

**FILED**  
LOS ANGELES SUPERIOR COURT

MAR 23 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK  
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NANCY NAVARRO

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

RENEE J. MONTOYA, CINDY L.  
BRAKEBILL, JACOB R. MONTOYA and  
SOLEDAD MARRON, as individuals and  
on behalf of all others similarly situated,

Plaintiff,

v.

REMO, INC., a California corporation; and  
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV34614

ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

Date: March 23, 2022  
Time: 9:00 a.m.  
Dept.: SSC-17

**I. BACKGROUND**

Plaintiffs Renee J. Montoya, Cindy L. Brakebill, Jacob R. Montoya, and Soledad Marron sue their former employer, Defendant Remo, Inc., for alleged wage and hour violations. Defendant is an American musical instruments manufacturing company

1 based in Valencia, California. Plaintiffs seek to represent a class of Defendant's current  
2 and former non-exempt employees.

3 On September 11, 2020, Plaintiffs Renee J. Montoya, Cindy L. Brakebill, and  
4 Jacob R. Montoya filed a Class Action Complaint against Defendant Remo, Inc., as  
5 well as former defendants Employbridge, LLC and Real Time Staffing Services, LLC  
6 (the "Staffing Agencies").

7 On September 30, 2020, Plaintiff Soledad Marron filed a Class Action  
8 Complaint against Defendant Remo, Inc. and Remo International, Inc. (Case No.  
9 2STCV37581). On January 5, 2021, the Court deemed the *Montoya* and *Marron*  
10 actions related.

11 On April 26, 2021, the parties attended mediation before Paul Grossman, Esq.  
12 and reached a settlement. On December 10, 2021, pursuant to a stipulation of the  
13 parties and the Staffing Agencies, the Court granted Plaintiffs' leave to file a First  
14 Amended Complaint in the *Montoya* action, dismissing the Staffing Agencies and  
15 consolidating the allegations in the *Montoya* and *Marron* actions against Remo, Inc.

16 On December 27, 2021, Plaintiffs filed the First Amended Complaint alleging  
17 causes of action for: (1) failure to pay overtime wages (Labor Code §§ 510, 1194); (2)  
18 failure to pay minimum wages (Labor Code §§ 1197, 1199); (3) failure to provide meal  
19 periods (Labor Code § 512); (4) failure to provide rest periods (Labor Code § 226.7);  
20 (5) failure to pay all wages due upon termination (Labor Code §§ 201, 202, 203); (6)  
21 failure to provide accurate wage statements (Labor Code § 226); (7) failure to timely  
22 pay wages during employment (Labor Code § 204); (8) failure to indemnify (Labor  
23 Code § 2802); (9) violation of Labor Code § 1400, et seq.; (10) unfair competition  
24 (Bus. & Prof. Code §§ 17200, et seq.); and (11) civil penalties under the Private  
25 Attorneys General Act (Labor Code §§ 2699, et seq.) ("PAGA").

1 The terms of settlement were finalized in a *Stipulation of Class and*  
2 *Representative Settlement* ("Settlement Agreement"), a copy of which was filed with  
3 the Court.

4 On January 19, 2022, the Court issued a "checklist" to the parties pertaining to  
5 deficiencies in Plaintiffs' motion for preliminary approval and the Settlement  
6 Agreement. In response, the parties filed further briefing, including a First Amended  
7 Settlement Agreement attached to the Renewed Declaration of David D. Bibiyan  
8 ("Bibiyan Decl.") as Exhibit 2.

9 Plaintiffs' motion for preliminary approval of the settlement came on for hearing  
10 on March 23, 2022 and certain issues related to the settlement, set forth in a further  
11 checklist filed March 21, 2022, were discussed. Having considered the pleadings and  
12 arguments of counsel, as well as an amended form of Notice filed March 22, 2022, and  
13 for the reasons set forth below, the Court preliminarily grants approval of the settlement  
14 as set forth in the First Amended Settlement Agreement.

## 15 **II. THE TERMS OF THE SETTLEMENT**

### 16 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

17 "Settlement Class Member(s)" or "Settlement Class" means all non-exempt,  
18 hourly-paid employees, currently and formerly employed by Defendants, in the State of  
19 California during the Class Period. Aggrieved Employees are included in this  
20 Settlement Class. (§1.39)

21 "Class Period" means the period from September 11, 2016, through and  
22 including the date the Court grants Preliminary Approval of the Settlement. (§1.8)  
23  
24  
25

1 "Aggrieved Employees" means Class Members working during the PAGA  
2 Period, with the time period defined as July 27, 2019 through the date of preliminary  
3 approval. (§1.23)

4 "Participating Class Members" means all Settlement Class Members who do not  
5 submit a valid and timely Request for Exclusion. (§1.29)

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

8 The essential monetary terms are as follows:

9 The Gross Settlement Amount ("GSA") is **\$900,000** (§1.21). This includes  
10 payment of a PAGA penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000) and 25%  
11 to the Aggrieved Employees (\$5,000) (§1.23).

12 Escalation of Gross Settlement Amount: Defendants represent that there are no  
13 more than 27,155 workweeks worked from September 11, 2016 through April 26, 2021.  
14 In the event the number of workweeks worked during this timeframe increases by more  
15 than 10%, or 2,716 workweeks worked, then the GSA shall be increased proportionally  
16 by the workweeks in excess of 27,155 multiplied by the workweek value. The workweek  
17 value shall be calculated by dividing the Gross Settlement Amount by 27,155. The  
18 Parties agree that the workweek value amounts to and the settlement amounts to \$33.14  
19 per workweek ( $\$900,000 / 27,155$  workweeks). Thus, for example, should there be  
20 30,000 workweeks in the Class Period, then the GSA shall be increased by \$94,283.30.  
21 ( $30,000$  workweeks -  $27,155$  workweeks x  $\$33.14/\text{workweek}$ .) (§3.35)

22 The Net Settlement Amount ("Net") (**\$542,005**) is the GSA less:

- 23 ○ Up to **\$300,000** (33 1/3%) for attorney fees (§1.5);
- 24 ○ Up to **\$30,000** for attorney costs (§1.6);

- 1           ○ Up to **\$20,000 total [\$5,000 each]** for service awards to the proposed  
2           class representatives (¶1.9); and
- 3           ○ Estimated **\$7,995** for settlement administration costs Lawrence Dec. ¶17.
- 4       ● Employer-side payroll taxes will be paid separately by Defendants and not out of  
5       the GSA (¶1.17).
  - 6       ● Assuming the Court approves all maximum requested deductions, approximately  
7       \$522,005 will be available for automatic distribution to participating class  
8       members. Assuming full participation, the average settlement share will be  
9       approximately \$3,017.37. ( $\$522,005 \text{ Net} \div 173 \text{ class members} = \$3,017.37$ ). In  
10      addition, each Aggrieved Employee will receive a portion of the PAGA penalty,  
11      estimated to be \$36.49 per Aggrieved Employee. ( $\$5,000 \text{ or } 25\% \text{ of } \$20,000$   
12      PAGA penalty  $\div 137 \text{ Aggrieved Employees} = \$36.49$ ).
  - 13     ● There is no Claim Requirement (¶1.21).
  - 14     ● The settlement is not reversionary (¶3.19).
  - 15     ● Individual Settlement Share Calculation: Each Participating Class Member shall  
16     be eligible to receive an Individual Settlement Payment, which is a share of the  
17     Net Settlement Amount, based on the number of weeks worked by the  
18     Participating Class Member during the Class Period, as a proportion of all weeks  
19     worked by all Participating Class Members during the Class Period. (¶3.21) To  
20     determine each Participating Class Member's Individual Settlement Share, the  
21     Settlement Administrator will determine the aggregate number of Workweeks  
22     worked by all Participating Class Members during the Class Period  
23     ("Participating Class Workweeks") and use the following formula: Individual  
24     Settlement Share = (Participating Class Member's Workweeks / Participating  
25     Class Workweeks) x Net Settlement Amount. (¶3.23.3)

1           ○ PAGA Payments: Each Aggrieved Employee shall be eligible to receive  
2           an Individual PAGA Payment, which is a share of the PAGA Allocation  
3           attributed to Aggrieved Employees based on the number of weeks worked  
4           by the Participating Class Member during the PAGA Period, as a  
5           proportion of all weeks worked by all Aggrieved Employees during the  
6           PAGA Period. (§3.22) To determine each Aggrieved Employee's PAGA  
7           Payment, the Settlement Administrator will use the following formula:  
8           Aggrieved Employee's PAGA Payment= (Aggrieved Employee's  
9           Workweeks / PAGA Workweeks) x \$5,000.00 (the portion of the PAGA  
10          Payment paid to PAGA Aggrieved Employees). (§3.23.5)

- 11       ● Tax Withholdings: Individual Settlement Payments will be allocated as follows:  
12       twenty percent (20%) as wages (a W-2 will be issued) and eighty percent (80%)  
13       as interest and penalties (a 1099 will be issued). Individual PAGA Payments will  
14       be allocated as one hundred percent ( 100%) penalties. (§3.4)
- 15       ● Uncashed Settlement Payment Checks: Any settlement checks that remain  
16       uncashed one hundred eighty (180) or more calendar days after issuance shall be  
17       voided. Within seven (7) calendar days after expiration of the 180-day period,  
18       checks for such payments shall be canceled and funds associated with such  
19       checks shall be considered unpaid, unclaimed or abandoned cash residue  
20       pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The  
21       Unpaid Residue plus accrued interest, if any, as provided in Code of Civil  
22       Procedure section 384, shall be transmitted as follows: to Legal Aid at Work,  
23       180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los  
24       Angeles County. (§3.26)

1           ○ All parties and their counsel represent that they have no interest or  
2           involvement in the governance or work of Legal Aid at Work. (Renewed  
3           Bibiyán Decl. ¶103; Amended Decl. of Berkeh Alemzadeh ¶8; Amended  
4           Decl. of Kevin Mahoney ¶7; Decl. of Cindy L. Brakebill ¶19; Decl. of  
5           Soledad Marron ¶21; Decl. of Jacob R. Montoya ¶20; Decl. of Renee J.  
6           Montoya ¶19; Decl. of Carmen Boyce ¶¶ 2-4; Decl. of Keith J. Rasher ¶¶  
7           2-3.)

- 8           ● Funding and Distribution of Settlement: Defendants shall fully fund the  
9           Settlement within fourteen (14) calendar days after the Final Approval Date,  
10          including Employer's Taxes. No payments from the Gross Settlement Amount  
11          shall be made before the Gross Settlement Amount is fully funded. No release in  
12          this Settlement shall be effective until the Gross Settlement Amount and  
13          Employer's Taxes are paid to the Settlement Administrator. (¶3.19) Individual  
14          Settlement Payments shall be mailed by regular First-Class U.S. Mail to  
15          Participating Class Members' last known mailing address no later than fifteen  
16          (15) calendar days after the Gross Settlement Amount is fully funded. (¶3.21)

### 18           **C.     TERMS OF RELEASES**

- 19          ● Release By All Settlement Class Members. Effective only upon the entry of an  
20          Order granting Final Approval of the Settlement, entry of Judgment, and  
21          payment by Defendants to the Settlement Administrator of the full Gross  
22          Settlement Amount (as the same may be escalated pursuant to this Agreement)  
23          and Employer's Taxes necessary to effectuate the Settlement, all Participating  
24          Class Members, including the Plaintiffs, will be deemed to have fully, finally  
25

1 and forever released, settled, compromised, relinquished, and discharged the  
2 Released Parties from the Released Claims for the Class Period. (§3.2.1)

- 3 • "Released Claims" means any and all claims against the Released Parties  
4 asserted in the Operative Complaint in the Action, and any and all claims that  
5 may be asserted against the Released Parties based on the factual allegations in  
6 the Operative Complaint in the Action, as follows: For the duration of the Class  
7 Period, the release includes: (a) all claims for failure to pay overtime wages and  
8 for failure to properly calculate overtime wages; (b) all claims for failure to pay  
9 minimum wages, straight time wages, bonus, commissions, or incentive  
10 compensation, and for failure to properly calculate minimum wages, straight  
11 time wages, bonus, commissions, or incentive compensation; (c) all claims for  
12 failure to provide compliant meal and rest periods and associated premium pay,  
13 or to properly calculate and/or pay premium pay in lieu of meal and rest periods;  
14 (d) all claims for the failure to timely pay wages upon termination; (e) all claims  
15 for non-compliant, incomplete, and/or inaccurate wage statements; (f) all claims  
16 for failure to reimburse or indemnify for business expenses or losses incurred;  
17 (g) all claims for failure to maintain accurate records; (h) all claims asserted  
18 through California Business & Professions Code § 17200 et seq. arising out of  
19 the Labor Code violations referenced in the Operative Complaint in the Action;  
20 (i) any other claims or penalties under the wage and hour laws pleaded in the  
21 Operative Complaint in the Action; (j) all damages, penalties, interest and other  
22 amounts recoverable under the causes of action alleged in the Operative  
23 Complaint in the Action under California law, to the extent possible, including  
24 but not limited to the California Labor Code, the Fair Labor Standards Act, 29  
25 USC § 201, et seq. ("FLSA"), the California Industrial Welfare Commission



1 Wage Orders, as to the facts alleged in the Operative Complaint in the Action,  
2 the applicable wage orders as to the facts alleged in the Operative Complaint in  
3 the Action, and the California Unfair Competition Law. (§1.34)

4 ○ For Aggrieved Employees, the release includes, for the duration of the  
5 PAGA Period, all claims for civil penalties under PAGA arising out of  
6 Labor Code Sections 210, 226.3, 558, 1197.1, and 2699 based on the  
7 factual allegations and Labor Code sections alleged to have been violated  
8 in the notices filed with the LWDA under Labor Code section 2699, and  
9 on file with the Court, which includes, without limitation, Labor Code  
10 sections 200, 201, 202, 203, 204, 226, 246, 404, 432, 510, 1174, 1194,  
11 1197, 1198.5, 2802, and 2810.5. (§1.34)

12 ○ The release extends to the FLSA only insofar as a Class Member timely  
13 cashes his or her Individual Settlement Payment check. Only in such an  
14 instance will he or she be deemed to have opted into the action for the  
15 purposes of the FLSA and thereby waived and released any claims he or  
16 she may have under the FLSA. (§1.33, fn 1)

17 ○ "Operative Complaint" shall refer to the First Amended Complaint in the  
18 Action. (§1.28)

19 ● "Released Parties" means Remo Inc., Remo International Inc., and current and  
20 former parents, owners, subsidiaries, predecessors and successors, and each of  
21 their respective officers, directors, partners, shareholders and agents, joint  
22 venturers, employees and any other successors or assigns. (§1.35). In approving  
23 the settlement it is understood that no proposed members of the class are  
24 releasing other class members.

- 1 • The named Plaintiffs will also provide a general release and a waiver of the  
2 protections of Cal. Civ. Code §1542. (¶¶ 1.31, 3.22)
- 3 • The releases are effective only upon the entry of an Order granting Final  
4 Approval of the Settlement, entry of Judgment, and payment by Defendants to  
5 the Settlement Administrator of the full Gross Settlement Amount, which will  
6 occur within fourteen (14) calendar days after the Final Approval Date (¶3.19).

#### 7

8 **D. SETTLEMENT ADMINISTRATION**

- 9 • The proposed Settlement Administrator is Phoenix Settlement Administrators  
10 (¶1.2), which has provided evidence that no counsel are affiliated with it and that it  
11 has adequate procedures in place to safeguard the data and funds to be entrusted to  
12 it. (See Declaration of Jodey Lawrence.)
- 13 • Settlement administration costs are estimated to be \$7,995.00. Id.
- 14 • Notice: The manner of giving notice is described below.
- 15 • Opt Out/Objection Dates: "Response Deadline" means the date forty-five (45)  
16 days after the Settlement Administrator mails Notice Packets to Settlement Class  
17 Members, and shall be the last date on which Settlement Class Members may: (a)  
18 postmark Requests for Exclusion from the Settlement, or (b) postmark Notices of  
19 Objection to the Settlement. (¶1.37) The deadline also applies to the submission of  
20 workweek disputes. (¶3.14)
  - 21 ○ Any Settlement Class Member who requests to be excluded from the  
22 Settlement will not be entitled to any recovery under the Class Settlement  
23 allocation and will not be bound by the terms of the class settlement.  
24 However, if he or she is an Aggrieved Employee, he or she will still receive  
25

1 an Individual PAGA Payment and be bound by the release of PAGA civil  
2 penalties for the PAGA Period. (§3.15)

3 ○ If the number of Settlement Class Members who opt out by submitting  
4 Requests for Exclusion exceeds seven and-a-half percent (7.5%) of the total  
5 number of Settlement Class Members, then Defendants may, in the exercise  
6 of their sole discretion, abrogate the Agreement. (§3.30)

7 • Notice of Final Judgment will be posted on the Settlement Administrator’s website  
8 (§3.33).

9  
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,  
25 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)

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

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

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

1 factors is not exclusive and the court is free to engage in a balancing and weighing of  
2 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
3 245.

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

11  
12 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

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

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

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

18 On April 26, 2021, the parties attended mediation before Paul Grossman, Esq.,  
19 which resulted in settlement with the aid of the mediator’s evaluation and proposal.  
20 (Renewed Bibiyan Decl. ¶8.)

21  
22 **2. The investigation and discovery were sufficient**

23 Class Counsel represents that in the leadup to mediation, Plaintiffs were  
24 provided with, among other things: (1) a class list reflecting the names of 173  
25 employees; (2) time and punch data for putative class members; and (3) all policy

1 documents pertaining to the employment of putative class members with Remo, Inc.  
2 (*Id.* at ¶7.)

3 In supplemental briefing, Counsel further represents that time and pay records  
4 were provided for 132 of the 172 Class Members [76.7%], that hire dates, termination  
5 dates and rates of pay were provided for all 172 Class Members, and that expert  
6 consultants retained by Class Counsel to help perform an analysis of those time and pay  
7 records concluded that the sampling was sufficient to provide useful data and was  
8 statistically significant. (*Id.* at ¶94.) At oral argument counsel indicated the data had a  
9 96% confidence interval with a 4% margin of error. This is sufficient to value the case  
10 for settlement purposes.

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

12 Class Counsel represent that they are experienced in class action litigation,  
13 including wage and hour class actions. (*Id.* at ¶82; Amended Decl. of Kevin Mahoney  
14 ¶5; Amended Decl. of Berkeh Alemzadeh ¶6.)  
15

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

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

22 //

23 //

24 //

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  
14           **1. Amount Offered in Settlement**

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

17           Class Counsel estimated Defendant’s maximum exposure at \$14,212,911, based  
18          on the following analysis:

19

<b>Violation</b>	<b>Maximum Exposure</b>
Unpaid Wages - Rounding	\$30,070.00
Unpaid Wages – Manual Time Records	\$71,619.00
Unpaid Wages – Electronic Time Records	\$111,977.00
Meal Period Violations	\$579,207.00
Rest Period Violations	\$1,421,258.00
Wage Statement Violations	\$897,700.00

20  
21  
22  
23  
24  
25

1	Waiting Time Penalties	\$328,680.00
2	PAGA Penalties	\$10,772,400.00
3	<b>Total</b>	<b>\$14,212,911.00</b>

4 (Renewed Bibiyan Decl. ¶¶ 24-57.)

5 Class Counsel obtained a gross settlement valued at \$900,000. This is  
6 approximately 6.3% of Defendant’s maximum exposure, including penalties, which are  
7 discretionary.

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

10 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,  
11 motion practice and appeals) are also likely to prolong the litigation as well as any  
12 recovery by the class members. Even if a class is certified, there is always a risk of  
13 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226  
14 [“Our Supreme Court has recognized that trial courts should retain some flexibility in  
15 conducting class actions, which means, under suitable circumstances, entertaining  
16 successive motions on certification if the court subsequently discovers that the propriety  
17 of a class action is not appropriate.”].) Further, the settlement was negotiated and  
18 endorsed by Class Counsel who, as indicated above, are experienced in class action  
19 litigation. Based upon their investigation and analysis, the attorneys representing  
20 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and  
21 adequate. (Renewed Bibiyan Decl. ¶57.)

22 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,  
23 which was sent a copy of the First Amended Settlement Agreement on March 1, 2022  
24 and has not yet objected. (Renewed Bibiyan Decl., Exhibit 6.) Any objection by it will  
25 be considered at the final fairness hearing.



1  
2 **3. The Releases Are Limited**

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

9 **4. Conclusion**

10 Class Counsel estimated Defendant's maximum exposure at \$14,212,911. Class  
11 Counsel obtained a gross settlement valued at \$900,000. This is approximately 6.3% of  
12 Defendant's maximum exposure, which, given the uncertain outcomes, including the  
13 potential that the class might not be certified, that liability is a contested issue, and that  
14 the full amount of penalties would not necessarily be assessed even if the class is certified  
15 and liability found, the settlement is within the "ballpark of reasonableness."  
16

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

18 A detailed analysis of the elements required for class certification is not required,  
19 but it is advisable to review each element when a class is being conditionally certified.  
20 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party  
21 advocating class treatment must demonstrate the existence of an ascertainable and  
22 sufficiently numerous class, a well-defined community of interest, and substantial  
23 benefits from certification that render proceeding as a class superior to the alternatives."  
24 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.  
25

//

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

2                   There are 173 putative Class Members. (Renewed Bibiyan Decl. ¶7.)  
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 records. (Renewed Bibiyan Decl. ¶7.)

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, Plaintiffs contend that common issues,  
22                  without limitation, include, whether Defendant violated applicable wage and hour laws,  
23                  i.e., failed pay for all hours worked; detrimentally rounded time; failed to provide meal or  
24                  rest breaks or compensation in lieu thereof; and whether the Class Members are entitled  
25                  to derivative penalties, etc. (MPA at 25:13-17.)

1 As to typicality, Plaintiffs assert that their claims are precisely the same as those of  
2 the Class Members they seek to represent: like other members of the Class, they were  
3 employed by Defendant during the relevant time period as a non-exempt employees, and  
4 they contend that Defendant's wage practices were uniformly applied to its non-exempt  
5 employees. (MPA at 26:3-6.)

6 As to adequacy, each Plaintiff represents that he or she has participated in the  
7 litigation, does not have conflicts of interest with the class, and is aware of the risks of  
8 serving as class representative. (Declaration of Cindy L. Brakebill ¶¶ 7-20; Declaration  
9 of Soledad Marron ¶¶ 8-22; Declaration of Jacob R. Montoya ¶¶ 8-21; Declaration of  
10 Renee Montoya ¶¶ 7-20.) As previously stated, Class Counsel have experience in class  
11 action litigation.

#### 12 13 **4. Substantial Benefits Exist**

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

#### 16 17 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 18 **OF DUE PROCESS**

19 The purpose of notice is to provide due process to absent class members. A practical  
20 approach is required, in which the circumstances of the case determine what forms of  
21 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California  
22 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the  
23 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the  
24 stake of the individual class members; (4) the cost of notifying class members; (5) the  
25

1 resources of the parties; (6) the possible prejudice to class members who do not receive  
2 notice; and (7) the res judicata effect on class members.

3 **1. Method of class notice**

4 Within fourteen (14) calendar days after the entry of the Preliminary Approval  
5 Order, Defendant, shall provide the Settlement Administrator with the Class  
6 Information for purposes of mailing Class Notices to Settlement Class Members,  
7 including: 1. Class Member's full name; 2. Class Member's last known address; 3. Class  
8 Member's last four (4) digits of social security number; 4. Class Member's employee  
9 identification number; and 5. based on Defendant's payroll records, the Class Member's  
10 total number of workweeks. The Settlement Administrator shall use commercially  
11 reasonable efforts to secure the data provided by Defendant at all times so as to avoid  
12 inadvertent or unauthorized disclosure or use of such data other than as permitted by the  
13 Settlement. The Settlement Administrator shall ensure that the Class Notice and any  
14 other communications to Class Members shall not include the Class Members' social  
15 security number, except for the last four (4) digits, if necessary. (§3.8)

16 Upon receipt of the Class Information, the Settlement Administrator will perform  
17 a search on the National Change of Address database to update the Settlement Class  
18 Members' addresses. No more than fourteen (14) calendar days after receiving the Class  
19 Information from Defendant, the Settlement Administrator shall mail copies of the  
20 Class Notice, written in both English and Spanish, to all Settlement Class Members by  
21 regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best  
22 judgment to determine the current mailing address for each Settlement Class Member.  
23 The address identified by the Settlement Administrator as the current mailing address  
24 shall be presumed to be the best mailing address for each Settlement Class Member.

25 (§3.9)

1 Any Notice Packets returned to the Settlement Administrator as undeliverable on  
2 or before the forty-five (45) day Response Deadline shall be re-mailed to the  
3 forwarding address affixed thereto. (§3.10) For each Settlement Class Member whose  
4 Class Notice is returned, there will be one (1) skip trace by the Settlement  
5 Administrator. If an updated mailing address is identified, the Settlement Administrator  
6 shall resend the Class Notice to the Settlement Class Member. One (1) supplemental  
7 Class Notice shall be mailed to each Settlement Class Member whose original Class  
8 Notice is returned as undeliverable to the Settlement Administrator. Such re-mailing  
9 shall be made within five (5) business days of the Settlement Administrator receiving  
10 notice that the respective Class Notice was undeliverable. (§3.11) Settlement Class  
11 Members to whom Class Notices are resent after having been returned undeliverable to  
12 the Settlement Administrator, during the entire Response Deadline, shall have an  
13 additional fourteen (14) calendar days from the date of re-mailing, or until the forty-five  
14 (45) day Response Deadline has expired, whichever is later, to mail the Request for  
15 Exclusion or a Notice of Objection. (§3.12)

## 16 **2. Content of class notice.**

17 A copy of the proposed class notice was filed March 22, 2022. The notice  
18 includes information such as: a summary of the litigation; the nature of the settlement;  
19 the terms of the settlement agreement; the maximum deductions to be made from the  
20 gross settlement amount (i.e., attorney fees and costs, the enhancement award, and  
21 claims administration costs); the procedures and deadlines for participating in, opting  
22 out of, or objecting to, the settlement; the consequences of participating in, opting out  
23 of, or objecting to, the settlement; and the date, time, and place of the final approval  
24 hearing. See Cal Rules of Court, rule 3.766(d). It is to be given in both English and  
25 Spanish (§3.9).

1                   **3. Settlement Administration Costs**

2                   Settlement administration costs are estimated at **\$7,995**, including the cost of  
3 notice (§1.3). Prior to the time of the final fairness hearing, the settlement administrator  
4 must submit a declaration attesting to the total costs incurred and anticipated to be  
5 incurred to finalize the settlement for approval by the Court.

6  
7                   **E. ATTORNEY FEES AND COSTS**

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

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

24                   The question of class counsel’s entitlement to **\$300,000** (33 1/3%) in attorney  
25 fees will be addressed at the final fairness hearing when class counsel brings a noticed

1 motion for attorney fees. If a lodestar analysis is requested class counsel must provide  
2 the court with current market tested hourly rate information and billing information so  
3 that it can properly apply the lodestar method and must indicate what multiplier (if  
4 applicable) is being sought.

5 Fee Split: Attorneys' fees will be divided amongst Class Counsel as follows:  
6 60% to Bibiyan Law Group P.C.; 20% to Mahoney Law Group, APC; and 20% to  
7 Work Lawyers PC. (Renewed Bibiyan Decl. ¶105.) Each Plaintiff represents that he or  
8 she consented to counsel's fee sharing agreement. (Brakebill Decl. ¶21; Marron Decl.  
9 ¶23; Jacob Montoya Decl. ¶22; Renee Montoya Decl. ¶21.)

10 Class counsel should also be prepared to justify the costs sought (capped at  
11 \$30,000) by detailing how they were incurred.

12  
13 **F. SERVICE AWARDS**

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

24 The Court will decide the issue of the enhancement award at the time of final  
25 approval.

1 **V. CONCLUSION AND ORDER**

2 The Court hereby:

- 3 (1) Grants preliminary approval of the settlement as fair, adequate, and  
4 reasonable;
- 5 (2) Grants conditional class certification;
- 6 (3) Appoints Renee J. Montoya, Cindy L. Brakebill, Jacob R. Montoya, and  
7 Soledad Marron as Class Representatives;
- 8 (4) Appoints Bibiyan Law Group, P.C., Work Lawyers, PC and Mahoney Law  
9 Group, APC as Class Counsel;
- 10 (5) Appoints Phoenix Settlement Administrators as Settlement Administrator;
- 11 (6) Approves the proposed notice plan; and
- 12 (7) Approves the proposed schedule of settlement proceedings as follows:
- 13 • Preliminary approval hearing: March 23, 2022
  - 14 • Deadline for Defendant to provide class list to settlement administrator: April 6,  
15 2022 (within 14 calendar days from preliminary approval)
  - 16 • Deadline for settlement administrator to mail notices: April 20, 2022 (within 28  
17 calendar days from preliminary approval)
  - 18 • Deadline for class members to opt out or object: June 4, 2022 (45 calendar days  
19 from the initial mailing of the Notice Packets)
  - 20 • Deadline for class counsel to file motion for final approval: August 4, 2022 (16  
21 court days prior to final fairness hearing)
  - 22 • Final fairness hearing: August 26, 2022 at 9:00 a.m.

23 Dated: 3/23/2022



24 MAREN E. NELSON

25 Judge of the Superior Court