

**FILED**  
Superior Court of California  
County of Los Angeles

SEP 22 2021

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

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

LAZARO SANDOVAL, individually and  
on behalf of others similarly situated,

Plaintiff,

vs.

WEST PICO FOODS, INC., a California  
Corporation; and WEST PICO  
DISTRIBUTORS, LLC, a California limited  
liability company and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: 20STCV26873

~~ITENTATIVE~~ ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

Date: September 22, 2021  
Dept.: SSC-7  
Time: 11:00 a.m.

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2 **I. BACKGROUND**

3 This is a wage and hour class action. Defendants West Pico Foods, Inc. and West  
4 Pico Distributors, LLC (“Defendants”) operate under the “West Pico Distributor” brand  
5 and advertise themselves as one of the largest distributors of Kosher food products on the  
6 West Coast.

7 On May 19, 2020, Plaintiff provided notice to the California Labor Workforce  
8 Development Agency (“LWDA”) and Defendant West Pico Foods, Inc. of his intent to  
9 seek civil penalties under Labor Code section 2699, et seq. (“PAGA”). On June 25, 2020,  
10 Plaintiff amended his notice to the LWDA to include additional facts and name  
11 Defendant West Pico Distributors, LLC.

12 On July 13, 2020, Plaintiff filed a wage and hour class action complaint alleging  
13 the following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums;  
14 (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not  
15 Timely Paid; (6) Failure to Provide Accurate Wage Statements; (7) Failure to Reimburse  
16 Necessary Business Expenses; and (8) Violation of Business and Professions Code §  
17 17200, et seq. On August 31, 2020, Plaintiff filed a First Amended Complaint (“FAC”),  
18 adding a PAGA cause of action.

19 Counsel represents that prior to mediation, Defendants provided Plaintiff with  
20 informal discovery including all relevant policies and handbooks in place during the  
21 Class Period, Plaintiff’s personnel file, a randomly selected 20% sampling of time and  
22 payroll data for the putative class, and figures and information regarding the class size  
23 and composition.

24 On February 23, 2021, the parties attended a full day mediation with Eve Wagner,  
25 Esq., and were able to come to an agreement. A fully executed copy of the Settlement

1 Agreement was filed on June 15, 2021, attached to the Declaration of Heather Davis  
2 (“Davis Decl.”), as Exhibit 1.

3 On July 12, 2021, the Court issued a checklist of items for the parties to address.  
4 In response, on August 11, 2021 counsel filed a fully executed Amended Settlement  
5 Agreement attached as Exhibit B to the Supplemental Declaration of Heather Davis  
6 (“Davis Supp. Decl.”).

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

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10 **II. THE TERMS OF THE SETTLEMENT**

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

12 “Class” or “Class Members” means all current and former hourly-paid, non-  
13 exempt employees of Defendants who were employed by Defendants in the State of  
14 California at any time during the Class Period. (Settlement Agreement, ¶6)

15 “Class Period” means the period from July 13, 2016, to April 24, 2021. (¶7)

16 “PAGA Members” means all current and former non-exempt employees of  
17 Defendants who were employed by Defendants in the state of California at any time  
18 during the PAGA Period. (¶21)

19 “PAGA Period” means the period from May 19, 2019, to April 24, 2021. (¶20.)

20 There are 118 Class Members. (Davis Decl., ¶23.)

21 Prior to mediation, Defendants represented there were approximately 12,921  
22 Workweeks during the period of July 30, 2016 to January 25, 2021. Should the total  
23 actual number of Workweeks during the Class Period exceed this figure by more than  
24 fifteen percent (15%) (i.e., by more than 1,938 Workweeks) Defendants, at their option  
25 may choose to either (1) increase the Gross Settlement Amount on a pro-rata basis equal

1 to the percentage increase in the number of Workweeks worked by the Class Members  
2 above 15%; or (2) cut off the date of the Class Period upon the date the total workweeks  
3 reach 14,859. If Defendants elect to cut off the Class Period prior to April 24, 2021 due  
4 to an unanticipated increase in workweeks, Defendants shall notify Plaintiff's Counsel of  
5 the verified number of workweeks prior to the filing of Plaintiff's Motion for Preliminary  
6 Approval. (¶36)

7 The Parties stipulate and agree to the conditional certification of this Action for  
8 purposes of this Settlement only. (¶80)

### 9 **B. THE MONETARY TERMS OF SETTLEMENT**

10 The essential monetary terms are as follows:

11 The Gross Settlement Amount ("GSA") is **\$400,000** (¶14). This includes payment  
12 of a PAGA penalty of \$25,000 to be paid 75% to the LWDA (\$18,750) and 25% to the  
13 Aggrieved Employees (\$6,250) (¶19);

14 The Net Settlement Amount ("Net") (**\$204,000**) is the GSA less:

- 15 ○ Up to \$140,000 (35%) for attorney fees (¶39);
  - 16 ○ Up to \$20,000 for attorney costs (*Ibid.*);
  - 17 ○ Up to \$5,000 for a service award to the proposed class representative (¶40);
  - 18 ○ \$25,000 allocated as the PAGA Payment (¶42); and
  - 19 ○ Up to \$6,000 for settlement administration costs (¶41)
- 20 ● Defendants shall fund the Gross Settlement Amount and all applicable employer-  
21 side payroll taxes following Final Approval by the Court and the occurrence of  
22 the Effective Date. (¶35)
  - 23 ● Assuming the Court approves all maximum requested deductions, approximately  
24 \$204,000 will be available for automatic distribution to participating class  
25 members. Assuming full participation, the average settlement share will be

1 approximately \$1,728.81. ( $\$204,000 \text{ Net} \div 118 \text{ class members} = \$1,728.81$ ). In  
2 addition, each class member will receive a portion of the PAGA penalty, estimated  
3 to be \$52.97 per class member. ( $\$6,250 \text{ (25\% of } \$25,000 \text{ PAGA penalty)} \div 118$   
4 employees = \$52.97.)

- 5 • There is no Claim Requirement. (§23)
- 6 • The settlement is not reversionary. (§14.)
- 7 • Individual Settlement Payments Calculations. Individual Settlement Payments  
8 will be paid from the Net Settlement Amount and the 25% portion of the PAGA  
9 Payment allocated for PAGA Members and shall be paid pursuant to the formula  
10 set forth herein:

11 ○ Calculation of Class Portion of Individual Settlement Payments: The  
12 Settlement Administrator will calculate the total Workweeks for all  
13 Participating Class Members by adding the number of Workweeks worked  
14 by each Participating Class Member during the Class Period. The  
15 respective Workweeks for each Participating Class Member will be divided  
16 by the total Workweeks for all Participating Class Members, resulting in  
17 the Payment Ratio for each Participating Class Member. Each Participating  
18 Class Member's Payment Ratio will then be multiplied by the Net  
19 Settlement Amount to calculate each Settlement Class Member's estimated  
20 share of the Net Settlement Amount. (§44.a)

21 ○ Calculation of PAGA Portion of Individual Settlement Payments: The  
22 Settlement Administrator will calculate the total Workweeks for all PAGA  
23 Members by adding the number of Workweeks worked by each PAGA  
24 Member during the PAGA Period. The respective Workweeks for each  
25 PAGA Member will be divided by the total Workweeks for all PAGA

1 Members, resulting in the Payment Ratio for each PAGA Member. Each  
2 PAGA Member's Payment Ratio will then be multiplied by the employee  
3 portion of the PAGA Payment to calculate each PAGA Member's  
4 estimated share of the PAGA Payment. PAGA Members shall receive this  
5 portion of their Individual Settlement Payment regardless of whether they  
6 opt out of the participation regarding the class claims (i.e., Class Members  
7 who opt-out will nevertheless receive their portion of the PAGA Payment).  
8 (§44.b)

- 9 ■ Tax Allocation: 20% wages, 40% interest, and 40% penalties.  
10 (§44.c)

- 11 • **Uncashed Settlement Checks:** If a Participating Class Member or PAGA  
12 Member does not cash his or her Settlement Check or PAGA payment check  
13 within 180 days, the uncashed funds, subject to Court approval, shall be  
14 distributed to the Controller of the State of California to be held pursuant to the  
15 Unclaimed Property Law, California Civil Code §1500, et. seq. for the benefit of  
16 those Participating Class Members and PAGA Members who did not cash their  
17 checks until such time that they claim their property. (§59)
- 18 • **Funding of the Settlement:** Within 14 calendar days of the Effective Date of the  
19 Settlement, presuming the Settlement Administrator provides all necessary  
20 funding information, Defendants will deposit the Gross Settlement Amount and  
21 all applicable employer-side payroll taxes into a Qualified Settlement Fund  
22 ("QSF") to be established by the Settlement Administrator. Defendants shall  
23 provide all information necessary for the Settlement Administrator to calculate  
24 necessary payroll taxes including its official name, 8 digit state unemployment  
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1 insurance tax ID number, and other information requested by the Settlement  
2 Administrator, no later than 7 calendar days of the Effective Date. (¶37)

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4 **C. TERMS OF RELEASES**

5 Upon the complete funding of the Gross Settlement Amount and all applicable  
6 employer-side payroll taxes by Defendants, Participating Class Members shall fully  
7 release and discharge the Released Parties from any and all Released Claims for the Class  
8 Period. This release shall be binding on all Participating Class Members. All PAGA  
9 Members, the LWDA, and State of California shall release claims arising under PAGA  
10 for the PAGA Period. All PAGA Members shall release claims arising under PAGA  
11 regardless of their decision to participate in the class settlement. Any Participating Class  
12 Member who cashes his or her settlement check will be deemed to have opted into the  
13 action for purposes of the FLSA and, the Released Claims include any and all claims  
14 those Settlement Class Members may have under the FLSA arising during the Class  
15 Period relating to the alleged claims. If a Participating Class Member does not cash his  
16 or her settlement check, he or she has not opted into the Action for purposes of the FLSA.  
17 (¶64)

- 18 • “Released Claims” means claims, rights, demands, liabilities and causes of actions  
19 that are alleged or reasonably could have been alleged based on the facts and  
20 claims asserted in the operative complaint in the Action including the following  
21 claims: (i) failure to pay all regular wages, minimum wages and overtime wages  
22 due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii)  
23 failure to provide rest periods or compensation in lieu thereof; (iv) failure to  
24 reimburse necessary business expenses; (v) failure to provide complete, accurate  
25 wage statements; (vi) failure to pay wages timely at time of termination or

1 resignation; (vii) failure to provide timely pay wages during employment  
2 (including a claim under the Industrial Welfare Commission Wage Orders, and  
3 common law including conversion); (viii) unfair business practices that could have  
4 been premised on the claims, causes of action or legal theories of relief described  
5 above or any of the claims, causes of action or legal theories of relief pleaded in  
6 the operative complaint; (ix) failure to maintain required payroll records and (x)  
7 all claims under the California Labor Code Private Attorneys General Act of 2004  
8 or for civil penalties that could have been premised on the claims, causes of action  
9 or legal theories described above or any of the claims, causes of action or legal  
10 theories of relief pleaded in the operative complaint including but not limited to  
11 Labor Code sections 210, 226.3, 1197.1, 558, and 2699. In addition, any  
12 Participating Class Member who cashes his or her settlement check will be  
13 deemed to have opted into the action for purposes of the FLSA and, the Released  
14 Claims include any and all claims those Settlement Class Members may have  
15 under the FLSA related to the alleged claims. The Released Claims are expressly  
16 limited to claims arising during the Class Period. (§27)

- 17 • “Released Parties” means Defendants West Pico Foods, Inc. and West Pico  
18 Distributors, LLC, and their past, present and/or future, direct and/or indirect,  
19 officers, directors, members, managers, employees, agents, representatives,  
20 attorneys, insurers, partners, investors, shareholders, administrators, parent  
21 companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns,  
22 and joint venturers. (§28)
- 23 • Each settlement check to Participating Class Members and PAGA Members shall  
24 contain, on the back of the check, the following language: By endorsing or  
25 otherwise negotiating this check, I acknowledge that I read, understood, and agree



1 to the terms set forth in the Notice of Class Action Settlement and I consent to join  
2 in the Fair Labor Standards Act (“FLSA”) portion of the matter of Sandoval v.  
3 West Pico Foods, Inc., elect to participate in the settlement of the FLSA claims,  
4 and agree to release all of my FLSA claims that are covered by the Settlement.  
5 (¶58)

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7 **D. SETTLEMENT ADMINISTRATION**

- 8 • The proposed Settlement Administrator is Phoenix Settlement Administrators.  
9 (¶32)
- 10 • Settlement administration costs are estimated to be \$6,000. (¶33)
- 11 • Notice: The manner of giving notice is described below.
- 12
- 13 • “Response Deadline” means the date 60 days after the Settlement Administrator  
14 mails Notice to Class Members and the last date on which Class Members may  
15 submit Requests for Exclusion, Written Objections to the Settlement, or  
16 Workweek Disputes. In the event the 60th day falls on a Sunday or Federal  
17 holiday, the Response Deadline will be extended to the next day on which the  
18 U.S. Postal Service is open. The Response Deadline for Requests for Exclusion  
19 or Written Objections will be extended 15 calendar days for any Class Member  
20 who is re-mailed a Notice by the Settlement Administrator, unless the 15th day  
21 falls on a Sunday or Federal holiday, in which case the Response Deadline will  
22 be extended to the next day on which the U.S. Postal Service is open. (¶30)  
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- 1           o If more than 8% of the Class Members (rounded to the next whole  
2           number) elect not to participate in the Settlement, Defendants may rescind  
3           the Settlement Agreement. (¶54)

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5           **D. ATTORNEYS' FEES**

6           Counsel for the proposed class seek \$140,000 (35%) in attorney's fees and a  
7           maximum amount of \$20,000 in costs. (¶39)

8           **E. SERVICE AWARD**

9           The named plaintiff seeks an enhancement award of \$5,000. (¶40)

10          **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

18           "In a class action lawsuit, the court undertakes the responsibility to assess  
19           fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or  
20           dismissal of a class action. The purpose of the requirement [of court review] is the  
21           protection of those class members, including the named plaintiffs, whose rights may not  
22           have been given due regard by the negotiating parties." *Consumer Advocacy Group,*  
23           *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal  
24           quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,  
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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. 4<sup>th</sup> 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,’ this  
9 is no bar to a class settlement because ‘the public interest may indeed be served by a  
10 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 **1. The settlement was reached through arm’s-length bargaining**

16 On February 23, 2021, the parties attended a full day mediation with Eve Wagner,  
17 Esq., and were able to come to an agreement. (Davis Dec. ¶¶17-19.)

##### 18 **2. The investigation and discovery were sufficient**

19 Counsel represents that prior to mediation, Defendants provided Plaintiff with  
20 informal discovery including all relevant policies and handbooks in place during the  
21 Class Period, Plaintiff’s personnel file, a randomly selected 20% sampling of time and  
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1 payroll data for the putative class, and figures and information regarding the class size  
2 and composition. (*Id.* at ¶16.)

### 3 4 **3. Counsel is experienced in similar litigation**

5 Class Counsel represent that are experienced in class action litigation. (*Id.* at ¶¶2-  
6 12.)

### 7 **4. Percentage of the class objecting**

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

## 12 13 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED FAIR, 14 ADEQUATE, AND REASONABLE**

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

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## 1. Amount Offered in Settlement

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

Counsel has provided the following exposure analysis:

CLAIM	MAX EXPOSURE
Meal Periods	\$341,670.00
Rest Periods	\$341,670.00
Unpaid Wages	\$330,777.60
Wage Statement	\$ 296,850.00
Waiting Time Penalties	\$147,398.40
Businesses Expenses	\$8,700.00
PAGA	\$457,650.00
<b>TOTAL</b>	<b>\$1,924,716.00</b>

(Davis Decl., ¶39; Davis Supp. Decl., ¶¶6-27.)

Class Counsel obtained a gross settlement valued at \$400,000. This is 21% of Defendant’s maximum exposure.

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## 2. The Risks of Future Litigation

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

1 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and  
2 adequate.

3 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,  
4 which has been served with a copy of the Settlement Agreement and has not yet objected.  
5 Any objection by it will be considered at the final fairness hearing. (David Decl., ¶56 and  
6 Exhibit 2 thereto.)

### 7 8 **3. The Releases Are Limited**

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

### 14 **4. Conclusion**

15 Class Counsel estimated Defendant's maximum exposure at Class Counsel  
16 estimated Defendant's maximum exposure at \$1,924,716.00. Class Counsel obtained a  
17 gross settlement valued at \$400,000. This is 21% of Defendant's maximum exposure,  
18 which, given the uncertain outcomes, including the potential that the class might not be  
19 certified, that liability is a contested issue, and that the full amount of penalties would not  
20 necessarily be assessed even if the class is certified and liability found, the settlement is  
21 within the "ballpark of reasonableness."

### 22 23 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

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

1 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party  
2 advocating class treatment must demonstrate the existence of an ascertainable and  
3 sufficiently numerous class, a well-defined community of interest, and substantial  
4 benefits from certification that render proceeding as a class superior to the alternatives.”  
5 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

7 There are 118 Class Members. (Davis Decl., ¶23.) Numerosity is established.  
8 *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25 Cal.App.5th  
9 369, 393: stating that the “requirement that there be many parties to a class action is  
10 liberally construed,” and citing examples wherein classes of as little as 10, *Bowles v.*  
11 *Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove* (1972) 28  
12 Cal.App.3d 1017, were upheld).

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

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

19 The class is defined above. Class Members are ascertainable through  
20 Defendant’s records. (Motion 11:26-28.)

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

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



1 Counsel contends that common questions of law and fact predominate because  
2 Plaintiffs allege that Defendant's policies and practices were unlawful and uniform as to  
3 all class members, therefore class treatment is appropriate. (Motion, 12:14-19.)

4 Counsel further contends that Plaintiffs' claims are typical because all of their  
5 claims arise out of the same facts and course of conduct, seek the same relief, and are  
6 based upon the same alleged violations. (Motion, 12:27-13:3.)

7 Finally, Counsel contends that Plaintiff is an as he has no antagonism as to the  
8 interests of the class and is represented by experienced counsel. (Motion, 13:6-11;  
9 Declaration of Lazaro Sandoval, *passim*.)

#### 10 **4. Substantial Benefits Exist**

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

#### 14 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 15 **OF DUE PROCESS**

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

1  
2 **1. Method of class notice**

3 Within 14 calendar days of Preliminary Approval, Defendant will provide the Class  
4 List to the Settlement Administrator. (¶47) Within 7 calendar days after receiving the  
5 Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all  
6 Class Members via regular First-Class U.S. Mail, using the most current, known mailing  
7 addresses identified in the Class List. (¶48) The Notice will be translated into Spanish.  
8 (¶46.c) Prior to mailing, the Settlement Administrator will perform a search based on the  
9 National Change of Address Database for information to update and correct for any  
10 known or identifiable address changes. Any Notice Packets returned to the Settlement  
11 Administrator as non-deliverable on or before the Response Deadline will be sent  
12 promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and  
13 the Settlement Administrator will indicate the date of such re-mailing on the Notice  
14 Packet. If no forwarding address is provided, the Settlement Administrator will promptly  
15 attempt to determine the correct address using a skip-trace, or other search using the  
16 name, address and/or Social Security number of the Class Member involved and will then  
17 perform a single re-mailing within 7 calendar days from the date of receipt of the returned  
18 Notice. If any notice sent to a Class Member by the Settlement Administrator is returned  
19 as undeliverable to a current employee, then Defendants shall make all reasonable efforts  
20 to obtain the current address from the Class Member and provide the same within 7  
21 calendar days of notice from the Settlement Administrator. (¶49) The Settlement  
22 Administrator shall post a notice of final judgment online at Settlement Administrator's  
23 website. (¶46.j)

24  
25 ///

1           **2. Content of class notice.**

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

10           **3. Settlement Administration Costs**

11           Settlement administration costs are estimated at \$6,000, including the cost of  
12 notice. Prior to the time of the final fairness hearing, the settlement administrator must  
13 submit a declaration attesting to the total costs incurred and anticipated to be incurred to  
14 finalize the settlement for approval by the Court.

15           **E. ATTORNEY FEES AND COSTS**

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

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

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

7 The question of class counsel’s entitlement to **\$140,000 (35%)** in attorney fees  
8 will be addressed at the final fairness hearing when class counsel brings a noticed  
9 motion for attorney fees. If a lodestar analysis is requested class counsel must provide  
10 the court with current market tested hourly rate information and billing information so  
11 that it can properly apply the lodestar method and must indicate what multiplier (if  
12 applicable) is being sought.

13 Class counsel should also be prepared to justify the costs sought (\$20,000) by  
14 detailing how they were incurred.

#### 15 F. SERVICE AWARD

16 The Settlement Agreement provides for a service award of up to **\$5,000** to the  
17 Class Representative. Trial courts should not sanction enhancement awards of  
18 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours  
19 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the  
20 form of quantification of time and effort expended on the litigation, and in the form of  
21 reasoned explanation of financial or other risks incurred by the named plaintiffs, is  
22 required in order for the trial court to conclude that an enhancement was ‘necessary to  
23 induce [the named plaintiff] to participate in the suit . . . .’” *Clark v. American*  
24 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in  
25

1 original. The Court will decide the issue of the enhancement award at the time of final  
2 approval.

3  
4 **V. CONCLUSION AND ORDER**

5 The Court hereby:

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

8 (2) Grants conditional class certification;

9 (3) Appoints Lazaro Sandoval as Class Representatives;

10 (4) Appoints Protection Law Group, LLP as Class Counsel;

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

12 (6) Approves the proposed notice plan; and

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

- 14 • Preliminary approval hearing: September 22, 2021.
- 15 • Deadline for Defendant to provide class list to settlement administrator: October  
16 6, 2021
- 17 • Deadline for settlement administrator to mail notices: October 13, 2021
- 18 • Deadline for class members to opt out: November 13, 2021
- 19 • Deadline for class members to object: November 13, 2021.
- 20 • Deadline for class counsel to file motion for final approval: *AK* (16 court  
21 days prior to final fairness hearing)
- 22 • Final fairness hearing: 1/18/22, at 11:00 a.m.

23 Dated: 9/22/21



Hon. Amy Hogue

Judge of the Superior Court