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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MIGUEL GUERRERO, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

UNITED STATES GYPSUM
COMPANY, a Delaware corporation; and
DOES 1–20, inclusive,

Defendants.

Case No.: 3:21-cv-01502-RBM-JLB

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

[Doc. 25]

I. INTRODUCTION

On March 25, 2022, Plaintiff Miguel Guerrero (“Plaintiff”) filed a Motion for Preliminary Approval of Class Action Settlement (“Motion”). (Doc. 25.) Defendant United States Gypsum Company (“Defendant”) did not file a response in opposition. The undersigned held a hearing for the Motion on June 17, 2022. Having reviewed the Stipulation, Settlement and Release of Class Action and Private Attorneys General Claims (the “Settlement”), Plaintiff’s Motion, and the applicable law, the Court concludes that the Settlement falls within the range of reasonableness warranting preliminary approval. Accordingly, Plaintiff’s Motion is **GRANTED**.

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II. BACKGROUND

1
2 On April 29, 2021, Plaintiff filed a putative class action pursuant to California Code
3 of Civil Procedure Section 382 against Defendant in the Superior Court of the State of
4 California, County of San Diego. (Doc. 1 at 2.) Defendant filed an answer on June 1,
5 2021. (*Id.*) Plaintiff filed a first amended complaint (“FAC”) on July 29, 2021. (*Id.*)
6 Plaintiff alleges he was Defendant’s employee from January 2016 through April 20, 2021,
7 and Plaintiff filed this putative class action “on behalf of himself and all non-nonexempt
8 employees who are or were employed by Defendant in California during the four years
9 preceding the filing of the complaint.” (*Id.* at 3.) Defendant filed an answer to the FAC
10 on August 4, 2021. (Doc. 1 at 3.)

11 The FAC includes the following claims: (1) failure to pay all wages, (2) non-
12 payment of overtime compensation, (3) failure to provide proper meal breaks, (4) failure
13 to authorize and permit proper rest breaks, (5) failure to properly maintain and submit
14 itemized wage statements, (6) violation of Labor Code §§ 201 and 202.7, (7) failure to
15 reimburse business expenses, (8) violation of California Business and Professions Code §
16 17200, and (9) violation of California Labor Code Private Attorney General Act. (Doc. 1–
17 4.)

18 On August 24, 2021, Defendant removed this action to federal court pursuant to the
19 Class Action Fairness Act. (Doc. 1; Doc. 25.) Plaintiff and Defendant (collectively, the
20 “Parties”) “engaged in an initial round of written discovery with each party producing
21 responses and documents.” (Doc. 25 at 12.) There was an informal exchange of
22 information including the total number of non-exempt employees who worked for
23 Defendant during the period in question, the total number of non-exempt employees
24 currently employed by Defendant, payroll and time keeping records for Plaintiff, the
25 number of workweeks worked by settlement class members, etc. (*Id.*)

26 The Parties attended an early neutral evaluation conference with Magistrate Judge
27 Jill L. Burkhardt on November 9, 2021. (Doc. 18; Doc. 25 at 13.) The Parties exchanged
28 their respective settlement position but were unable to reach a resolution. (Doc. 25 at 13.)

1 The Parties continued settlement discussions and agreed to attend mediation. (*Id.*) On
2 February 9, 2022, the Parties attended mediation with Steve Rottman, “a well-respected
3 mediator for wage and hour claims.” (*Id.*) After a full day of mediation, the Parties were
4 able to reach a resolution. (*Id.*) The Parties continued to draft and negotiate the Settlement
5 over the next month, and it was finalized and mutually executed on March 24, 2022. (Doc.
6 25 at 13; *see* Doc. 25–7.) Also on March 24, 2022, Plaintiff submitted the Settlement to
7 the Labor and Workforce Development Agency (“LWDA”) pursuant to Labor Code §
8 2699(1)(2).

9 On March 25, 2022, Plaintiff filed the instant Motion for Preliminary Approval of
10 Class Action Settlement. (Doc. 25.) Defendant did not file an opposition.

11 **III. SUMMARY OF SETTLEMENT TERMS**

12 The proposed settlement class includes “all current and former non-exempt
13 employees employed by Defendant in the State of California during the Class Settlement
14 Period” (“Settlement Class”). (Doc. 25–7 at 1.) The settlement class period is “between
15 April 29, 2017 to the date of preliminary approval, or June 3, 2022, whichever is earlier.”
16 (Doc. 25–7 at 53.) The basic terms of the Settlement include the following:

- 17 1. Defendant to pay \$600,000.00 to establish the Gross Settlement Amount,
18 subject to a credit of \$167,700 for Pick-Up Stix Payments previously paid
19 by Defendant, that will be used to fund the Settlement.
- 20 2. A Net Settlement Amount derived from the Gross Settlement Amount (less
21 the amounts specified hereafter) from which approximately 393 Settlement
22 Class Members will be allocated a pro rata share for Individual Settlement
23 Payments according to the number of weeks each Settlement Class
24 Member worked during the Settlement Class Period.
- 25 3. An award of attorneys’ fees not to exceed 30% of the Gross Settlement
26 Amount (equal to \$180,000.00), and reimbursement for costs and expenses
27 (up to \$17,000.00) that the Court approves, and supported by declarations
28 by Class Counsel.

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- 1 4. The Class Representative Service Award to Plaintiff (up to \$5,000.00) for
2 Plaintiff’s time, effort and risk in bringing and prosecuting the Action.
- 3 5. The General Release Payment to Plaintiff (up to \$10,000.00) for his
4 execution of a general release and waiver under Civil Code § 1542, which
5 includes the release of any and all known or unknown non-wage related
6 claims that Plaintiff may have against Defendant.
- 7 6. An allocation of Settlement Administration Costs not to exceed \$9,000.00.
- 8 7. An allocation of \$10,000.00 for settlement of claims for civil penalties
9 under the California Private Attorneys General Act of 2004, California
10 Labor Code § 2698 et seq. (“PAGA”), of which seventy-five percent (75%)
11 of this amount, or \$7,500.00, will be paid to the California Labor and
12 Workforce Development Agency and the remaining twenty-five percent
13 (25%), or \$2,500.00, will be distributed to PAGA Group Members based
14 on the number of pay periods worked during the PAGA Settlement Period.
- 15 8. Payment of Employer Taxes from the Gross Settlement Amount estimated
16 at \$10,587.75.
- 17 9. An allocation of \$5,000.00 for Pick-Up Stix Adjustment Payments, which
18 will be payments set aside to give to employees who were not already paid
19 by Defendant for signing Pick-Up Stix settlement agreements.

19 (Doc. 25 at 9–10.)

20 **IV. DISCUSSION**

21 **A. Rule 23 Settlement Class Certification**

22 A court must determine whether the proposed class can be certified before granting
23 preliminary approval of a class action settlement agreement. *Amchem Prods. v. Windsor*,
24 521 U.S. 591, 620 (1997) (indicating that a district court must apply “undiluted, even
25 heightened, attention [to class certification] in the settlement context” to protect absentees).
26 Class actions are governed by Federal Rule of Civil Procedure 23 (“Rule 23”). To certify
27 a class, each of the four requirements of Rule 23(a) must be satisfied. *Zinser v. Accufix*
28 *Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

1 (1) the class must be so numerous that joinder of all members is
2 impracticable; (2) questions of law or fact exist that are common to the class;
3 (3) the claims or defenses of the representative parties are typical of the claims
4 or defenses of the class; and (4) the representative parties will fairly and
adequately protect the interests of the class.

5 *Otsuka v. Polo Ralph Lauren Corp.*, 251 F.R.D. 439, 443 (N.D. Cal. 2008) (citing FED. R.
6 CIV. P. 23(a)).

7 Additionally, the proposed class must satisfy the requirements of one of the
8 subdivisions of Rule 23(b). *Zinser*, 253 F.3d at 1186. Here, Plaintiff seeks to certify the
9 Settlement Class under Rule 23(b)(3), which permits certification if “questions of law or
10 fact common to class members predominate over any questions affecting only individual
11 class members” and “a class action is superior to other available methods for fairly and
12 efficiently adjudicating the controversy.” FED. R. CIV. P. 23(b)(3); *see also* Doc. 25 at 22.

13 a. Rule 23(a) Requirements

14 i. *Numerosity*

15 Rule 23(a)(1) requires a class be “so numerous that joinder of all members is
16 impracticable.” FED. R. CIV. P. 23(a)(1). The “requirement that an attempt to join all
17 parties be ‘impracticable’ does not equate to ‘impossible.’” *Campbell v.*
18 *PricewaterhouseCoopers, LLP*, 253 F.R.D. 586, 594 (E.D. Cal. 2008). Numerosity
19 “requires examination of the specific facts of each case and imposes no absolute
20 limitations” though joinder is impracticable in cases involving as few as forty members.
21 *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 632 (S.D. Cal. 2010).

22 Here, the proposed settlement class consists of approximately 393 class members.
23 (Doc. 25 at 17.) Joinder of 393 members is impracticable for purposes of Rule 23(a), and
24 the numerosity element is satisfied. *See Campbell*, 253 F.R.D. at 594.

25 ii. *Commonality*

26 Commonality requires “questions of law or fact common to the class.” FED. R. CIV.
27 P. 23(a)(2). This requirement is construed permissively. *Hanlon v. Chrysler Corp.*, 150
28 F.3d 1011, 1019 (9th Cir. 1998). “The existence of shared legal issues with divergent

1 factual predicates is sufficient, as is a common core of salient facts coupled with disparate
2 legal remedies within the class.” *Id.*

3 In this case, the Settlement Class includes “all current and former non-exempt
4 employees employed by Defendant in the State of California during the Class Settlement
5 Period.” (Doc. 25 at 21; Doc. 25–7 at 1.) The settlement class period is “between April
6 29, 2017 to the date of preliminary approval, or June 3, 2022, whichever is earlier.” (Doc.
7 25 at 21; Doc. 25–7 at 53.) There are questions common to the class including: (1) whether
8 Defendant’s compensation plan was unlawful, (2) whether Defendant required or
9 knowingly permitted non-exempt employees from foregoing meal breaks, (3) whether
10 Defendant provided non-exempt employees a duty-free meal period within the first five
11 hours of work and/or a second duty-free meal period after ten hours of work, (4) whether
12 Defendant failed to provide non-exempt employees a duty-free rest period for every four
13 hours or work, and (5) whether Defendant failed to pay overtime compensation to all non-
14 exempt employees. (Doc. 25 at 18.)

15 Since these questions apply to all members of the Settlement Class, there is a
16 common injury, and it is appropriate for these issues to be adjudicated on a class-wide
17 basis. *See McCowen v. Trimac Transp. Servs. (W.), Inc.*, 311 F.R.D. 579, 584–86 (N.D.
18 Cal 2015) (finding commonality satisfied where the common question was whether the
19 defendant failed to provide meal and rest breaks).

20 *iii. Typicality*

21 Rule 23(a)(3) requires only that the named plaintiff’s claims “are reasonably
22 coextensive with those of absent class members.” *Hanlon*, 150 F.3d at 1020. “The test of
23 typicality ‘is whether other members have the same or similar injury, whether the action is
24 based on conduct which is not unique to the named plaintiff[], and whether other class
25 members have been injured by the same course of conduct.’” *Hanon v. Dataprods. Corp.*,
26 976 F.2d 497, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D.
27 Cal. 1985)). The focus is on the nature of the claim rather than the specific facts from
28

1 which the claim arises. *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (quoting *Hanon*
2 976 F.2d at 508 (internal citation omitted)).

3 Plaintiff alleges Defendant engaged in various practices giving rise to the current
4 cause of action including:

- 5 (a) donning and doffing, whereby non-exempt employees are required to put
6 on and take off protective clothing as prerequisite for performing work,
7 including but not limited to hard hats, high visibility vests, safety boots,
8 locks and keys, and company radios (“Donning and Doffing Policy”); (b)
9 use of a “rounding policy” that does not fully compensate employees over
10 a “period of time,” as explained in *See’s Candy Shops, Inc. v. Superior*
11 *Court* (2012) 210 Cal.App.4th 889 (“Illegal Rounding Policy”); and (c)
12 company practice whereby employees are required to keep their radios on
at all times, including during meal and rest periods, which violate *Augustus*
v. ABM Security Services, Inc. (2016) 2 Cal.5th 257.

13 (Doc. 25 at 19 (italics added).) Plaintiff, like the Settlement Class, was employed by
14 Defendant, and Plaintiff’s claims arise out of Defendant’s underlying policies and
15 practices. Thus, the proposed Settlement Class was likely subject to the same alleged
16 unlawful policies and practices. Accordingly, Plaintiff’s claims are typical of the claims
17 of the proposed Settlement Class.

18 *iv. Adequacy*

19 The last Rule 23(a) requirement asks whether “the representative parties will fairly
20 and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4). This
21 requirement is satisfied if: (1) the proposed representative plaintiff does not have conflicts
22 of interest with the proposed class, and (2) the plaintiff is represented by qualified and
23 competent counsel. *See Hanlon*, 150 F.3d at 1020.

24 The Court finds no reason to believe that Plaintiff or Plaintiff’s counsel have any
25 conflicts of interest with the proposed Settlement Class members. There also is no reason
26 to believe that Plaintiff or Plaintiff’s counsel have failed to vigorously investigate and
27 litigate the case to this point. Plaintiff has retained competent counsel, who has “extensive
28 experience in class action litigation.” (Doc. 25 at 20.) Moreover, Plaintiff’s counsel has

1 “expended considerable time and effort on this case and will continue to do so through
2 final approval.” (*Id.*) Accordingly, the Court finds that Plaintiff and Plaintiff’s counsel
3 adequately represent the Settlement Class, and Rule 23(a)(4) is satisfied.

4 b. Rule 23(b)(3) Requirements

5 Rule 23(b)(3) permits class certification if “questions of law or fact common to class
6 members predominate over any questions affecting only individual class members” and “a
7 class action is superior to other available methods for fairly and efficiently adjudicating the
8 controversy.” FED. R. CIV. P. 23(b)(3).

9 i. *Predominance*

10 “The Rule 23(b)(3) predominance inquiry tests whether the proposed classes are
11 sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods.*, 521 U.S.
12 at 623. “Rule 23(b)(3) focuses on the relationship between the common and individual
13 issues.” *Hanlon*, 150 F.3d at 1022.

14 Plaintiff alleges several common questions of law and fact. (*See* Doc. 25 at 18.) The
15 issues common to the proposed Settlement Class include whether Defendant’s
16 compensation plan was unlawful, whether Defendant required or knowingly permitted
17 non-exempt employees from foregoing meal breaks, etc. (*Id.*) Plaintiff explains the claims
18 are based on “Defendant’s common, class-wide policies and procedures, and that liability
19 could accordingly be determined on a class wide basis, without dependence on individual
20 assessments of liability.” (*Id.* at 23.) Thus, Plaintiff and the proposed Settlement Class
21 share common questions of fact and law that are central to Plaintiff’s alleged injuries and
22 predominate over individualized issues. (*See id.*) Accordingly, the predominance
23 requirement of Rule 23(b)(3) is satisfied. *See McCowen*, 311 F.R.D. at 597 (finding
24 predominance satisfied where “class-wide issues predominate over individualized issues”).

25 ii. *Superiority*

26 Lastly, a class action must be “superior to other available methods for fairly and
27 efficiently adjudicating the controversy.” FED. R. CIV. P. 23(b)(3). The superiority inquiry
28 requires the Court to consider the following four factors:

1 (A) the class members’ interests in individually controlling the prosecution or
2 defense of separate actions;

3 (B) the extent and nature of any litigation concerning the controversy already
4 begun by or against class members;

5 (C) the desirability or undesirability of concentrating the litigation of the
6 claims in the particular forum; and

7 (D) the likely difficulties in managing a class action.
8

9 *Zinser*, 253 F.3d at 1190; *see True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1066
10 n.12 (C.D. Cal. 2010); *see also Amchem*, 521 U.S. at 620 (“[c]onfronted with a request for
11 settlement-only class certification, a district court need not inquire whether the case, if
12 tried, would present intractable management problems, for the proposal is that there be no
13 trial.”). A district court has “broad discretion” in determining whether class treatment is
14 superior. *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975).

15 Plaintiff’s claims and potential Settlement Class members’ claims involve the same
16 questions of law arising from the same facts. If the Settlement Class members’ claims
17 were treated on an individual basis, more than three-hundred potential cases would follow
18 a similar trajectory. It also is likely that the Settlement Class members would not pursue
19 litigation on an individual basis due to the high cost of pursuing their individual claims
20 compared with the relatively low value of recovery. (*See* Doc. 25 at 25); *see also Hanlon*,
21 150 F.3d at 1023. Ultimately, the interests of the Settlement Class members in individually
22 controlling the litigation are minimal, especially given the same broad-based policies and
23 practices at issue. The Court is aware of no other pending actions adjudicating the
24 Settlement Class members’ claims against Defendant, making concentration in this forum
25 desirable. Thus, the superiority requirement of Rule 23(b)(3) is met.

26 For the reasons stated above, the Court finds certification of the Settlement Class
27 proper under Rules 23(a) and 23(b)(3).

28 ///

B. Preliminary Fairness Determination

After certifying the class, the Court then makes a preliminary determination as to whether the proposed settlement is “fair, reasonable, and adequate” pursuant to Rule 23(e)(2). Under amendments to Rule 23(e), district courts must consider the following factors to determine whether the proposal is “fair, reasonable, and adequate”:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23(e)(2). In this case, the Settlement is the result of arm’s length negotiations before a mediator following comprehensive informal discovery. (Doc. 25 at 13.) Additionally, it appears that Plaintiff and Plaintiff’s counsel have adequately represented the class, which goes to at least two factors in the amended Rule 23(e)(2). See FED. R. CIV. P. 23(e)(2)(A)–(B). The other relevant considerations are discussed below.

a. Adequacy of Relief Provided

In determining whether a proposed settlement is “fair, reasonable, and adequate,” Rule 23(e)(2)(C) directs a court to consider: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). FED. R. CIV. P. 23(e)(2)(C).

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1 Plaintiff alleges that Defendant’s total exposure if Plaintiff is successful on all claims
2 is about \$9,812,957. (Doc. 25 at 28.) The gross settlement amount of \$600,000 is
3 significantly less than that amount and avoids the expenses and risks associated with taking
4 the case to trial. (*Id.*) Given that this is a class action involving employment claims, there
5 are great costs and efforts associated with litigating this action. Moreover, LWDA, a
6 government participant in this action, has been notified of the Settlement, and “in their
7 papers for final approval of the Settlement, Plaintiff will include a declaration reflecting
8 that Defendant provided appropriate notice of the proposed settlement to relevant state and
9 federal authorities per the terms of 28 U.S.C. § 1715(b).” (*Id.* at 30.) The Settlement also
10 includes a proposed Notice of Class Action Settlement informing the Settlement Class of
11 the nature of the action, Settlement Class members’ options, the scope of the release that
12 will take effect, etc. (*Id.* at 31.)

13 Overall, the risks and delays of continued litigation justify the Settlement, and the
14 compensation to the Settlement Class is adequate and relative to Defendant’s exposure.
15 Therefore, this factor weighs in favor of preliminarily approving the settlement.

16 b. Preferential Treatment

17 Rule 23(e)(2) requires the court to examine whether “the proposal treats class
18 members equitably relative to each other.” FED. R. CIV. P. 23(e)(2)(D).

19 Plaintiff states he seeks a service award in the amount of \$5,000, in consideration
20 for his services rendered on behalf of the Settlement Class. (Doc. 25 at 10, 14.) Plaintiff
21 states this amount reflects Plaintiff’s “efforts and risks in assisting with the prosecution of
22 this action.” (Doc. 25–7 at 10.) The Ninth Circuit has explained that “[i]ncentive awards
23 are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958
24 (9th Cir. 2009). At this stage, the service award Plaintiff seeks does not constitute
25 inequitable treatment of class members. Accordingly, this factor weighs in favor of
26 preliminarily approving the settlement.

27 For the reasons stated above, the Court finds the Settlement is fair, reasonable and
28 adequate, and Plaintiff’s Motion is **GRANTED**.

1 **V. CONCLUSION**

2 Accordingly, the Court finds the following:

3 1. Preliminary Approval of Proposed Settlement. The Settlement, including all
4 exhibits thereto, is preliminarily approved as fair, reasonable and adequate and within the
5 range of reasonableness for preliminary settlement approval. The Court finds that: (a) the
6 Settlement resulted from extensive arm’s length negotiations; and (b) the Settlement is
7 sufficient to warrant notice to persons in the Settlement Class and a full hearing on the
8 approval of the Settlement.

9 2. Provisional Class Certification for Settlement Purposes Only. The Court
10 provisionally finds, for settlement purposes only and conditioned upon the entry of this
11 Order that the prerequisites for a class action under Rule 23 have been satisfied in that: (a)
12 the Settlement Class certified herein consists of about 393 individuals, and joinder of all
13 such persons would be impracticable; (b) there are questions of law and fact that are
14 common to the Settlement Class, and those questions of law and fact common to the
15 Settlement Class predominate over any questions affecting any individual Settlement Class
16 member; (c) the claims of Plaintiff are typical of the claims of the Settlement Class he seeks
17 to represent for purposes of settlement; (d) a class action on behalf of the Settlement Class
18 is superior to other available means of adjudicating this dispute; and (e) as set forth below,
19 Plaintiff and Class Counsel are adequate representatives of the Settlement Class.

20 3. Settlement Class Definition. Pursuant to Rule 23, this Court hereby certifies
21 for settlement purposes only, a Settlement Class consisting of “all non-exempt employees
22 employed by Defendant in the State of California at any time between April 29, 2017 to
23 June 3, 2022.” The Settlement Class shall not include any person who submits a timely
24 and valid Request for Exclusion as provided in the Settlement.

25 4. PAGA Group Member Definition. The Court hereby approves PAGA Group
26 Members defined under the Settlement as “all non-exempt employees employed by
27 Defendant in the State of California at any time between April 29, 2020 to June 3, 2022.”

28 5. Class Representative and Class Counsel. Plaintiff is designated as the

1 representative of the provisionally certified Settlement Class. The Court preliminarily
2 finds that he is similarly situated to absent Settlement Class members and therefore typical
3 of the Settlement Class, and that he will be an adequate class representative. Sam Kim and
4 Yoonis Han of Verum Law Group, APC, whom the Court finds are experienced and
5 adequate counsel for purposes of these settlement approval proceedings, are hereby
6 designated as Class Counsel.

7 6. Final Approval Hearing. The Court orders that each Settlement Class member
8 shall be given a full opportunity to object to the proposed Settlement and request for the
9 Class Counsel Costs Award and Class Counsel Fees Award, and to participate at a Final
10 Approval Hearing, which the Court sets to commence on **December 15, 2022 at 9:00 a.m.**
11 in Courtroom 5B of the United States District Court for the Southern District of California,
12 221 West Broadway San Diego, CA 92101. The Court will determine whether the
13 Settlement should be approved as fair, reasonable, and adequate, and finally approved
14 pursuant to Rule 23(e). The Court will rule on Class Counsel's application for the Class
15 Counsel Costs Award, Class Counsel Fees Award, and Class Representative Service
16 Award at that time. Any Settlement Class member seeking to object to the proposed
17 Settlement may file a written Notice of Objection by the Response Deadline, with the
18 Settlement Administrator, and appear at the Final Approval/Settlement Fairness Hearing.
19 The Final Approval/Settlement Fairness Hearing may be postponed, adjourned, or
20 continued by order of the Court without further notice to the Class. After the Final
21 Approval/Settlement Fairness Hearing, the Court may enter a Final Judgment in
22 accordance with the Settlement that will adjudicate the rights of the Settlement Class
23 members (as defined in the Settlement) with respect to the claims being settled.

24 7. Administration. The Court hereby authorizes the retention of Phoenix
25 Settlement Administrators as Settlement Administrator for the purpose of the Settlement
26 with reasonable administration costs estimated not to exceed \$9,000.00.

27 8. Class Notice. The form and content of the proposed Notice of Class Action
28 Settlement attached as Exhibit 1 to the Settlement, and the notice methodology described

1 in the Settlement are hereby approved. Pursuant to the Settlement, the Court hereby
2 appoints Phoenix Settlement Administrators as Settlement Administrator to administer the
3 notice process.

4 a. Class Data. Within fifteen (15) business days of the date this Order is issued
5 (“Preliminary Approval Date”), Defendant shall provide the Settlement
6 Administrator with the Employee List for purposes of preparing, printing and
7 mailing Notice Packets to Settlement Class members and PAGA Group
8 Members, setting forth the following information for each Settlement Class
9 member and PAGA Group Member: (1) employee identification number; (2)
10 full name; (3) last known address; (4) last known home telephone number; (5)
11 Social Security Number; (6) start and end dates of employment; and (7)
12 whether the Settlement Class member previously received an individual
13 settlement payment as part of the Pick-Up Stix Payments paid by Defendant.

14 b. Notice Date. Within fourteen (14) calendar days after receiving the Employee
15 List from Defendant as provided herein, the Settlement Administrator shall
16 mail copies of the Notice Packet to all Settlement Class members and PAGA
17 Group Members via regular First-Class U.S. Mail.

18 c. Findings Concerning Notice. The Court finds that the form, content and
19 method of the disseminating notice: (i) complies with Rule 23(c)(2) of the
20 Federal Rules of Civil Procedure, as it is the best practicable notice under the
21 circumstances, given the contact information that Defendant maintains, and is
22 reasonably calculated, under all of the circumstances, to apprise the
23 Settlement Class members of the pendency of this action, the terms of the
24 Settlement, and their right to object to the Settlement or exclude themselves
25 from the Settlement; (ii) complies with Rule 23(e), as it is reasonably
26 calculated, under the circumstances, to apprise the Settlement Class members
27 of the pendency of this action, the terms of the Settlement, and their rights
28 under the Settlement, including but not limited to, their right to object to or

1 exclude themselves from the Settlement and other rights under the terms of
 2 the Settlement; and (iii) meets all applicable requirements of law, including,
 3 but not limited to, 28 U.S.C. § 1715, FED. R. CIV. P. 23(c) and (e), and the Due
 4 Process Clause(s) of the United States Constitution. The Court further finds
 5 that the Notice of Class Action Settlement is written in simple terminology, is
 6 readily understandable by Settlement Class members, and complies with the
 7 Federal Judicial Center’s illustrative class action notices.

8 d. Exclusion from Class. The Court hereby approves the proposed procedure for
 9 Settlement Class member exclusion from the Settlement, which is to submit a
 10 signed, written statement requesting exclusion to the Settlement
 11 Administrator no later than forty-five (45) days following the date on which
 12 the Settlement Administrator first mails the Notice Packet to the Settlement
 13 Class members. Any Settlement Class member who submits a Request for
 14 Exclusion will not be entitled to any recovery under the Settlement and will
 15 not be bound by the terms of the settlement, except as to the Released PAGA
 16 Claims, or have any right to object, appeal or comment thereon.

17 9. Class Counsel Award. The Court preliminarily approves Class Counsel’s
 18 ability to request attorneys’ fees, costs and expenses, fees of up to 30% of the Maximum
 19 Settlement Fund (\$180,000.00), plus a request for costs and expenses not to exceed
 20 \$17,000.00 supported by declaration from Class Counsel.

21 10. Deadlines. The deadlines set by this Order are as follows:

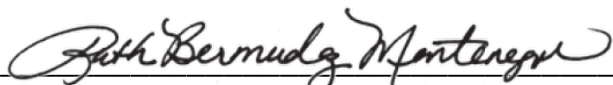
Event	Date
Deadline for Defendant to Provide Class Data to Settlement Administrator	No later than 15 business days after the Preliminary Approval Date
Deadline for Settlement Administrator to Mail Notice Packet	No later than 14 calendar days after receiving Class Data from Defendant

1 2 3	Deadline for Class Counsel to File Motion for Class Counsel Award and Class Representative Service Award	Within 120 calendar days after the Preliminary Approval Date
4 5 6	Response Deadline for Settlement Class members to Submit Notice of Objection or Request for Exclusion	Within 45 days after the Notice Packets are Mailed
7 8 9	Deadline for Defendant to Withdraw If Requests for Exclusion from the Settlement is at Least Five Percent (5%)	No later than 7 calendar days after the Response Deadline
10 11 12	Deadline for Class Counsel to File Motion for Order Granting Final Approval and Entering Judgment	Within 120 calendar days after the Preliminary Approval Date
13 14	Deadline for Parties to File Response to Any Objections	Within 14 calendar days of the Response Deadline

15 11. Extension of Deadlines. Upon application of the Parties and good cause
 16 shown, the deadlines set forth in this Order may be extended by order of the Court, without
 17 further notice to the Class. Settlement Class members must check the settlement website
 18 (<http://www.phoenixclassaction.com/class-action-lawsuits/judgments/>) regularly for
 19 updates and further details regarding this action.

20 **IT IS SO ORDERED.**

21 DATE: June 23, 2022

22 
 23 _____
 24 HON. RUTH BERMUDEZ MONTENEGRO
 25 UNITED STATES DISTRICT JUDGE
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