

FILED
Superior Court of California
County of Los Angeles

APR 09 2021

Sherri R. Carter, *deputy* Officer/Clerk
Alfredo Morales deputy
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Case No.: 18STCVO5751

JOHN MEDIODIA, on behalf of himself
and all other similarly situated,

Plaintiff,

v.

SOCAL JET SERVICES, INC., a California
corporation; ANDY FUENTES, an
individual; and DOES 1-100, inclusive,

Defendants.

ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT ON CONDITION

Date: April 9, 2021
Dept.: SSC-7
Time: 11:00 a.m.

1 **I. BACKGROUND**

2 This is a wage and hour class action. Plaintiff filed this class action Complaint on
3 November 20, 2018 asserting claims for (1) Failure to Pay Minimum Wage, (2) Failure
4 to Pay Overtime, (3) Failure to Pay All Wages on Separation, (4) Failure to Furnish
5 Accurate Itemized Wage Statements, (5) Unfair Business Practices, (6) Failure to Provide
6 Meal Periods, (7) Failure to Provide Rest Periods, (8) Failure to Timely Provide
7 Personnel Records, (9) Failure to Timely Provide Payroll Records, and (10) Private
8 Attorney General’s Act (“PAGA”) for Recovery of Civil Penalties.

9 Counsel represents that Plaintiff engaged in investigation and discovery which
10 included but was not limited to, (1) obtaining and reviewing Plaintiff’s personnel file,
11 payroll records, and time records; (2) researching Defendants, SoCal’s organization and
12 structure, and Defendant Fuentes’ relationship to the company; (3) identifying,
13 researching, and pleading the appropriate claims; (4) exhausting administrative remedies;
14 (5) identifying, requesting, securing, and reviewing pertinent policies, practices, and
15 procedures; (6) identifying, requesting, and securing time and payroll data for all
16 Technician Class members; (7) securing copies of wage statements for Wage Statement
17 Class Members, (8) personally evaluating the data provided and calculating the damages
18 of class members; (9) creating a reliable damages model; and (10) developing and
19 implementing a strategy for mediation and settlement.

20 On March 9, 2020, the parties participated in a mediation with mediator Steven A.
21 Paul, Esq. At the close of the mediation, the parties agreed to a Memorandum Of
22 Understanding (“MOU”) that was executed by all parties and counsel. Following the
23 mediation, the parties engaged in further discussion regarding the scope of the class sizes
24 and the appropriate temporal period for class claims. As a result of these further
25

1 discussions, the agreement reflected in the MOU was modified to 1) increase the
2 Maximum Settlement Amount, and 2) expand the temporal scope of the Released Claims.

3 On May 29, 2020, the Parties executed a Settlement Agreement, a fully executed
4 of which is attached to the Declaration of Jenny D. Baysinger (“Baysinger Decl.”) as
5 Exhibit A.

6 On September 28, 2020 and December 22, 2020, the Court issued checklists of
7 items for the parties to address and continued preliminary approval. In response, on
8 March 2, 2021, counsel filed a Motion for Preliminary Approval (“Supp. Brief”) and an
9 Amended Settlement agreement attached to the Declaration of Jenny D. Baysinger
10 (“Baysinger Supp. Decl.”) as Exhibit A.

11 The Court issued a tentative ruling granting preliminary approval of the settlement
12 on three conditions: 1) all counsel and parties provide declarations disclosing any
13 interest/involvement with the *cy pres* (or lack thereof); 2) the Plaintiff providing a
14 declaration by which the Court can ascertain his adequacy as a class; and 3) the Notice
15 being revised to disclose the maximum amount sought as an incentive award to the
16 Named Plaintiff. The parties have met the second and third condition, Defendant and its
17 counsel have met the first condition. Plaintiff and his counsel have also now met the first
18 condition, having provided declarations disclaiming a relationship with the *cy pres*,
19 Special Advocates for Children of Los Angeles.

20 The Court therefore grants preliminary approval provided Plaintiff and his counsel
21 file the relevant declarations within five days.

22
23 **II. THE TERMS OF THE SETTLEMENT**

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

1 “Class” and “Class Members” refers to all current and former California
2 employees of Defendant who either (i) was non-exempt, performed mechanic services,
3 and was paid a 160-hour minimum monthly compensation at any time between August
4 31, 2014 and August 31, 2018, and/or (ii) received a wage statement at any time between
5 August 31, 2017 and May 8, 2020. To allow for orderly distribution of the Net Settlement
6 Amount and releases that properly track the claims advanced, the Parties have agreed to
7 the following specific classes:

- 8 a. All current and former California non-exempt employees of Defendants who
9 performed mechanic services and were paid a 160-hour minimum monthly
10 compensation at any time between August 31, 2014 and August 31, 2018 (the
11 “Technician Class”); and
12 b. All current and former California employees of Defendants who received a
13 wage statement at any time between August 31, 2017 and May 8, 2020 (the
14 “Wage Statement Class”). (Settlement Agreement, ¶11.)

15 “Technician Class Member” shall refer to all current and former California non-
16 exempt employees of Defendants who performed mechanic services and were paid a 160-
17 hour minimum monthly compensation at any time during the Technician Class Period.
18 (¶38.)

19 “Technician Class Period” means August 31, 2014 through May 8, 2020. (¶39.)

20 “Wage Statement Class Members” refers to all current and former California
21 Employees of Defendants who received a wage statement at any time during the Wage
22 Statement Class Period. (¶40.)

23 “Wage Statement Class Period” means August 31, 2017 through May 8, 2020.
24 (¶41.)
25

1 There are 104 Class Members. (¶8.a.) The Parties agree that there are
2 approximately 43 Technician Class Members and 61 Wage Statement Class Members. If
3 either of these numbers increases by 10% or more, there shall be an equal increase in the
4 MSA (i.e., if the number of class members increases by 11%, the MSA shall increase by
5 1%, etc.). (¶46.)

6 The Parties stipulate and agree to the conditional certification of this Action for
7 purposes of this Settlement only. (¶8.)

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

9 The essential monetary terms are as follows:

10 The Maximum Settlement Amount (“MSA”) is \$200,000 (¶24.) This includes
11 payment of a PAGA penalty of \$10,000 to be paid 75% to the LWDA (\$7,500) and 25%
12 to the Aggrieved Employees (\$2,500) (¶48);

13 The Net Settlement Amount (“Net”) (\$93,333.33) is the MSA less:

- 14 ○ Up to \$66,666.67 (1/3) for attorney fees (¶44);
 - 15 ○ Up to \$12,500 for attorney costs (*Ibid.*);
 - 16 ○ Up to \$10,000 for a service award to the proposed class representative
17 (*Ibid.*);
 - 18 ○ \$10,000 allocated for PAGA Penalties (¶48); and
 - 19 ○ Estimated \$7,500 for settlement administration costs (*Ibid.*)
- 20 ● Employer taxes must be paid by Defendants. (¶42.)
 - 21 ● 60% of the Net is allocated to the Technician Class and 40% is allocated to the
22 Wage Statement Class. (¶44.)
 - 23 ● Assuming the Court approves all maximum requested deductions, approximately
24 \$93,333.33 will be available for automatic distribution to participating class
25 members. Assuming full participation, the average settlement share will be

1 approximately \$897.44. ($\$93,333.33 \text{ Net} \div 104 \text{ class members} = \897.44). In
2 addition, each class member will receive a portion of the PAGA penalty, estimated
3 to be \$24.04 per class member. ($\$2,500 \text{ 25\% of } \$10,000 \text{ PAGA penalty} \div 104$
4 class members = \$24.04).

- 5 • There is no Claim Requirement. (§60.)
- 6 • The settlement is not reversionary. (§42.)
- 7 • Individual Settlement Share Calculation for Technician Class: The amount of each
8 Participating Technician Class Member's Settlement Share shall be determined by
9 the Settlement Administrator as follows: Settlement Shares will be proportionally
10 based upon the number of workweeks worked by Participating Technician Class
11 Members during the relevant period (August 31, 2014 through May 8, 2020). The
12 workweeks worked by each Participating Technician Class Member shall be
13 divided by the total workweeks worked by all Participating Technician Class
14 Members resulting in a payment ratio for each Participating Technician Class
15 Member. Each Participating Technician Class Member's payment ratio is then
16 multiplied by the Net Settlement Amount allocated to the Technician Class. (§61.)

- 17 ○ Tax Withholdings: 20% as wages, 40% as interest, and 40% as penalties.
18 (§51.)

- 19 • The amount of each Participating Wage Statement Class Member's Settlement
20 Share shall be determined by the Settlement Administrator as follows: Settlement
21 Shares will be proportionally based upon the number of wage statements issued to
22 Participating Wage Statement Class Members during the relevant period (August
23 31, 2017 through May 8, 2020). The number of wage statements issued to each
24 Participating Wage Statement Class Member shall be divided by the total wage
25 statements issued to all Participating Wage Statement Class Members resulting in

1 a payment ratio for each Participating Wage Statement Class Member. Each
2 Participating Wage Statement Class Member's payment ratio is then multiplied
3 by the Net Settlement Amount allocated to the Wage Statement Class. 61.)

4 ○ Tax Withholdings: 100% as penalties. (§51.)

- 5 ● **Uncashed Settlement Payment Checks:** The parties designated Court Appointed
6 Special Advocates for Children of Los Angeles to receive any unpaid residue or
7 unclaimed or abandoned class member funds and interest thereon pursuant to
8 Cal. Code of Civ. Pro. § 384 in the event that any checks mailed to a
9 Participating Class Member remain uncashed after the expiration of 180 days
10 from mailing. (§53.) Plaintiff and his Counsel have not confirmed that they have
11 no affiliation with that entity. See Cal. Code of Civ. Pro. § 382.4. Approval
12 herein is contingent on all parties and counsel providing declarations disclosing
13 the interest of involvement with the cy pres (or lack thereof).

- 14 ● **Funding and Payment of the Settlement:** The Defendants agree to pay the MSA
15 in installment payments as follows:

- 16 ○ Initial Payment – Defendants will transmit \$100,000 to the QSF within 10
17 calendar days of the Effective Date or December 15, 2020, whichever is
18 later. (§43.i.)

- 19 ○ Monthly Installment Payments – Defendants will transmit \$15,000 to the
20 QSF on or before the 1st day of the month, for each of the 6 months
21 following the Initial Payment, and \$10,000 on the 1st day of the month on
22 the seventh calendar month after the initial payment is due. (§43.)

- 23 ■ Defendant has provided a declaration evidencing the need for an
24 installment plan. (Declaration of Andy Fuentes, *passim*.)

- 1 • The MSA will be proportionally distributed in 2 separate distributions, the first
2 within 10 calendar days after the Initial Payment is deposited into the QSF and
3 the second within 10 calendar days after the eighth and final Monthly
4 Installment Payment is deposited into the QSF. (¶45.)

5
6 **C. TERMS OF RELEASES**

- 7 • Participating Class Members, i.e., those that do not opt-out, and their respective
8 heirs, beneficiaries, devisees, executors, administrators, trustees, conservators,
9 guardians, personal representatives, successors-in-interest, and assigns, shall
10 forever and completely release and discharge Defendants and Released Parties
11 from the following claims, collectively the Released Claims: (¶66)
- 12 ○ Participating Technician Class Members release Defendants and the
13 Released Parties of any and all claims for failure to pay minimum, overtime
14 and double-time wages, failure to pay all wages due to discharged or
15 quitting employees upon separation or termination, failure to furnish
16 accurate itemized wage statements, and violations of California Business
17 and Professions Code section 17200 et. seq., as well as any and all claims
18 under California law that were or could have been pled based upon the
19 factual allegations contained in the Complaint filed in the Class Action and
20 asserted on behalf of the Technician Class and that occurred between
21 August 31, 2014 and May 8, 2020. (¶66(i).)
 - 22 ○ Participating Technician Class Members who are currently employed by
23 Defendants and who participate in the Settlement and receive a payment
24 there under shall, by virtue of the same, release any Labor Code section
25 203 claims for failure to pay wages due and owing at the end of

1 employment based upon the claims set forth above in Paragraph 66(i).
2 (§66(ii).)

3 ○ Participating Wage Statement Class Members release Defendants and the
4 Released Parties of any and all claims for failure to furnish accurate
5 itemized wage statements in violation of Labor Code section 226 that were
6 or could have been pled based upon the factual allegations contained in the
7 Complaint filed in the Class Action and asserted on behalf of the Wage
8 Statement Class and that occurred between August 31, 2017 and May 8,
9 2020. (§66(iii).)

10 ○ “Released Parties” means (i) Defendants SoCal Jet Services, Inc. and Andy
11 Fuentes; (ii) each of Defendants’ respective past, present and future
12 parents, subsidiaries, and affiliates including, without limitation, any
13 corporation, limited liability company, partnership, trust, foundation, and
14 nonprofit entity which controls, is controlled by, or is under common
15 control with Defendants; (iii) the past, present and future shareholders,
16 directors, officers, agents, employees, attorneys, insurers, members,
17 partners, managers, contractors, agents, consultants, representatives,
18 administrators, fiduciaries, benefit plans, transferees, predecessors,
19 successors, and assigns of any of the foregoing; and (iv) any individual or
20 entity which could be jointly liable with any of the foregoing. (§33.)

21 ● PAGA Release: As of the Effective Date, Plaintiff, on behalf of himself the Labor
22 and Workforce Development Agency, and the other aggrieved employees in the
23 State of California, releases Defendants and Released Parties from any and all
24 PAGA Claims based upon Defendants’ alleged violation of Labor Code sections
25 arising out of or related to events alleged in the Complaint filed in the Class

1 Action, including but not limited to, Labor Code sections 201, 202, 203, 204, 226,
2 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, and 1198, between
3 August 31, 2017 and May8, 2020. The claims described above are referred to
4 herein as the “Released PAGA Claims.” (¶67.)

- 5 • The named Plaintiff will also provide a general release and a waiver of the
6 protections of Cal. Civ. Code §1542. (¶68.)
- 7 • The releases are effective 14 calendar days after Defendants fully fund the QSF.
8 (¶¶66-67.)

9 **D. SETTLEMENT ADMINISTRATION**

- 10 • The proposed Settlement Administrator is Phoenix Settlement Administrators
11 which has provided evidence that no counsel are affiliated with it and that it has
12 adequate procedure in place to safeguard the data and funds to be entrusted to it.
13 (¶35; Declaration of Jodey Lawrence, *passim*.)
- 14 • Settlement administration costs are estimated to be \$7,500. (¶44.)
- 15 • Notice: The manner of giving notice is described below.
- 16 • The “Response Period” or “Response Deadline” means the final date, 45 days
17 after the Settlement Administrator mails the Class Notice to the Class Members,
18 or 15 days after any re-mailed Notice Packets, whichever is later, upon which
19 Class Members may submit a request for exclusion or objection to the
20 Settlement. (¶34.) A Class Member may, before the Response Deadline, dispute
21 the amount of his or her Settlement Share, and the data used to calculate it.
22 (¶62.)

- 1 • The Court’s Order on Final Approval and Final Judgment will be posted on the
2 Administrator’s informational website, which shall remain active until 30 days
3 following distribution. (§69.)
4

5 **D. ATTORNEYS’ FEES**

6 Counsel for the proposed class seek \$66,666.67 (1/3) in attorney’s fees and \$12,500
7 in costs. (§44.)
8

9 **E. SERVICE AWARD**

10 The named plaintiff seeks an enhancement awards of \$10,000. (§44.)
11

12 **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

20 “In a class action lawsuit, the court undertakes the responsibility to assess
21 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
22 dismissal of a class action. The purpose of the requirement [of court review] is the
23 protection of those class members, including the named plaintiffs, whose rights may not
24 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
25 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal

1 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
2 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
3 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
4 agreement to the extent necessary to reach a reasoned judgment that the agreement is
5 not the product of fraud or overreaching by, or collusion between, the negotiating
6 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
7 concerned.”] [internal quotation marks omitted].

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

14 Notwithstanding an initial presumption of fairness, “the court should not give
15 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
16 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
17 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
18 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
19 members, the court must independently and objectively analyze the evidence and
20 circumstances before it in order to determine whether the settlement is in the best
21 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
22 In that determination, the court should consider factors such as “the strength of
23 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
24 the risk of maintaining class action status through trial, the amount offered in
25 settlement, the extent of discovery completed and stage of the proceedings, the

1 experience and views of counsel, the presence of a governmental participant, and the
2 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
3 factors is not exclusive, and the court is free to engage in a balancing and weighing of
4 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
5 245.

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

13 14 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

15 16 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

18 19 **1. The settlement was reached through arm’s-length bargaining**

20 On March 9, 2020, the parties participated in a mediation with mediator Steven A.
21 Paul, Esq. At the close of the mediation, the parties agreed to a Memorandum Of
22 Understanding (“MOU”) that was executed by all parties and counsel. Following the
23 mediation, the parties engaged in further discussion regarding the scope of the class sizes
24 and the appropriate temporal period for class claims. As a result of these further
25 discussions, the agreement reflected in the MOU was modified to 1) increase the

1 Maximum Settlement Amount, and 2) expand the temporal scope of the Released Claims.
2 On May 29, 2020, the Parties executed a Settlement Agreement (Baysinger Decl., ¶¶14-
3 16.)

4 5 **2. The investigation and discovery were sufficient**

6 Counsel represents that Plaintiff engaged in investigation and discovery which
7 included but was not limited to, (1) obtaining and reviewing Plaintiff's personnel file,
8 payroll records, and time records; (2) researching Defendants, SoCal's organization and
9 structure, and Defendant Fuentes' relationship to the company; (3) identifying,
10 researching, and pleading the appropriate claims; (4) exhausting administrative remedies;
11 (5) identifying, requesting, securing, and reviewing pertinent policies, practices, and
12 procedures; (6) identifying, requesting, and securing time and payroll data for all
13 Technician Class members; (7) securing copies of wage statements for Wage Statement
14 Class Members, (8) personally evaluating the data provided and calculating the damages
15 of class members; (9) creating a reliable damages model; and (10) developing and
16 implementing a strategy for mediation and settlement. (*Id.* at ¶12.)

17 This is sufficient to value the case for settlement purposes.

18 19 **3. Counsel is experienced in similar litigation**

20 Class Counsel represent that are experienced in class action litigation, including
21 wage and hour class actions. (*Id.* at ¶¶53-56.)

22 23 **4. Percentage of the class objecting**

24 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
25 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 ["Should

1 the court receive objections to the proposed settlement, it will consider and either sustain
2 or overrule them at the fairness hearing.”].

3
4 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED FAIR,**
5 **ADEQUATE, AND REASONABLE**
6

7 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
8 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
9 does when it approves a settlement as in good faith under Code of Civil Procedure
10 section 877.6, the court must at least satisfy itself that the class settlement is within the
11 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
12 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
13 consider and weigh the nature of the claim, the possible defenses, the situation of the
14 parties, and *the exercise of business judgment* in determining whether the proposed
15 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
16 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).
17

18 **1. Amount Offered in Settlement**

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

21 Class Counsel estimated Defendant’s maximum exposure at **\$742,221.62** broken
22 down as follows:

CLAIM	EXPOSURE
Unpaid Wages	\$90,047.50
Waiting Time Penalties	\$67,953.60

1	Wage Statement Violations	\$185,050
2	Interest	\$44,670.52
3	PAGA	\$354,500.00
4	TOTAL	\$742,221.62

5 (Baysinger Supp. Decl., ¶¶22-34)

6 Class Counsel obtained a gross settlement valued at \$200,000. This is 26.9% of
7 Defendant's maximum exposure of **\$742,221.62**.

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

10 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
11 motion practice and appeals) are also likely to prolong the litigation as well as any
12 recovery by the class members. Even if a class is certified, there is always a risk of
13 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
14 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
15 conducting class actions, which means, under suitable circumstances, entertaining
16 successive motions on certification if the court subsequently discovers that the propriety
17 of a class action is not appropriate."] Further, the settlement was negotiated and
18 endorsed by Class Counsel who, as indicated above, are experienced in class action
19 litigation. Based upon their investigation and analysis, the attorneys representing
20 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
21 adequate. (Baysinger Decl., ¶38.)

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

25 ///

1 ///

2 ///

3 **3. The Releases Are Limited**

4 The Court has reviewed the Releases to be given by the absent class members and
5 the named plaintiffs. The releases, described above, are tailored to the pleadings and
6 release only those claims in the pleadings. There is no general release by the absent
7 class. The named plaintiff's general releases are appropriate given that he was
8 represented by counsel in its negotiation.

9

10 **4. Conclusion**

11 Class Counsel estimated Defendant's maximum exposure at Class Counsel estimated
12 Defendant's maximum exposure at **\$742,221.62**.

13 Class Counsel obtained a gross settlement valued at \$200,000. This is 26.9% of
14 Defendant's maximum exposure, which, given the uncertain outcomes, including the
15 potential that the class might not be certified, that liability is a contested issue, and that
16 the full amount of penalties would not necessarily be assessed even if the class is certified
17 and liability found, the settlement is within the "ballpark of reasonableness."

18

19 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

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

22 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
23 advocating class treatment must demonstrate the existence of an ascertainable and
24 sufficiently numerous class, a well-defined community of interest, and substantial

25

1 benefits from certification that render proceeding as a class superior to the alternatives.”
2 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

3 4 **1. The Proposed Class is Numerous**

5 There are 104 Class Members (43 Technician Class members and 61 Wage
6 Statement Class Members). (Motion, ¶III.A.) Numerosity is established. *Franchise Tax*
7 *Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating
8 that the “*requirement that there be many parties to a class action is liberally*
9 *construed,*” and citing examples wherein classes of as little as 10, *Bowles v. Superior*
10 *Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017,
11 were upheld).

12 13 **2. The Proposed Class Is Ascertainable**

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

19 The class is defined above. Class Members are ascertainable through
20 Defendant’s payroll records. (Motion, ¶IV.A.)

21 22 **3. There Is A Community of Interest**

23 “The community of interest requirement involves three factors: ‘(1) predominant
24 common questions of law or fact; (2) class representatives with claims or defenses typical
25

1 of the class; and (3) class representatives who can adequately represent the class.’’

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

3 Counsel contends that the claims of Plaintiff and the Class Members all flow from
4 the same facts and legal claims, i.e., Defendants’ alleged unlawful pay policies for
5 Technician Class Members that resulted in unpaid minimum and overtime wages, and the
6 omission of Defendants’ address on its wage statements (at least until August 2018), and
7 failures to accurately identify total hours worked on the wage statements furnished to
8 Wage Statement Class Members. (Motion, ¶IV.B.)

9 Counsel further contends that Plaintiff’s claims are typical of the claims of each
10 Class because they arise from the same factual bases and are based upon the same legal
11 theories as those applicable to the Class Members. (Motion, ¶IV.C.) It is represented that
12 Plaintiff and Class Counsel have no conflicts with the class. (Motion, ¶IV.D.) Class
13 Counsel have experience in class action litigation. (Motion, ¶IV.F.) The Court now has
14 sufficient information based on the Supplemental Declaration of Mr. Mediodia, to
15 confirm the adequacy of the class representative including testimony that he understands the
16 obligations of being an adequate class representative, the details of what he has done or will do
17 to demonstrate the adequacy of his representative, and the substantial burden he will undertake in
18 order to represent the putative class in this case. (See *Soderstedt v. CBIZ Southern California,*
19 *LLC* (2011) 197 Cal.App.4th 133, 155-156; *Jones v. Farmers Ins. Exchange* (2013) 221
20 Cal.App.4th 986, 998-999).

21 **4. Substantial Benefits Exist**

22
23 Given the relatively small size of the individual claims, a class action is superior to
24 separate actions by the class members.
25

1 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS**
2 **OF DUE PROCESS**

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

11
12 **1. Method of class notice**

13 Within 10 days of the Court's entry of the Order of Preliminary Approval,
14 Defendants shall provide the Settlement Administrator with the Class List. (¶57.)
15 Promptly upon receipt of the Class List, the Settlement Administrator shall access the
16 National Change of Address Database ("NCOA") and update the addresses provided by
17 Defendants. Within 10 calendar days after receipt of the Class List, the Settlement
18 Administrator shall mail the Class Notice to each Class Member via first-class mail.
19 Any Notice Packets returned to the Settlement Administrator as non-deliverable on or
20 before the Response Deadline will be sent promptly, within three calendar days, via
21 regular First-Class U.S. Mail to the forwarding address affixed thereto and the
22 Settlement Administrator will indicate the date of such re-mailing on the Notice Packet.
23 If no forwarding address is provided, the Settlement Administrator will promptly
24
25

1 attempt to determine the correct address using a skip-trace, or other search using the
2 name, address and/or Social Security number of the Class Member involved and will
3 then perform a single re-mailing within five calendar days of receipt of the returned
4 Notice Packet. Any re-mailed Class Notice shall be identical to the original Class
5 Notice except that it will identify a date certain for the response that is either 45 days
6 after the original mailing or 15 days after the re-mailing, whichever is later. Within 10
7 calendar days after receipt of the Class List, or as otherwise directed by the Court, the
8 Settlement Administrator shall also launch its informational website. The URL for the
9 informational website will be www.socaljetclassaction.com or some other closely
10 related iteration. In addition to the information contained in the Class Notice, the
11 Settlement Administrator shall also post the Order of Preliminary Approval, the motion
12 for final approval, the motion for attorneys' fees, costs and Service Payment, and Order
13 of Final Approval when each is filed with the Court. Any changes in the hearing date
14 for final approval will also be promptly posted on the informational website. The
15 informational website shall remain active until 30 calendar days after the final
16 distribution to the cy pres. (¶58.) The Class Notice will be mailed in both English and
17 Spanish. (¶14.)

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

22 A copy of the proposed class notice is attached to the Amended Settlement
23 Agreement as Exhibit 1. The notice includes information such as: a summary of the
24 litigation; the nature of the settlement; the terms of the settlement agreement; the
25 maximum deductions to be made from the gross settlement amount (i.e., attorney fees

1 and costs, the enhancement award, and claims administration costs); the procedures and
2 deadlines for participating in, opting out of, or objecting to, the settlement; the
3 consequences of participating in, opting out of, or objecting to, the settlement; and the
4 date, time, and place of the final approval hearing. See Cal Rules of Court, rule
5 3.766(d). The class notice is generally acceptable and has been modified to disclose the
6 amount sought as an incentive payment to the Named Plaintiff (i.e., \$10,000.).

7 8 **3. Settlement Administration Costs**

9 Settlement administration costs are estimated at **\$7,500**, including the cost of
10 notice. (§44.) Prior to the time of the final fairness hearing, the settlement administrator
11 must submit a declaration attesting to the total costs incurred and anticipated to be
12 incurred to finalize the settlement for approval by the Court.

13 14 **E. ATTORNEY FEES AND COSTS**

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

20 Ultimately, the award of attorney fees is made by the court at the fairness
21 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
22 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans,*
23 *Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th
24 1122, 1132-1136. In common fund cases, the court may use the percentage method. If
25 sufficient information is provided a cross-check against the lodestar may be conducted.

1 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
2 agreement by the parties to the contrary, “the court ha[s] an independent right and
3 responsibility to review the attorney fee provision of the settlement agreement and
4 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
5 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

6 The question of class counsel’s entitlement to **\$66,666.67** (1/3) in attorney fees
7 will be addressed at the final fairness hearing when class counsel brings a noticed
8 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
9 the court with current market tested hourly rate information and billing information so
10 that it can properly apply the lodestar method and must indicate what multiplier (if
11 applicable) is being sought.

12 Class counsel should also be prepared to justify the costs sought (capped at
13 **\$12,500**) by detailing how they were incurred.

14
15 **F. SERVICE AWARD**

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

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

11 (2) Grants conditional class certification;

12 (3) Appoints John Mediodia Class Representatives;

13 (4) Appoints Mayall Hurley, P.C., as Class Counsel;

14 (5) Appoints tor Phoenix Settlement Administrators as Settlement Administrator;

15 (6) Approves the proposed notice plan; and

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

- 17 ● Preliminary approval hearing: April 9, 2021
- 18 ● Deadline for Defendant to provide class list to settlement administrator: April
19 19, 2021 (within 10 days of preliminary approval)
- 20 ● Deadline for settlement administrator to mail notices: April 29, 2021 (within 10
21 days from receiving the class list)
- 22 ● Deadline for class members to opt out: June 14, 2021 (45 days from the initial
23 mailing of the Notice Packets)
- 24 ● Deadline for class members to object: June 14 , 2021 (45 days from the initial
25 mailing of the Notice Packets)

- Deadline for class counsel to file motion for final approval: (16 court days prior to final fairness hearing)
- Final fairness hearing: August 17, 2021, at 11:00.

Dated: April 9, 2021



AMY A. HOGUE

Judge of the Superior Court