days from the
24 initial mailing of the Notice Packets)
- 25

- 1 • Deadline for class counsel to file motion for final approval 16 court days prior to
2 final fairness hearing)
- 3 • Final fairness hearing: May 24, 2022 at 11:00 a.m.

7 Dated: JAN 21 2022


AMY A. HOGUE

Hon. Amy D. Hogue
Judge of the Superior Court