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**ELECTRONICALLY  
FILED**

3/19/2021

K. BIEKER, CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA - MARTINEZ  
A.Stewart, DEPUTY CLERK

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

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

Plaintiffs,

v.

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

Defendants.

Case No.: MSC19-00878

Honorable Edward G. Weil  
Department 39

**CLASS ACTION**

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: February 18, 2021  
Time: 9:00 a.m.  
Department: 39

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

1 This matter came before the Honorable Edward G. Weil in Department 39 of the Superior  
2 Court of the State of California, for the County of Contra Costa, for Plaintiffs Amanda Patterson  
3 and Matthew Medina's ("Plaintiffs") Motion for Preliminary Approval of Class Action Settlement.

4 Having carefully considered the papers, argument of counsel, and all matters presented to  
5 the Court, and good cause appearing,

6 **THE COURT RULES AS FOLLOWS:**

7 Plaintiffs Amanda Patterson and Matthew Medina move for preliminary approval of their  
8 class action and PAGA settlement. The matter initially was heard on January 28, 2021, after which  
9 the Court requested supplemental information. Plaintiffs filed a supplemental declaration and  
10 memorandum for this hearing.

11 **A. Background and Settlement Terms**

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

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

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

22 PAGA penalties would be \$150,000, resulting in a payment to the LWDA of \$112,500,  
23 with the remainder distributed to the aggrieved employees. A class representative incentive  
24 payment would be made to each plaintiff in the amount of \$10,000, totaling \$20,000. Phoenix  
25 Settlement Administrators is the settlement administrator, and estimates costs at \$15,000.  
26 Litigation costs would not exceed \$25,000. Attorney's fees would be \$722,000, which is 38% of  
27 the settlement fund. The net amount would be divided into wages, interest, and penalties.

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

10       Based on the estimated class size (about 491), the average net settlement share is about  
11 \$2,000.

#### 12       **B. Legal Standards**

13       The primary determination to be made is whether the proposed settlement is "fair,  
14 reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,  
15 including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of  
16 further litigation, the risk of maintaining class action status through trial, the amount offered in  
17 settlement, the extent of discovery completed and the state of the proceedings, the experience and  
18 views of counsel, the presence of a governmental participant, and the reaction ... to the proposed  
19 settlement."

20       Because this matter also proposes to settle PAGA claims, the Court also must consider the  
21 criteria that apply under that statute. The Legislature's express command that PAGA settlements  
22 be approved by the court necessarily implies that there is some substantive dimension to the  
23 review. (Labor Code § 2699(l).) The Court's review, however, is somewhat hampered by the lack  
24 of guidance in the statute or case law concerning the basis upon which a settlement may be  
25 approved. The Court has found no binding authority, but one federal District Court has addressed  
26 the issue. In *O'Connor v. Uber Techs, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133, the court  
27 denied approval of class action settlements that included PAGA claims in part because the  
28 plaintiffs' claims added up to as much as \$1 billion in PAGA penalties but parties settled those

1 claims for \$1 million, or 0.1% of their alleged maximum value. As the court stated, “where  
2 plaintiffs bring a PAGA representative claim, they take on a special responsibility to their fellow  
3 aggrieved workers who are effectively bound by any judgment. [citation omitted] Such a plaintiff  
4 also owes responsibility to the public at large; they act, as the statute’s name suggests, as a private  
5 attorney general, and 75% of the penalties go to the LWDA ‘for enforcement of labor laws . . . and  
6 for education of employers and employees about their rights and responsibilities under this code.’”  
7 (*Id.*, at 1134.) In that case, the LWDA itself filed a brief stating that “[i]t is thus important that  
8 when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful,  
9 consistent with the underlying purpose of the statute to benefit the public and, in the context of a  
10 class action, the court evaluate whether the settlement meets the standards of being ‘fundamentally  
11 fair, reasonable, and adequate’ with reference to the public policies underlying the PAGA.” (*Id.*, at  
12 1133.) The *Uber Techs* court noted that “a court may reduce the penalty when ‘to do otherwise  
13 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.’” (*Id.*, at 1134,  
14 citing Labor Code § 2699(e)(2).) Nonetheless, the court noted that the plaintiff had provided no  
15 “coherent analysis” to justify the “relatively meager value” assigned to the PAGA claim.

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

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1           **C. Attorney fees**

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

10          Following typical practice, however, the fee award will not be considered at this time, but  
11 only as part of final approval.

12           **D. Discussion**

13          Plaintiffs’ initial motion provided no specific information as to the legal or factual basis  
14 for the claim, or its merit or value. The initial memorandum generally set forth a variety of claims,  
15 e.g., failure to pay overtime, failure to provide meal and rest breaks, along with a cascade of  
16 violations that follow from those violations. There was little, however, from which the Court could  
17 ascertain whether there actually was any unlawful policy or practice that resulted in the violations.  
18 The supplemental declaration sets forth greater analysis. With respect to each category of claim, it  
19 describes that in many instances defendant had evidence of facially compliant policies, indicating  
20 that there were relatively few violations, or at least that they involved individual facts that may not  
21 be appropriate for resolution on a class-wide basis. It sets out estimates of the value of each claim,  
22 and applies a discount for settlement purposes. (After discounts, counsel estimated values for  
23 overtime violations (\$366,000), minimum wage violations (\$198,000), meal breaks (\$244,000),  
24 rest breaks (\$212,000), waiting time penalties (\$313,000), wage statements (\$262,000), and  
25 employee reimbursements (\$65,000). These figures total \$1,660,000. They also provide sufficient  
26 information concerning the nature of the claims to enable the Court to determine that the amounts  
27 are fair, reasonable, and adequate.

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

3 Litigation costs, settlement administration costs, and the representative incentive payments  
4 will be reviewed in conjunction with the motion for final approval. Criteria for evaluation of  
5 representative payments are discussed in *Clark v. American Residential Services LLC* (2009) 175  
6 Cal.App.4th 785, 804-807.

7 **E. Conclusion**

8 The motion is granted.

9 Counsel were directed to prepare an order reflecting the Court's ruling, the other findings  
10 in the previously submitted proposed order, and to obtain a hearing date for the motion for final  
11 approval from the clerk. Other dates in the scheduled notice process should track as appropriate to  
12 the hearing date.

13 **THE COURT HEREBY ORDERS AS FOLLOWS:**

14 1. The Court hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class  
15 Action Settlement.

16 2. The Court preliminarily approves the Stipulation of Settlement and Release  
17 ("Settlement," "Agreement," or "Settlement Agreement"), attached as "EXHIBIT 1" to the  
18 Declaration of Edwin Aiwarzian in Support of Plaintiffs' Motion for Preliminary Approval of Class  
19 Action Settlement. This is based on the Court's determination that the Settlement falls within the  
20 range of possible approval as fair, adequate, and reasonable.

21 3. This Order incorporates by reference the definitions in the Settlement Agreement,  
22 and all capitalized terms defined therein shall have the same meaning in this Order as set forth in  
23 the Settlement Agreement.

24 4. It appears to the Court on a preliminary basis that the Settlement is fair, adequate  
25 and reasonable. It appears to the Court that extensive investigation and research have been  
26 conducted such that counsel for the parties at this time are able to reasonably evaluate their  
27 respective positions. It further appears to the Court that the Settlement, at this time, will avoid  
28 substantial additional costs by all parties, as well as avoid the delay and risks that would be

1 presented by the further prosecution of the case. It further appears that the Settlement has been  
2 reached as the result of intensive, serious and non-collusive, arms-length negotiations, and was  
3 entered into in good faith.

4 5. The Court preliminarily finds that the Settlement, including the allocations for the  
5 Attorneys' Fees and Costs, Enhancement Payments, LWDA Payment, Settlement Administration  
6 Costs, and payments to the Settlement Class Members provided thereby, appear to be within the  
7 range of reasonableness of a settlement that could ultimately be given final approval by this Court.  
8 Indeed, the Court has reviewed the monetary recovery that is being granted as part of the  
9 Settlement and preliminarily finds that the monetary settlement awards made available to the Class  
10 Members are fair, adequate, and reasonable when balanced against the probable outcome of further  
11 litigation relating to certification, liability, and damages issues.

12 6. The Court concludes that, for settlement purposes only, the proposed Class meets  
13 the requirements for certification under section 382 of the California Code of Civil Procedure in  
14 that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is  
15 impracticable; (b) common questions of law and fact predominate, and there is a well-defined  
16 community of interest amongst the members of the Class with respect to the subject matter of the  
17 litigation; (c) Plaintiffs' claims are typical of the claims of the members of the Class; (d) Plaintiffs  
18 will fairly and adequately protect the interests of the members of the Class; (e) a class action is  
19 superior to other available methods for the efficient adjudication of the controversy; and (f) Class  
20 Counsel is qualified to act as counsel for Plaintiffs in their individual capacities and as the  
21 representatives of the Class.

22 7. The Court conditionally certifies, for settlement purposes only, the Class, defined  
23 as follows:

24 All current and former hourly-paid and non-exempt employees in the State of  
25 California who worked for Defendant from May 3, 2015 through February 18,  
2021, excluding three individuals who have already entered into individual  
settlements with Defendant.

26 8. The Court provisionally appoints Edwin Aiwazian, Arby Aiwazian, and Joanna  
27 Ghosh of Lawyers *for* Justice, PC as counsel for the Class ("Class Counsel").

28 9. The Court provisionally appoints Plaintiffs Amanda Patterson and Matthew

1 Medina as the representatives of the Class ("Class Representatives").

2 10. The Court provisionally appoints Phoenix Settlement Administrators ("Phoenix")  
3 to handle the administration of the Settlement ("Settlement Administrator").

4 11. Within thirty (30) calendar days of the date of this Order, Defendant shall provide  
5 the Settlement Administrator with the following information about each Class Member: last known  
6 full name, last known address, social security number, and Pay Periods, based on Defendant's  
7 business records (collectively referred to as the "Class Data") in conformity with the Settlement  
8 Agreement.

9 12. The Court approves, both as to form and content, the revised Notice of Class  
10 Action Settlement ("Class Notice") attached hereto as "**EXHIBIT 1.**" The Class Notice shall be  
11 provided to Class Members in the manner set forth in the Settlement Agreement. The Court finds  
12 that the Class Notice appears to fully and accurately inform the Class Members of all material  
13 elements of the Settlement, of Class Members' right to be excluded from the Settlement by  
14 submitting a Request for Exclusion, of Class Members' right to dispute the Pay Periods credited to  
15 each of them by submitting a Pay Periods Dispute, and of each Settlement Class Member's right  
16 and opportunity to object to the Settlement by mailing an Objection to the Settlement  
17 Administrator. The Court further finds that distribution of the Class Notice substantially in the  
18 manner and form set forth in the Settlement Agreement and this Order, and that all other dates set  
19 forth in the Settlement Agreement and this Order, meet the requirements of due process and shall  
20 constitute due and sufficient notice to all persons entitled thereto. The Court further orders the  
21 Settlement Administrator to mail the Class Notice to all Class Members within twenty-one (21)  
22 calendar days of receipt of the Class Data, pursuant to the terms set forth in the Settlement  
23 Agreement.

24 13. The Court hereby preliminarily approves the proposed procedure, set forth in the  
25 Settlement Agreement, for seeking exclusion from the Settlement. Any Class Member may  
26 choose to be excluded from the Settlement by submitting a valid and timely Request for Exclusion  
27 in conformity with the requirements set forth in the Class Notice, to the Settlement Administrator,  
28 postmarked no later than the date which is sixty (60) calendar days from the initial mailing of the  
Class Notice to Class Members ("Response Deadline"), or, in the case of Class Members to whom



1 a Class Notice is re-mailed, ten (10) business days from the date of re-mailing, or until the  
2 Response Deadline has expired, whichever is later. Any such person who timely and validly  
3 chooses to opt out of, and be excluded from, the Settlement will not be entitled to any recovery  
4 under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or  
5 comment thereon. Class Members who have not submitted a timely and valid Request for  
6 Exclusion from the Settlement (i.e., Settlement Class Member) shall be bound by the Settlement  
7 Agreement and any final judgment based thereon.

8 14. To object to the Settlement, a Class Member must mail their Objection to the  
9 Settlement Administrator, postmarked on or before the Response Deadline. The Objection must  
10 be signed and must contain the information that is required, as set forth in the Class Notice,  
11 including and not limited to the grounds for the objection.

12 15. A Final Approval Hearing shall be held before this Court on August 26, 2021 at  
13 9:00 a.m. in Department 39 of the Contra Costa County Superior Court, located at Wakefield  
14 Taylor Courthouse, 725 Court Street, Martinez, California 94553, to determine all necessary  
15 matters concerning the Settlement, including: whether the proposed settlement of the action on the  
16 terms and conditions provided for in the Settlement is fair, adequate, and reasonable and should be  
17 finally approved by the Court; whether a judgment, as provided in the Settlement, should be  
18 entered herein; whether the plan of allocation contained in the Settlement should be approved as  
19 fair, adequate, and reasonable to the Class Members; and determine whether to finally approve the  
20 requests for the Attorneys' Fees and Costs, Enhancement Payments, and Settlement  
Administration Costs.

21 16. Class Counsel shall file a motion for final approval of the Settlement and for  
22 Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs, along  
23 with the appropriate declarations and supporting evidence, including the Settlement  
24 Administrator's declaration, by August 4, 2021, to be heard at the Final Approval Hearing.

25 17. The proposed final approval order and judgment to be submitted to the Court in  
26 conjunction with the motion for final approval of the Settlement shall provide for a Compliance  
27 Hearing after the Settlement has been completely implemented, for Class Counsel to submit a  
28 compliance report one week before the Compliance Hearing date, and for five percent (5%) of the

1 attorneys' fees awarded to be withheld by the Settlement Administrator pending satisfactory  
2 compliance as found by the Court.


3 18. In the event the Settlement does not become effective in accordance with the terms  
4 of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled  
5 or fails to become effective for any reason, this Order shall be rendered null and void, shall be  
6 vacated, and the Parties shall revert back to their respective positions as of before entering into the  
7 Settlement Agreement.

8 19. The Court reserves the right to adjourn or continue the date of the Final Approval  
9 Hearing and any dates provided for in the Settlement Agreement without further notice to the  
10 Class Members, and retains jurisdiction to consider all further applications arising out of or  
11 connected with the Settlement.

12 **IT IS SO ORDERED.**

13 Dated: MAR 19 2021

14 By:

  
15 The Honorable Edward G. Weil  
16 Judge of the Superior Court  
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# **EXHIBIT 1**

## **NOTICE OF CLASS ACTION SETTLEMENT**

*Amanda Patterson, et al. v. FinishMaster, Inc.*  
Superior Court of California for the County of Contra Costa, Case No. MSC19-00878

### **PLEASE READ THIS NOTICE CAREFULLY.**

**You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.**

**You do not need to take any action to receive a settlement payment.**

**This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the settlement, object to the settlement, and/or dispute the number of Pay Periods that you are credited with, if you so choose.**

**YOU ARE NOTIFIED THAT:** A class and representative action settlement has been reached between Plaintiffs Amanda Patterson and Matthew Medina ("Plaintiffs") and Defendant FinishMaster, Inc. ("Defendant") (Plaintiffs and Defendant are collectively referred to as the "Parties") in the case entitled *Amanda Patterson, et al. v. FinishMaster, Inc.*, Contra Costa County Superior Court, Case No. MSC19-00878 (the "*Patterson Action*" or "Lawsuit"), which may affect your legal rights. On February 18, 2021, the Court granted preliminary approval of the settlement and scheduled a hearing on August 26, 2021 at 9:00 a.m. ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

### **I. IMPORTANT DEFINITIONS**

"**Class**" means all current and former hourly-paid and non-exempt employees in the state of California who worked for Defendant from May 3, 2015 through February 18, 2021, excluding three individuals who have already entered into individual settlements with Defendant.

"**Class Member**" means any hourly-paid and non-exempt employee who worked for Defendant in California during any portion of the Class Period.

"**Class Period**" means the period from May 3, 2015 through February 18, 2021.

### **II. BACKGROUND OF THE ACTION**

On May 3, 2019, Plaintiff Patterson filed a Class Action Complaint for Damages against Defendant in the Contra Costa County Superior Court, thereby commencing the *Patterson Action*. On August 8, 2019, Plaintiff Medina filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Ventura County Superior Court, thereby commencing the representative action entitled *Matthew Medina v. FinishMaster, Inc.*, Case No. 56-2019-00531639-CU-OE-VTA (the "*Medina Action*"). On December 30, 2019, Plaintiff Patterson filed a Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint") in the *Patterson Action*, adding Plaintiff Medina as a named plaintiff and a cause of action under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA") to the Lawsuit. On January 24, 2020, the *Medina Action* was dismissed without prejudice.

Plaintiffs allege that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment, provide accurate wage statements, keep requisite payroll records, and reimburse business expenses, and thereby engaged in unfair business practices under the California Business and Professions Code section 17200, *et seq.* and conduct giving rise to civil penalties recoverable under PAGA, with respect to Plaintiffs and other putative class members. Plaintiffs seek, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, penalties, interest, and attorneys' fees and costs.

Defendant denies all of the allegations in the Lawsuit or that it violated any law, and contends that at all times it has complied with federal, state, and local laws.

The Parties participated in a full-day mediation session with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Stipulation of Settlement and Release ("Settlement Agreement" or "Settlement").

On February 18, 2021, the Court entered an order preliminarily approving the Settlement. The Court has appointed Phoenix Settlement Administrators as the administrator of the Settlement ("Settlement Administrator"), Plaintiffs Amanda Patterson and Matthew Medina as representatives of the Class ("Class Representatives"), and Plaintiffs' attorneys, Lawyers for Justice, PC, as counsel for the Class ("Class Counsel").

Counsel for this matter is as follows:

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Defendant FinishMaster, Inc.:
Edwin Aiwanian Arby Aiwanian Joanna Ghosh <b>Lawyers for Justice, PC</b> 410 West Arden Avenue, Suite 203 Glendale, California 91203 Tel.: (818) 265-1020 Fax: (818) 265-1021	Mary Dollarhide Taylor H. Wemmer <b>DLA PIPER LLP (US)</b> 4365 Executive Drive, # 1100 San Diego, California 92121-233 Tel: 858.677.1400 Fax: 858.677.1401

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Settlement (in which case you will not receive an Individual Settlement Payment), object to the Settlement, and/or dispute the Pay Periods credited to you, if you so choose, as explained more fully in Section III below.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Lawsuit have merit or that Defendant has any liability to Plaintiffs or to Class Members. Plaintiffs and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members. The Court has made no ruling on the merits of the Class Members' claims and has determined only that certification of the Class for settlement purposes is appropriate under California law.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT**

#### **A. Settlement Formula**

The maximum settlement consideration to be paid by Defendant is One Million Nine Hundred Thousand Dollars (\$1,900,000) (the "Maximum Settlement Amount"). The portion of the Maximum Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Maximum Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys' fees in the amount of 38% of the Maximum Settlement Amount (i.e., \$722,000) plus actual litigation costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000) to Class Counsel (collectively, "Attorneys' Fees and Costs"); (2) payments in the amount of Ten Thousand Dollars (\$10,000) each to Plaintiffs Amanda Patterson and Matthew Medina (i.e. \$20,000 in total) for their services in the Lawsuit ("Enhancement Payments"); (3) payment to the California Labor and Workforce Development Agency ("LWDA") in the amount of One Hundred Twelve Thousand Five Hundred Dollars (\$112,500) for its 75% portion of the PAGA penalties ("LWDA Payment"); and (4) costs associated with administration of the Settlement, which are anticipated to be no greater than Fifteen Thousand Dollars (\$15,000), to the Settlement Administrator ("Settlement Administration Costs"). Note: a total of One Hundred and Fifty Thousand Dollars (\$150,000) from the Maximum Settlement Amount has been allocated toward penalties under the Private Attorneys General Act ("PAGA Penalties"), of which the LWDA will be paid 75% and the remaining 25% (i.e., Thirty-Seven Thousand Five Hundred Dollars (\$37,500)) will be a part of the Net Settlement Amount for distribution to Settlement Class Members.

Class Members are eligible to receive payment under the Settlement of their share of the Net Settlement Amount ("Individual Settlement Payment") based on the number of pay periods they worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period ("Pay Periods").

The Settlement Administrator has multiplied the Net Settlement Amount by a fraction, the numerator of which is the Class Member's individual total Pay Periods, and the denominator of which is the total number of Pay Periods of all Class Members to yield each Class Member's estimated Individual Settlement Payment that he or she may be eligible to receive under the Settlement (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion ("Settlement Class Members") will be issued their Individual Settlement Payment.

Each Individual Settlement Payment will be allocated one-third (1/3) as wages ("Wages Portion") which will be reported on an IRS Form W2, and two-thirds (2/3) as penalties, interest, and other non-wage damages ("Non-Wages Damages") which will be reported on an IRS Form 1099. Each Individual Settlement Payment will be subject to reduction for all applicable employee's and employer's share of payroll contributions and withholdings with respect to the Wages Portion of the Individual Settlement Payments.

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

**B. Your Pay Periods Based on Defendant's Records**

The Pay Periods of each Class Member were calculated based on Defendant's records. According to Defendant's records:

**From May 3, 2015 through February 18, 2021, you worked for Defendant as an hourly-paid or non-exempt employee in California for [REDACTED] Pay Periods.**

If you disagree with the number of Pay Periods credited to you, you must submit a written dispute of the number of Pay Periods credited to you ("Pay Periods Dispute") to the Settlement Administrator. The Pay Periods Dispute must: (1) contain the case name and number of the *Patterson* Action (*Patterson, et al. v. FinishMaster, Inc.*, Case No. MSC19-00878); (2) contain your full name, address, telephone number, and the last four digits of your social security number; (3) be signed by you; (4) contain a clear statement indicating that you dispute the Pay Periods credited to you and provide the number of Pay Periods that you contend should be credited to you; (5) attach documentation and/or an explanation to show that the Pay Periods credited to you are incorrect; and (6) be mailed to the Settlement Administrator at the address specified in Section IV.B below, postmarked **on or before [the Response Deadline]**.

**C. Your Estimated Individual Settlement Payment**

As explained above, your estimated Individual Settlement Payment is based on the number of Pay Periods credited to you, based on Defendant's records. Based on your Pay Periods:

**Your Individual Settlement Payment is estimated to be \$ [REDACTED]. The Individual Settlement Payment is subject to reduction for the employee's and employer's share of taxes and withholding with respect to the Wages Portion of the Individual Settlement Payment and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**

The settlement approval process may take multiple months. Your Individual Settlement Payment reflected in this Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower.

**D. Release of Claims**

Upon the Effective Date, Plaintiffs and all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will be deemed to have released and discharged the Released Parties of all Released Claims he or she may have or had.

“Released Claims” means any and all wage-and-hour claims, rights, demands, liabilities and causes of action that that were pled or could have been pled based on the factual allegations in the Operative Complaint, arising during the Class Period, including, but not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, for the following categories of allegations: all claims for failure to pay wages for hours worked, including regular wages and overtime premium pay; all claims for failure to pay the minimum wage in accordance with applicable law; all claims for the failure to provide compliant meal and/or rest periods and associated premium pay in accordance with applicable law; all claims for recordkeeping violations; all claims for pay stub violations; all claims for failing to timely pay wages during employment and upon termination and associated waiting time penalties; all claims for unreimbursed business expenses; all claims under the California Business and Professions Code §§ 17200 et. seq. based on the aforementioned; and all claims for civil and statutory penalties, including and not limited to those recoverable under California Labor Code § 2698 et seq. (“PAGA”), based on the aforementioned.

“Released Parties” means Defendant, and all of its former and present parents and subsidiaries, and their current and former officers, directors, employees, partners, shareholders and agents, and the predecessors, successors, assigns, and legal representatives of all such entities and individuals.

**E. Attorneys’ Fees and Costs to Class Counsel**

Class Counsel will seek Attorneys’ Fees and Costs, consisting of attorneys’ fees in an amount of up to thirty-eight percent (38%) of the Maximum Settlement Amount (i.e., up to \$722,000) and reimbursement of actual litigation costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000), subject to approval by the Court. All Attorneys’ Fees and Costs awarded by the Court will be paid from the Maximum Settlement Amount. Class Counsel has been prosecuting the Lawsuit on behalf of Plaintiffs and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

**F. Enhancement Payments to Plaintiffs**

In recognition of their services in connection with the Lawsuit, Plaintiffs will each seek an Enhancement Payment in the amount of Ten Thousand Dollars (\$10,000) (for a total of \$20,000), to be paid from the Maximum Settlement Amount subject to approval by the Court. If awarded, the Enhancement Payments will be paid to Plaintiffs in addition to their Individual Settlement Payments that they are entitled to under the Settlement.

**G. Settlement Administration Costs to the Settlement Administrator**

Payment to the Settlement Administrator is estimated not to exceed Fifteen Thousand Dollars (\$15,000) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Objections, and Pay Periods Disputes, calculating Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Maximum Settlement Amount, subject to approval by the Court.

**IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?**

**A. Participate in the Settlement**

**If you want to participate in the Settlement and receive money from the Settlement, you do not have to do anything.** You will automatically be included in the Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Settlement.

Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will release the claims described in Section III.D above. As a Class Member, you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

## **B. Request Exclusion from the Settlement**

If you wish to opt out of the Settlement, you must submit a valid and timely written request in writing to be excluded from the Settlement ("Request for Exclusion") to the Settlement Administrator.

A Request for Exclusion must: (1) contain the case name and number of the *Patterson* Action (*Patterson, et al. v. FinishMaster, Inc.*, Case No. MSC19-00878); (2) contain your full name, address, telephone number, and the last four digits of your social security number; (3) be signed by you; (4) contain a statement clearly indicating that you wish to be excluded from the Settlement; and (5) be mailed to the Settlement Administrator, postmarked **on or before [Response Deadline]**, at the following mailing address:

[Settlement Administrator]

[Mailing Address]

If the Court grants final approval of the Settlement, any Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive any payment from the Settlement, will not be bound by the Settlement (and the release of claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Settlement. Any Class Member who does not submit a valid and timely Request for Exclusion will be deemed a Settlement Class Member and will be bound by all terms of the Settlement, including those pertaining to the Release of Claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

## **C. Object to the Settlement**

You can object to the terms of the Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection ("Objection") to the Settlement Administrator.

An Objection must (1) contain the case name and number of the *Patterson* Action (*Patterson, et al. v. FinishMaster, Inc.*, Case No. MSC19-00878); (2) contain your full name, address, telephone number, and the last four digits of your social security number; (3) be signed by you; (4) contain an explanation of your objection(s) to the Settlement; (5) indicate whether you are represented by counsel, and if represented by counsel, provide the name and address of said counsel; (6) indicate whether you intend to appear at the Final Approval Hearing; and (7) be mailed to the Settlement Administrator at the address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

## **V. FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing in Department 39 of the Contra Costa County Superior Court, Wakefield Taylor Courthouse, located at 725 Court Street, Martinez, California 94553, on **August 26, 2021, at 9:00 a.m.**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Attorneys' Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

## **VI. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court Records Department of the Contra Costa County Superior Court, located at 1111 Ward Street, Martinez, California 94553. Some documents and information regarding the Lawsuit can also be accessed online for free or at a minimal charge at the Contra Costa County Superior Court's website, using the Public Case Access System, at the following web address: <http://icms.cc-courts.org/tellme/>

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

**IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**