

FILED
Superior Court of California
County of Los Angeles

AUG 25 2021

Sherril R. Carr, Officer/Clerk
By Alfredo Morales deputy
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

11 FAUSTINO ARCINIEGA, on behalf of
12 himself and all other similarly situated,

13 Plaintiff,

14 v.

15 PROTECTIVE INDUSTRIES, INC., A
16 Delaware Corporation; CAPPLUGS, an
17 unknown entity, EVERGREEN
18 INDUSTRIES, INC. A California
19 Corporation and DOES 1 through 50,
20 inclusive,

21 Defendants.

Case No.: 19STCV08558

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

Date: August 25, 2021

Dept.: SSC-7

Time: 11:00 a.m.

23 **I. BACKGROUND**

24 Plaintiff Faustino Arciniega sues his former employer, Defendant Protective
25 Industries, Inc., dba Caplugs ("Defendant") for alleged wage and hour violations.

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

3 Plaintiff filed the initial class action complaint in this matter on March 13, 2019,
4 alleging: (1) failure to pay wages, including minimum wages and overtime (Lab. Code
5 §§ 510, 1194); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512); (3) failure
6 to provide rest periods (Lab. Code §§ 226.7, 512); (4) failure to provide accurate and
7 itemized wage statements (Lab. Code §226); (5) failure to pay wages upon termination
8 of employment (Lab. Code §§ 201-203); (6) failure to pay earned wages; (7) failure to
9 reimburse for necessary business expenses (Lab. Code §2802); and (8) violation of Bus.
10 & Prof. Code sections 17200 ("UCL"). On July 5, 2019, Plaintiff filed the First
11 Amended Complaint against Defendant, adding a ninth cause of action for civil
12 penalties under Private Attorney General Act ("PAGA") (Lab. Code, § 2698, et seq.).

13 On February 19, 2020, the parties participated in a mediation with Hon. Peter D.
14 Lichtman and were able to reach a settlement. The parties subsequently finalized the
15 long-form *Stipulation of Class Action Settlement and Release* ("Settlement
16 Agreement"), a copy of which was filed with the Court.

17 On April 26, 2021, the Court issued a "checklist" pertaining to deficiencies in
18 the Settlement Agreement. In response, the parties filed supplemental briefing,
19 including the Revised Settlement Agreement attached to the Second Supplemental
20 Declaration of Kevin Mahoney as Exhibit A.

21 Now before the Court is Plaintiff's motion for preliminary approval of the
22 settlement. For the reasons set forth below, the Court grants preliminary approval of
23 the settlement.

24 //

25 //

1 **II. THE TERMS OF THE SETTLEMENT**

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

3 “Settlement Class Member(s)” or “Settlement Class” means all non-exempt
4 employees, currently and formerly employed by Defendant, in the State of California
5 during the Class Period. Similarly Aggrieved Employees (as defined below) are
6 included in this Settlement Class. (¶1.42)

7 “Class Period” means the period from March 13, 2015, through and including
8 the date the Court grants Preliminary Approval of the Settlement. (¶1.8)

9 “Participating Class Members” means all Settlement Class Members who do not
10 submit a valid and timely Request for Exclusion. (¶1.31)

11 “Non-Participating Class Member” shall mean a Settlement Class Member who
12 submits a complete, valid and timely request to be excluded from the Settlement
13 pursuant to the instructions provided in the Class Notice and/or who has signed a
14 release with Defendant to resolve any claims as alleged in the Action. (¶1.25)

15 “Similarly Aggrieved Employees” means all non-exempt employees, currently
16 and formerly employed by Defendant in the State of California during the period
17 January 6, 2018, through the date the Court grants Preliminary Approval of the
18 Settlement. For purposes of this Settlement, these Similarly Aggrieved Employees are
19 members of the Settlement Class. (¶1.43)

20 “PAGA Period” shall mean the period from March 12, 2018 up to and including
21 the date of Preliminary Approval of the Settlement. (¶1.30)

22
23 **B. THE MONETARY TERMS OF SETTLEMENT**

24 The essential monetary terms are as follows:
25

1 The Gross Settlement Amount (“GSA”) is **\$525,000** (¶1.21). This includes
2 payment of a PAGA penalty of **\$10,000** to be paid 75% to the LWDA (\$7,500) and 25%
3 to the Aggrieved Employees (\$2,500) (¶1.29).

4 This settlement sum is based on Defendant's representation that the class size is
5 approximately one hundred eighty-two (182) individuals. Defendant shall not be required
6 to pay more than the Gross Settlement Amount, as long as the class size does not increase
7 by more than ten (10) percent (i.e., if the class size increases to eleven (11) percent, the
8 Settlement Agreement shall increase proportionately, i.e., by eleven percent of the Gross
9 Settlement Amount), and so forth. (¶1.21)

10 The Net Settlement Amount (“Net”) (**\$292,500**) is the GSA less:

- 11 ○ Up to **\$175,000** (33 1/3%) for attorney fees (¶1.5);
 - 12 ○ Up to **\$20,000** for attorney costs (¶1.6);
 - 13 ○ Up to **\$7,500** for a service award to the proposed class representative
14 (¶1.9); and
 - 15 ○ Estimated **\$20,000** for settlement administration costs (¶1.3).
- 16 ● The Employer Taxes will be paid separately by the Employer and shall not be
17 paid out of the Gross Settlement Amount (¶1.17).
 - 18 ● Assuming the Court approves all maximum requested deductions, approximately
19 \$292,500 will be available for automatic distribution to participating class
20 members. Assuming full participation, the average settlement share will be
21 approximately \$1,607.14 ($\$292,500 \text{ Net} \div 182 \text{ class members} = \$1,607.14$). In
22 addition, each class member will receive a portion of the PAGA penalty,
23 estimated to be \$17.01 per class member. ($\$2,500 \text{ or } 25\% \text{ of } \$10,000 \text{ PAGA}$
24 $\text{penalty} \div 147 \text{ PAGA class members} = \17.01).
 - 25 ● There is no Claim Requirement (¶1.21).

- 1 • The settlement is not reversionary (§1.21).
- 2 • Individual Settlement Share Calculation: The Claims Administrator shall divide
3 the Net Settlement Amount by the total number of workweeks Participating
4 Class Members worked during the Class Period in order to determine the amount
5 each Participating Class Member is entitled to for each workweek he or she was
6 employed by Defendant (the "Weekly Amount"). The Claims Administrator will
7 multiply the Weekly Amount by the estimated total number of workweeks that
8 each Participating Class Member worked during the Class Period. The product
9 of each calculation represents the gross Individual Settlement Payment for the
10 respective Participating Class Member. The Claims Administrator will then
11 deduct Employee Taxes attributable to wages to arrive at the net Individual
12 Settlement Payment for each respective Class Member. (§3.22)

- 13 ○ Each Participating and Non-Participating Class Member shall be eligible
14 to receive an Individual PAGA Settlement Payment, which is a share of
15 the Net Settlement Amount ("PAGA Allocation"), based on the number
16 of weeks worked by the Settlement Class Member during the PAGA
17 Period, as a proportion of all weeks worked by all eligible Settlement
18 Class Members during the PAGA Period. Individual PAGA Settlement
19 Payments reflect settlement of a dispute regarding civil penalties. The
20 Individual PAGA Settlement Payments are not subject to taxes. (§3.23)

- 21 • Tax Withholdings: 20% as wages, 80% as interest and penalties (§3.4).
- 22 • Uncashed Settlement Payment Checks: Any settlement checks that remain
23 uncashed one hundred eighty (180) or more calendar days after issuance shall be
24 voided. The Claims Administrator shall forward all voided settlement checks to
25 the California State Controller's Office's Unclaimed Property Division. (§3.25)

- Funding of Settlement: Defendant shall fully fund the Settlement up to twenty-one (21) days after the Final Approval Date. No release in this Settlement shall be effective until the Gross Settlement Amount is fully funded. (¶3.19)

- Individual Class Settlement Payments shall be mailed by regular First-Class U.S. Mail to Participating Class Members' last known mailing address no later than fifteen (15) calendar days after the Gross Settlement Amount is fully funded. (¶3.21)

C. TERMS OF RELEASES

- Release as All Settlement Class Members. As of the Effective Date (i.e., the date the GSA is fully funded; see ¶1.13), all Settlement Class Members, including Plaintiff, who do not opt out of the Settlement, will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties from the Released Claims for the period of March 13, 2015 to the Preliminary Approval Date. Settlement Class Members, including Plaintiff; who do not opt out of the Settlement will be deemed to have released any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any class or collective action), to obtain recovery against the Defendant that is reasonably related to the Released Claims for harms arising during the Class Period. (¶3.2.1)

- Non-Participating Class Members or Settlement Class Members who opt-out of the Settlement will still be deemed to have released any claims he or she may have under PAGA during the PAGA period, as disclosed in

1 the LWDA letter dated March 12, 2019 and the facts as alleged in the
2 operative First Amended Complaint. (*Ibid.*)

- 3 • Class members will release: Any and all known and unknown claims, debts,
4 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees,
5 damages, action or causes of action contingent or accrued for, arising out of the
6 allegations and claims asserted in the Action, including without limitation, all
7 wage and hour claims for unpaid wages including minimum wage payments,
8 failure to pay wages during employment, failure to pay overtime, failure to pay
9 wages upon termination, uniform maintenance costs, meal and rest break
10 violations, wage statement violations and penalties, waiting time penalties,
11 reimbursement, restitution and other equitable relief disgorgement, conversion,
12 unjust enrichment, civil and statutory penalties, interests, liquidated damages,
13 punitive damages, attorneys' fees and costs, claims under California Labor Code
14 sections 201-203, 204, 223, 226, 226.7, 510, 512, 558.1, 1194, 1194.2, 1197,
15 2698-2699.5, 2802, Industrial Welfare Commission Wage Order No. 1, claims
16 under California Business & Professions Code sections 17200-17204, penalties
17 pursuant to the Private Attorneys General Act ("PAGA"), and any other benefit
18 claims on account of the allegations asserted in the Action ("Released Claims").

19 This release shall apply to all claims arising at any point between March 13,
20 2015 through the date the Court grants Preliminary Approval of the Settlement,
21 based on the facts alleged in the operative First Amended Complaint. (¶1.37)

- 22 • "Released Parties" means Protective Industries Inc., and all of its current, former,
23 and future parents, owners, subsidiaries, predecessors (including but not limited
24 to Evergreen Industries, Inc.) and successors, and each of their respective agents,
25 employees, officers, directors, spouses, partners, shareholders, agents, and any

1 other successors, assigns, or legal representatives, as well as any other individual
2 or entity which could be jointly liable with any of the foregoing. (¶1.38)

- 3 • The named Plaintiff will also provide a general release and a waiver of the
4 protections of Cal. Civ. Code §1542. (¶¶ 1.34, 3.2.2)
- 5 • The releases are effective as of the Effective Date, defined as the date that the
6 Gross Settlement Amount is fully funded as agreed to in this Agreement. (¶1.13)
7 Defendant shall fully fund the Settlement up to twenty-one (21) days after the
8 Final Approval Date. (¶3.19)

9
10 **D. SETTLEMENT ADMINISTRATION**

- 11 • The proposed Settlement Administrator is Phoenix Settlement Administrators
12 (¶1.2).
- 13 • Settlement administration costs are estimated to be \$20,000 (¶1.3).
- 14 • Notice: The manner of giving notice is described below.
- 15 • Opt Out/Objection Dates: "Response Deadline" means the date sixty (60) days
16 after the Claims Administrator mails Notice Packets to Settlement Class Members,
17 and shall be the last date on which Settlement Class Members may: (a) postmark
18 Requests for Exclusion from the Settlement, or (b) postmark Objections to the
19 Settlement. (¶1.40) The Response Deadline also applies to the submission of
20 workweek disputes. (¶3.14)
 - 21 ○ Non-Participating Class Members (Settlement Class Members who request
22 to be excluded from the Settlement) will still receive a share of the PAGA
23 allocation if the Settlement Class Member worked during the PAGA period
24 and will be deemed to have released any PAGA claims as disclosed in the
25 LWDA letter dated March 12, 2019 and the facts as alleged in the operative

1 First Amended Complaint that he or she may have as a result of the
2 Settlement. (§3.15)

- 3 ○ If, after the Response Deadline and before the Final Approval Hearing, five
4 percent (5%) or more of the number of Settlement Class Members submit
5 timely and valid Requests for Exclusion from the Settlement, Defendant
6 shall have, in its sole discretion, the option to terminate this Settlement.

7 (§3.32)

- 8 • Notice of Final Judgment will be posted on the Settlement Administrator’s website
9 (§3.35).

10
11 **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

19 “In a class action lawsuit, the court undertakes the responsibility to assess
20 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
21 dismissal of a class action. The purpose of the requirement [of court review] is the
22 protection of those class members, including the named plaintiffs, whose rights may not
23 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
24 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
25 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,

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

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

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

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

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

12 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

13 **A. THERE IS A PRESUMPTION OF FAIRNESS**

14 The settlement is entitled to a presumption of fairness for the following reasons:
15

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

17
18 On February 19, 2020, the parties participated in a mediation with Hon. Peter D.
19 Lichtman and were able to reach a settlement. (Declaration of Kevin Mahoney
20 (“Mahoney Decl.”) ¶40.)
21

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

23
24 Class Counsel represents that Plaintiffs conducted informal discovery that
25 yielded information and documentation concerning the claims set forth in the litigation,

1 such as Defendant's policies and procedures regarding the payment of wages, meal and
2 rest breaks, time keeping, as well as information regarding the number of putative class
3 members and the mix of current versus former employees, the average number of hours
4 worked, the wage rates in effect, and length of employment for the average putative
5 class member. (*Id.* at ¶32.)

6 Class Counsel further represents that after the Parties agreed to participate in
7 early mediation with the hope of an expedited resolution to all claims, Defendant
8 informally produced the entire personnel files for Plaintiffs, information regarding the
9 class size, Defendant's policies including, but not limited to meal, rest and timekeeping
10 policies, and a random sampling of class members' time records and corresponding
11 payroll records, and average rate of pay. (*Id.* at ¶39.) This is sufficient to value the
12 case for settlement purposes.

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

14
15 Class Counsel represent that are experienced in class action litigation, including
16 wage and hour class actions. (*Id.* at ¶9.)

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

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

23 //

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25 //

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

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

13 **1. Amount Offered in Settlement**

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

16 Class Counsel estimated Defendant’s maximum exposure at \$7,164,400 and
17 realistic exposure at \$631,800, based on the following analysis:

18

19 Violation	Maximum Exposure	Realistic Exposure
20 Unpaid Wages Claim	\$332,800.00	\$166,400.00
21 Meal and Rest Break Claims	\$625,000.00	\$125,000.00
22 Wage Statement Violations	\$565,000.00	\$169,500.00
23 Waiting Time Penalties	\$144,800.00	\$72,400.00
24 Reimbursement Claim	\$50,000.00	\$25,000.00
25 PAGA Penalties	\$5,446,800.00	\$73,500.00

1 **Total**

\$7,164,400.00

\$631,800.00

2 (Mahoney Decl. ¶¶ 44-67; Supp. Mahoney Decl. ¶7.)

3 Class Counsel obtained a gross settlement valued at \$525,000. This is 7.3% of
4 Defendant's maximum exposure and 83.1% of Defendant's realistic exposure.

5
6 **2. The Risks of Future Litigation**

7 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
8 motion practice and appeals) are also likely to prolong the litigation as well as any
9 recovery by the class members. Even if a class is certified, there is always a risk of
10 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
11 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
12 conducting class actions, which means, under suitable circumstances, entertaining
13 successive motions on certification if the court subsequently discovers that the propriety
14 of a class action is not appropriate."] Further, the settlement was negotiated and
15 endorsed by Class Counsel who, as indicated above, are experienced in class action
16 litigation. Based upon their investigation and analysis, the attorneys representing
17 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
18 adequate. (¶3.61)

19 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
20 which was sent a copy of the Settlement Agreement on June 28, 2021 and has not yet
21 objected. (Supp. Mahoney Decl., Exhibit F.) Any objection by it will be considered at
22 the final fairness hearing.

23 //

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25 //

3. The Releases Are Limited

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

4. Conclusion

Class Counsel estimated Defendant's maximum exposure at \$7,164,400 and realistic exposure at \$631,800. Class Counsel obtained a gross settlement valued at \$525,000. This is approximately 7.3% of Defendant's maximum exposure and 83.1% of Defendant's realistic exposure, which, given the uncertain outcomes, including the potential that the class might not be certified, that liability is a contested issue, and that the full amount of penalties would not necessarily be assessed even if the class is certified and liability found, the settlement is within the "ballpark of reasonableness."

C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED

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

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

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

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

2 There are 182 putative Class Members. (Motion for Prelim at 12:23-24.)
3 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
4 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
5 *parties to a class action is liberally construed,*” and citing examples wherein classes of
6 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
7 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

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

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

14 The class is defined above. Class Members are ascertainable through
15 Defendant’s employee and payroll files. (Motion for Prelim at 12:15-16.)

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

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

21 As to predominant questions of law or fact, the Parties agree that common factual
22 and legal issues include, among other things: (1) whether Defendant engaged in a
23 common course of failing to provide and/or compensate employees based on the Labor
24 Code and applicable Wage Order requirements for meal periods; (2) whether Defendant
25 engaged in a common course of failing to authorize and permit and/or compensate

1 employees based on the Labor Code and applicable Wage Order requirements for rest
2 periods; (3) whether Defendant underpaid wages to employees as a result of requiring
3 employees to work off the clock; (4) whether these alleged violations resulted in ancillary
4 violations of Labor Code section 203; and (5) whether these alleged violations are cause
5 for civil penalties under Labor Code sections 2699, et seq. Furthermore, all Class
6 Members suffer from, and seek redress for, the same alleged injuries. (Motion for Prelim
7 at 13:2-15.)

8 As to typicality, the Parties agree that the claims of the proposed Class
9 Representatives here are typical of the Settlement Class as a whole. Plaintiff asserts that
10 he, like all Class Members, worked for Defendant and suffered relatively moderate
11 damages as a result of the alleged violations of California's wage and hour laws and
12 regulations. Plaintiff contends that since all members of the Class would need to
13 demonstrate the same elements to recover on their claims, their interests are sufficiently
14 aligned that the proposed Class Representatives can be expected to adequately pursue the
15 interests of the absentee Class Members. (Motion for Prelim at 13:17-26; Declaration of
16 Faustino Arciniega ¶¶ 3-4.)

17 As to adequacy, Plaintiff represents that he is aware of the risks and his fiduciary
18 duties of serving as class representative, does not have conflicts of interest with the class,
19 and has been actively involved in the litigation. (Arciniega Decl. at ¶¶ 5-7, 13.) As
20 previously stated, Class Counsel have experience in class action litigation.

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 **1. Method of class notice**

12 No more than twenty-one (21) calendar days after the entry of the Preliminary
13 Approval Order, Defendant, shall provide the Claims Administrator with the Class
14 Information for purposes of mailing Notice Packets to Settlement Class Members,
15 including: 1. Class Member's full name; 2. Class Member's last known address; 3. Class
16 Member's last four (4) digits of social security number; 4. Class Member's employee
17 identification number; and 5. based on Defendant's payroll records, the Class Member's
18 total number of workweeks. The Settlement Administrator shall use commercially
19 reasonable efforts to secure the data provided by Defendant at all times so as to avoid
20 inadvertent or unauthorized disclosure or use of such data other than as permitted by the
21 Settlement. The Settlement Administrator shall ensure that the Class Notice and any
22 other communications to Class Members shall not include the Class Members' social
23 security number, except for the last four (4) digits, if necessary. (¶3.8)

24 Upon receipt of the Class Information, the Claims Administrator will perform a
25 search on the National Change of Address database to update the Settlement Class

1 Members' addresses. No more than ten (10) calendar days after receiving the Class
2 Information from Defendant, as provided herein, the Claims Administrator shall mail
3 copies of the Notice Packet to all Settlement Class Members by regular First-Class U.S.
4 Mail. The Claims Administrator shall exercise its best judgment to determine the
5 current mailing address for each Settlement Class Member. The address identified by
6 the Claims Administrator as the current mailing address shall be presumed to be the
7 best mailing address for each Settlement Class Member. The Settlement Administrator
8 shall continue throughout the notice period to determine the current mailing address for
9 Settlement Class Members. (§3.9)

10 Any Notice Packets returned to the Claims Administrator as undeliverable on or
11 before the sixty (60) day Response Deadline shall be re-mailed to the forwarding
12 address affixed thereto. (§3.10) For each Settlement Class Member whose Notice
13 Packet is returned, there will be one (1) skip trace by the Claims Administrator. If an
14 updated mailing address is identified, the Claims Administrator shall resend the Notice
15 Packet to the Settlement Class Member. One (1) supplemental Notice Packet shall be
16 mailed to each Settlement Class Member whose original Notice Packet is returned as
17 undeliverable to the Claims Administrator. Such re-mailing shall be made within five (5)
18 business days of the Claims Administrator receiving notice that the respective Notice
19 Packet was undeliverable. (§3.11)

20 Settlement Class Members to whom Notice Packets are resent after having been
21 returned undeliverable to the Claims Administrator, during the entire Response
22 Deadline, shall have an additional fourteen (14) calendar days from the date of re-
23 mailing, or until the sixty (60) day Response Deadline has expired, whichever is later,
24 to mail the Request for Exclusion or a Notice of Objection. Notice Packets that are
25 resent shall inform the recipient of this adjusted deadline. The date of the postmark on

1 the return envelope shall be the exclusive means used to determine whether a
2 Settlement Class Member has returned his or her Request for Exclusion on or before the
3 adjusted deadline. It will be conclusively presumed that if an envelope so mailed has
4 not been returned within twenty (20) days of the mailing, that the Settlement Class
5 Member received the Notice Packet. If a Settlement Class Member's Notice Packet is
6 returned to the Claims Administrator more than once as undeliverable, then an
7 additional Notice Packet shall not be re-mailed. (§3.12)

8 **2. Content of class notice.**

9 A copy of the proposed class notice is attached to the Settlement Agreement.
10 The notice includes information such as: a summary of the litigation; the nature of the
11 settlement; the terms of the settlement agreement; the maximum deductions to be made
12 from the gross settlement amount (i.e., attorney fees and costs, the enhancement award,
13 and claims administration costs); the procedures and deadlines for participating in,
14 opting out of, or objecting to, the settlement; the consequences of participating in,
15 opting out of, or objecting to, the settlement; and the date, time, and place of the final
16 approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be given in both
17 English and Spanish. (Notice pg. 1)

18 **3. Settlement Administration Costs**

19 Settlement administration costs are estimated at \$20,000, including the cost of
20 notice (§1.3). Prior to the time of the final fairness hearing, the settlement administrator
21 must submit a declaration attesting to the total costs incurred and anticipated to be
22 incurred to finalize the settlement for approval by the Court.

23 //

24 //

25 //

1 **E. ATTORNEY FEES AND COSTS**

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

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

18 The question of class counsel’s entitlement to **\$175,000** (33 1/3%) in attorney
19 fees will be addressed at the final fairness hearing when class counsel brings a noticed
20 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
21 the court with current market tested hourly rate information and billing information so
22 that it can properly apply the lodestar method and must indicate what multiplier (if
23 applicable) is being sought.

24 Class counsel should also be prepared to justify the costs sought (capped at
25 **\$20,000**) by detailing how they were incurred.

1 **F. SERVICE AWARD**

2 The Settlement Agreement provides for a service award of up to \$7,500 for the
3 class representative (§1.9). Trial courts should not sanction enhancement awards of
4 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
5 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the
6 form of quantification of time and effort expended on the litigation, and in the form of
7 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
8 required in order for the trial court to conclude that an enhancement was ‘necessary to
9 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
10 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
11 original.

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

15 The Court will decide the issue of the enhancement award at the time of final
16 approval.

17
18 **V. CONCLUSION AND ORDER**

19 The Court hereby:

- 20 (1) Grants preliminary approval of the settlement as fair, adequate, and
21 reasonable;
- 22 (2) Grants conditional class certification;
- 23 (3) Appoints Faustino Arciniega as Class Representative;
- 24 (4) Appoints Mahoney Law Group, APC as Class Counsel;
- 25 (5) Appoints Phoenix Settlement Administrators as Settlement Administrator;

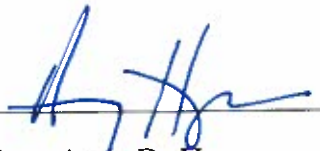
1 (6) Approves the proposed notice plan; and

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

- 3 • Preliminary approval hearing: August 25, 2021
- 4 • Deadline for Defendant to provide class list to settlement administrator:
- 5 September 15, 2021 (within 21 calendar days of preliminary approval)
- 6 • Deadline for settlement administrator to mail notices: September 25, 2021
- 7 (within 31 calendar days from preliminary approval)
- 8 • Deadline for class members to opt out: November 24, 2021 (60 calendar days
- 9 from the initial mailing of the Notice Packets)
- 10 • Deadline for class members to object: November 24, 2021 (60 calendar days
- 11 from the initial mailing of the Notice Packets)
- 12 • Deadline for class counsel to file motion for final approval:
- 13 ~~November 24, 2021~~ (16 court days prior to final fairness hearing)
- 14 • Final fairness hearing: JAN 4, 2028, at 11:00a.m.

15

16 Dated: 8-25-21

17 
18 Hon. Amy D. Hogue
19 Judge of the Superior Court
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