

FILED
LOS ANGELES SUPERIOR COURT

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SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY Nancy Navarro Deputy
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

SALVADOR RINCON and SAUL
ERNESTO CEDILLOS, on behalf of
themselves and all others similarly situated
and aggrieved,

Plaintiffs,

v.

NEW-INDY TRIPAQ, LLC, a Delaware
limited liability company; TRIPLE A
CONTAINERS, INC., a California
corporation; MCDONALD PACKAGING,
INC., a surrendered Delaware corporation;
BRAD MCCROSKEY, an individual; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV17118

ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

1 **I. BACKGROUND**

2 Plaintiffs Salvador Rincon and Saul Ernesto Cedillos sue their former employers,
3 Defendants New-Indy Tripaq, LLC (“New Indy”), Triple A Containers, Inc. (“Triple
4 A”), McDonald Packaging, Inc., Brad McCroskey, Montebello Container Company,
5 LLC (“Montebello”), and Proactive Packaging and Display, LLC (“Proactive”)
6 (collectively, “Defendants”) for alleged wage and hour violations. The corporate
7 defendants manufacturer and provide product packaging. Plaintiffs seek to represent a
8 class of Defendants’ current and former non-exempt employees.

9 On April 30, 2020, Plaintiff Rincon filed his complaint against Defendants New-
10 Indy Tripaq, LLC, Triple A Containers, Inc., McDonald Packaging, Inc., and Brad
11 McCroskey alleging causes of action for violations of the California Labor Code and
12 Business and Professions Code. On March 11, 2022, Plaintiff filed a First Amended
13 Complaint (“FAC”) adding Plaintiff Cedillos and Defendants Montebello Container
14 Company, LLC and Proactive Packaging and Display, LLC. The FAC alleges causes
15 of action for: (1) failure to pay overtime wages (Labor Code § 510); (2) failure to pay
16 minimum wages (Labor Code § 1197); (3) failure to provide meal periods (Labor Code
17 §§ 226.7, 512); (4) failure to provide rest periods (Labor Code § 226.7); (5) failure to
18 pay due wages at termination (Labor Code §§ 201, 202); (6) failure to issue accurate
19 itemized wage statements (Labor Code § 226); (7) failure to indemnify (Labor Code §
20 2802); (8) violation of Business & Professions Code § 17200, et seq.; (9) penalties per
21 Labor Code § 210; (10) penalties per Labor Code § 226.3; (11) penalties per Labor
22 Code § 558; and (12) penalties under the Private Attorneys General Act (“PAGA”) per
23 Labor Code § 2699.

24 On February 10, 2021, the parties mediated before Louis Marlin, Esq. and
25 reached a settlement with the aid of the mediator’s evaluation. The terms were

1 finalized in a Joint Stipulation Re: Class Action and Representative Action Settlement,
2 a copy of which was filed with the Court and on which approval was sought. .

3 On December 13, 2021, the Court issued a “checklist” to the parties pertaining to
4 deficiencies in Plaintiffs’ motion for preliminary approval and the Settlement
5 Agreement. In response, the parties filed further briefing, including a revised
6 Settlement Agreement.

7 The settlement was preliminarily approved on April 11, 2022, subject to certain
8 conditions, with which there has been compliance. Notice was given to the Class
9 Members as ordered (see Declaration of Kevin Lee).

10 Plaintiff’s motion for final approval of the Settlement Agreement, including for
11 payment of fees, costs, and service awards to the named plaintiffs came on for hearing
12 on August 11, 2022, at which time the Court sought clarification as to whether the
13 “escalator” clause in the Settlement Agreement was triggered (§14). A supplemental
14 Declaration of Kevin lee was filed August 16, 2022, confirming that it was not.

15 For the reasons set forth below, the Court grants final approval of the settlement.
16

17 **II. THE TERMS OF THE SETTLEMENT**

18 19 **A. SETTLEMENT CLASS DEFINITION**

20 "Class Members" shall mean: All current and former non-exempt, hourly
21 employees of Defendants who worked in the State of California from April 30, 2016
22 through April 26, 2021. (§1.f) "Class Period" shall mean from April 30, 2016 through
23 April 26, 2021. (§1.g)
24
25

1 "Aggrieved Employees" shall mean Class Members working during the PAGA
2 Period, defined as November 17, 2019 through April 26, 2021. (¶1.b) "PAGA Period"
3 shall mean from November 17, 2019 through April 26, 2021. (¶1.s)

4
5 **B. THE MONETARY TERMS OF SETTLEMENT**

6 The essential monetary terms are as follows:

- 7 • The Total Class Action Settlement Amount ("Gross Settlement Amount") is
8 **\$925,000.** (¶1.z). This includes payment of a PAGA penalty of **\$20,000** to be
9 paid 75% to the LWDA (\$15,000) and 25% to the Aggrieved Employees
10 (\$5,000) (¶19.e).

- 11 ○ Pro Rata Increase: Triple A represents that there are no more than 5,621
12 Workweeks through the date of the parties' mediation. The New-Indy
13 Defendants represent that there are no more than 31,250 Workweeks
14 through the date of the parties' mediation. In the event the number of
15 workweeks worked increases by more than 5% through the date of the
16 parties' mediation, for either Triple A, on the one hand, or the New-Indy
17 Defendants, on the other hand, then the Gross Settlement Amount shall be
18 increased proportionally by the Workweek Value and be paid by the party
19 or parties' whose Workweeks were in excess. The Workweek Value shall
20 be calculated by dividing the Gross Settlement Amount (\$925,000.00) by
21 the number of Workweeks worked (36,871), which amounts to a
22 Workweek Value of \$25.09. ($\$925,000 / 36,871$ workweeks.) Thus, for
23 example, should there be 34,000 Workweeks worked for the New-Indy
24 Defendants by Class Members through the date of the parties' mediation,
25 then the Gross Settlement Amount shall be increased by \$29,781.83 and

1 paid by the New-Indy Defendants. (34,000 workweeks - 31,250
2 workweeks - 1,563 workweeks x \$25.09/workweek.) (¶14)

3 ○ The Settlement Administrator determined that Class Members worked
4 thirty-two thousand two hundred ninety-four (32,294) Workweeks
5 through the date of mediation, February 10, 2021, consisting of t New-
6 Indy Tripaq employees who worked 5.621 workweeks from April 30,
7 2016, to February 10, 2021 and Triple A Containers, Inc. employees who
8 worked twenty-six thousand six hundred seventy three (26,673) 12
9 workweeks from April 30, 2016, to February 10, 2021. (Supp. Lee Dec. ¶¶
10 3-4). Therefore, the pro-rata increase was not put into effect. (Supp. Decl.
11 of Kevin Lee ¶4.)

- 12 ● The Net Settlement Amount (“Net”) (**\$556,666.67**) is the Gross Settlement
13 Amount less:
 - 14 ○ Up to **\$308,333.33** (33 1/3%) for attorney fees (¶19.a);
 - 15 ○ Up to **\$20,000** for attorney costs (¶19.b);
 - 16 ○ Up to **\$5,000 each [10,000 total]** for service awards to the proposed
17 class representatives (¶19.c); and
 - 18 ○ Estimated **\$10,000** for settlement administration costs (¶19.d).
- 19 ● The employer's share of payroll taxes shall be paid outside of the Gross
20 Settlement Amount by Defendants, and each of them. (¶20.i)
- 21 ● Assuming the Court approves all maximum requested deductions, approximately
22 \$561,883.58 will be available for distribution to participating class members.
23 The average settlement share will be approximately \$930.27. ($\$561,883.58 \text{ Net} \div 604 \text{ class members} = \930.27). In addition, each Aggrieved Employee will
24 receive a portion of the PAGA penalty, estimated to be \$12.31 per Aggrieved
25

1 Employee. ($\$5,000$ or 25% of $\$20,000$ PAGA penalty \div 406 Aggrieved
2 Employees = $\$12.31$).

- 3 • There is no Claim Requirement (Notice pg. 1).
- 4 • The settlement is not reversionary (§19.g).
- 5 • Individual Settlement Share Calculation: Individual Settlement Payments (i.e., a
6 payment to a Participating Class Member of his or her net share of the Net
7 Settlement Amount, excluding any PAGA Payment to which he or she may be
8 entitled if he or she is also an Aggrieved Employee), will be calculated and
9 distributed to Participating Class Members from the Net Settlement Amount on a
10 pro rata basis, based on the Participating Class Members' respective number of
11 Workweeks during the Class Period. PAGA Payments to Aggrieved Employees
12 will be calculated and distributed to Aggrieved Employees from the PAGA
13 Payment on a pro rata basis based on Aggrieved Employees' respective number
14 of Workweeks during the PAGA Period. Workweek means the number of
15 workweeks that a Class Member was employed by Defendant in a non-exempt,
16 hourly position during the Class Period. Specific calculations of the Individual
17 Settlement Shares and PAGA Payments to PAGA Aggrieved Employees will be
18 made as follows: (§19.f.a)

- 19 ○ The Settlement Administrator will determine the total number of
20 Workweeks worked by each Class Member during the Class Period
21 ("Class Member's Workweeks"), as well as the aggregate number of
22 Workweeks worked by all Class Members during the Class Period ("Class
23 Workweeks"). Additionally, the Settlement Administrator will determine
24 the total number of Workweeks worked by each Aggrieved Employee
25 during the PAGA Period ("Aggrieved Employee's Workweeks"), as well

1 as the aggregate number of Workweeks worked by all Aggrieved
2 Employees during the PAGA Period ("PAGA Workweeks"). (§19.f.a.i)

- 3 ○ To determine each Participating Class Member's Individual Settlement
4 Share, the Settlement Administrator will determine the aggregate number
5 of Workweeks worked by all Participating Class Members during the
6 Class Period ("Participating Class Workweeks") and use the following
7 formula: Individual Settlement Share = (Participating Class Member's
8 Workweeks / Participating Class Workweeks) x Net Settlement Amount.
9 (§19.f.a.iii) The net amount of the Individual Settlement Share is to be
10 paid out to Participating Class Members by way of check and is referred
11 to as "Individual Settlement Payment(s). (§19.f.a.iv)

- 12 ○ PAGA Payments: To determine each Aggrieved Employee's PAGA
13 Payment, the Settlement Administrator will use the following formula:
14 Aggrieved Employee's PAGA Payment = (Aggrieved Employee's
15 Workweeks / PAGA Workweeks) x \$2,500.00 (the portion of the PAGA
16 Payment paid to PAGA Aggrieved Employees). This amount is to be paid
17 out to Aggrieved Employees by way of check. (§19.f.a.v)

- 18 ● Tax Withholdings: 33.334% as wages, 66.666% as interest and penalties (§20.h).
- 19 ● Funding and Disbursement of Settlement: The Total Class Action Settlement
20 Amount will be paid as follows: \$850,000 to be paid by New-Indy and \$75,000
21 to be paid by Triple A. Defendants will pay the Total Class Action Settlement
22 Amount within twenty-one (21) calendar days following the Effective Date by
23 wiring that amount to the Settlement Administrator. (§§ 18.a, 30) Within ten (10)
24 calendar days after Defendants' transfer of funds to the Settlement Administrator,

25

1 the Settlement Administrator shall mail all Class Members their Individual
2 Settlement Payments and PAGA Payments. (§§ 20.j, 20.1)

- 3 ○ The payments in this paragraph recognize that Triple A and McCroskey
4 are potentially liable for the period from April 30, 2016 through
5 December 31, 2016, and that New-Indy is potentially liable for the period
6 from January 1, 2017 through the present. (§18.b)

7 ● Default: In the event of default by one defendant, but not both of the defendants,
8 the following should occur:

- 9 ○ As to the defendant that did not default, the release of claims shall apply
10 but only as to its portion of the liability period. For example, if New-Indy
11 funds its share of the settlement (\$850,000), but Triple A does not, the
12 release shall apply only to New-Indy and related entities and only to the
13 period beginning on January 1, 2017 through April 26, 2021.
- 14 ○ As to the defendant that did default, the Class Members will not release
15 any claims as to that defendant or portion of the liability period. For
16 example, if New-Indy did not fund its share of the settlement but Triple A
17 did comply with its obligations, the Class Members will not release any
18 claims as to New-Indy and related entities and will retain all claims
19 arising on or after January 1, 2017.
- 20 ○ Class Members who exclusively worked during the liability period
21 covered by the defaulting defendant, and who are thus not releasing any
22 claims, will not receive any portion of the Settlement.
- 23 ○ Class Members who worked during the liability period covered by the
24 non-defaulting defendant, and who are thus releasing claims as to that
25 liability period, will continue to receive their pro-rata portion of the

1 available settlement funds determined based on the proportion of
2 Workweeks worked during the non-defaulting defendant's liability
3 period.

- 4 ○ Because the PAGA period exclusively falls within the New-Indy's
5 liability period (since January 1, 2017), no adjustments are needed for
6 those calculations. They will either be calculated in the same manner
7 described in the Motion for Preliminary Approval if New-Indy funds its
8 portion of the Settlement, or will be entirely excluded from the
9 calculations if New-Indy fails to funds its portion.
- 10 ○ Each Class Member will receive a further notice from the administrator
11 advising them that one of the defendants has defaulted, clarifying whether
12 he or she continues to be bound by the Settlement (and as to what
13 defendant and for what period), and also notifying him or her of the
14 adjusted share of the Settlement.
- 15 ○ Because no claims will be released as to the defaulting defendant or its
16 liability period, Class Members and Class Counsel will retain all rights to
17 pursue such claims against the defaulting defendant.
- 18 ○ In the event New-Indy fails to fund its portion of the Settlement, the
19 PAGA Released Claims will not be released and as such, Aggrieved
20 Employees and the State of California will retain all rights to pursue the
21 PAGA claims as alleged in the PAGA Notice filed with the LWDA and
22 included in the First Amended Complaint by Plaintiffs. (Order Re:
23 Conditions for Preliminary Approval of Class Action and Representative
24 Action Settlement dated 4/19/2022, ¶¶ 1.a-1.h)

- **Uncashed Settlement Payment Checks:** Individual Settlement Payment checks and checks to Aggrieved Employees for their portion of the PAGA Payment shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los Angeles County. (§19.g)

C. TERMS OF RELEASES

- **Release By Plaintiffs And Class Members:** Upon final approval of this Settlement, as well as the receipt by the Settlement Administrator of the full Gross Settlement Amount and the employer's share of payroll taxes, Plaintiffs and Class Members release the Released Parties from the following, collectively referred to as the "Released Class Claims," during the period from April 30, 2016 through April 26, 2021: any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities that have been asserted by Plaintiffs in the First Amended Complaint on file in the Action, and any claims that could have been asserted based on the facts and/or theories alleged in the First Amended Complaint on file in the Action, including, but not limited to: claims for unpaid wages (including claims for minimum wage and overtime compensation), for failure to provide meal and rest periods and for any

1 and all unpaid meal and unpaid rest period premiums (including premiums
2 pursuant to Labor Code section 226.7), for unreimbursed business expenses, for
3 interest, for penalties (including waiting time penalties pursuant to Labor Code
4 sections 201, 202, and 203, pay stub penalties pursuant to Labor Code section
5 226, for claims pursuant to Labor Code sections 200, 201, 202, 203, 226, 226.7,
6 510, 512, 1174, 1194, 1194.2, 1197, and 2802, for claims under Business and
7 Professions Code section 17200 et seq. arising from the facts and/or theories
8 asserted in the First Amended Complaint on file in the Action, as well as for
9 claims for attorneys' fees, costs, interest, restitution, injunctive or equitable
10 relief, and any other remedies available at law or equity arising from the facts
11 and/or theories asserted in the First Amended Complaint on file in the Action
12 ("Class Released Claims"). This release is limited to claims based on facts
13 alleged in the First Amended Complaint on file in the Action. (¶16)

- 14 • In addition, for Aggrieved Employees, during the period from November 17,
15 2019 through April 26, 2021, the release includes all claims for civil penalties
16 under PAGA arising out of Labor Code sections 210, 226.3, 558, 1197.1, and
17 2699 based on the facts and/or theories alleged to have been violated in the
18 PAGA Notice filed with the LWDA and included in the First Amended
19 Complaint, which includes, without limitation, Labor Code sections 200, 201,
20 202, 203, 204, 226, 227.3, 404, 432, 510, 1174, 1194, 1197, 1198, 1198.5, 2802,
21 and 2810.5 ("PAGA Released Claims"). This release is limited to claims based
22 on facts that were alleged in the PAGA Notice filed with the LWDA by
23 Plaintiffs, or either of them. (¶16)
- 24 • "Released Parties" shall mean and refer to Defendants and all of Defendants'
25 current or former parent companies, subsidiary companies, and/or related

1 companies, partnerships, joint ventures, affiliates, divisions, and, with respect to
2 each of them, all of their and/or such related entities' predecessors and
3 successors, and, with respect to each such entity, all of its past, present, and/or
4 future, direct and/or indirect, employees, officers, partners, principals, directors,
5 stockholders, managers, owners, representatives, assigns, attorneys, agents,
6 insurers, employee benefit programs (and the trustees, administrators,
7 fiduciaries, and insurers of such programs), and investors. (§1.w)

8 ○ "Defendants" shall mean and refer to New-Indy TriPAQ LLC, Triple A
9 Containers, Inc., Brad McCroskey, additional defendants named by
10 Plaintiffs in the Action (including, but not limited to, Montebello
11 Container Company LLC, and Proactive Packaging and Display, LLC),
12 and their past, present and/or future, direct and/or indirect, officers,
13 directors, members, managers, employees, agents, representatives,
14 attorneys, insurers, partners, investors, shareholders, administrators,
15 parent companies, subsidiaries, affiliates, divisions, predecessors,
16 successors, assigns, and joint venturers. (§1.j)

17 ○ In connection with the release of "employees," counsel represented on the
18 record on April 11, 2022 that they are unaware of any potential class
19 member who could subject any of the Defendants to liability under Labor
20 Code § 588.1.

- 21 ● The named Plaintiffs will also provide a general release and a waiver of the
22 protections of Cal. Civ. Code §1542. (§17)
- 23 ● The releases are effective upon final approval of the Settlement, as well as the
24 receipt by the Settlement Administrator of the full Gross Settlement Amount and
25

1 the employer's share of payroll taxes (§16), which is to occur within twenty-one
2 (21) calendar days following the Effective Date (§18.a).

3 4 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

5 “Before final approval, the court must conduct an inquiry into the fairness of the
6 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
7 settlement agreement after the final approval hearing, the court must make and enter
8 judgment. The judgment must include a provision for the retention of the court's
9 jurisdiction over the parties to enforce the terms of the judgment. The court may not
10 enter an order dismissing the action at the same time as, or after, entry of judgment.”
11 Cal. Rules of Court, rule 3.769(h).

12 As discussed more fully in the Order conditionally approving the settlement, “[i]n
13 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
14 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
15 action. The purpose of the requirement [of court review] is the protection of those class
16 members, including the named plaintiffs, whose rights may not have been given due
17 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
18 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
19 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
20 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
21 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
22 extent necessary to reach a reasoned judgment that the agreement is not the product of
23 fraud or overreaching by, or collusion between, the negotiating parties, and that the
24 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
25 quotation marks omitted].

1 “The burden is on the proponent of the settlement to show that it is fair and
2 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
3 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
4 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
6 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
7 1802. Notwithstanding an initial presumption of fairness, “the court should not give
8 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
9 116, 130. “Rather, to protect the interests of absent class members, the court must
10 independently and objectively analyze the evidence and circumstances before it in order
11 to determine whether the settlement is in the best interests of those whose claims will be
12 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
13 that determination, the court should consider factors such as “the strength of plaintiffs’
14 case, the risk, expense, complexity and likely duration of further litigation, the risk of
15 maintaining class action status through trial, the amount offered in settlement, the extent
16 of discovery completed and stage of the proceedings, the experience and views of
17 counsel, the presence of a governmental participant, and the reaction of the class
18 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
19 the court is free to engage in a balancing and weighing of factors depending on the
20 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

21 **A. A PRESUMPTION OF FAIRNESS EXISTS**

22 The Court preliminarily found in its Order of April 11, 2022 that the presumption
23 of fairness should be applied. No facts have come to the Court’s attention that would
24 alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption
25 of fairness as set forth in the preliminary approval order.

1 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

2 The settlement was preliminarily found to be fair, adequate and reasonable.
3 Notice has now been given to the Class and the LWDA. The notice process resulted in
4 the following:

5 Number of class members: 604

6 Number of notices mailed: 604

7 Number of undeliverable notices: 0

8 Number of opt-outs: 0

9 Number of objections: 0

10 Number of participating class members: **604**

11 (Declaration of Kevin Lee ("Lee Decl.") ¶¶ 3-11.)

12 The Court finds that the notice was given as directed and conforms to due process
13 requirements. Given the reactions of the Class Members and the LWDA to the proposed
14 settlement and for the reasons set for in the Preliminary Approval order, the settlement is
15 found to be fair, adequate, and reasonable.

16 **C. CLASS CERTIFICATION IS PROPER**

17 For the reasons set forth in the preliminary approval order, certification of the
18 Class for purposes of settlement is appropriate.

19 **D. ATTORNEY FEES AND COSTS**

20 Class Counsel requests **\$308,333.33** (33 1/3%) for attorney fees and **\$14,783.09**
21 for costs. (MFA at 22:8-20.)

22 Courts have an independent responsibility to review an attorney fee provision and
23 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
24 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
25

1 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
2 503.

3 In the instant case, fees are sought pursuant to the percentage method. (MFA at
4 pp. 19-20.) The \$308,333.33 fee request is 33 1/3% of the Gross Settlement Amount.

5 A lodestar cross-check is requested. A lodestar is calculated by multiplying the
6 number of hours reasonably expended by the reasonable hourly rate. *PLCM Group, Inc.*
7 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096 (*PLCM*). “Generally, ‘[t]he lodestar is
8 calculated using the reasonable rate for comparable legal services in *the local community*
9 for noncontingent litigation of the same type, multiplied by the reasonable number of
10 hours spent on the case.’ ” *Environmental Protection Information Center v. Dept. of*
11 *Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of*
12 *Taft* (2007) 155 Cal.App.4th 1233, 1242-1243.

13 As to the reasonableness of the rate and hours charged, trial courts consider
14 factors such as “the nature of the litigation, its difficulty, the amount involved, the skill
15 required in its handling, the skill employed, the attention given, the success or failure,
16 and other circumstances.” *PLCM, supra*, 22 Cal.4th at p. 1096. “The evidence should
17 allow the court to consider whether the case was overstaffed, how much time the
18 attorneys spent on particular claims, and whether the hours were reasonably expended.”
19 *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

20 The evidence is insufficient to do a proper lodestar analysis. The admissible
21 evidence as to the time spent consists of the Declaration of Bibiyan to the effect that
22 “After diligent inquiry of the members of my firm, I can attest that Class Counsel have
23 already spent over 650 hours litigating this case to date and bringing it to fruition.”
24 Bibiyan Dec. ISO Final Approval ¶71. There follows a brief description of various
25

1 tasks. No information is provided as to who undertook the tasks, how much time was
2 spent on particular activities or the like.

3 The **\$308,333.33** fee request nonetheless represents a reasonable percentage of
4 the total funds paid by Defendant and may be approved on that basis. The notice
5 expressly advised class members of the fee request, and no one objected. (Lee Decl. ¶9,
6 Exhibit A thereto.) Accordingly, the Court awards fees in the amount of **\$308,333.33**.

7 Class Counsel requests **\$14,783.09** in costs. This is less than the \$20,000 cap
8 provided in the settlement agreement (¶19.b). The amount was disclosed to Class
9 Members in the Notice, and no objections were received. (Lee Decl. ¶9, Exhibit A
10 thereto.) Costs include: Mediation (\$8,000), Consultant/Expert Costs (\$3,175), and
11 Filing and Messenger Fees (\$2,002). (Bibiyan Decl. ISO Final ¶82.)

12 The costs appear to be reasonable and necessary to the litigation, are reasonable
13 in amount, and were not objected to by the class.

14 For all of the foregoing reasons, costs of **\$14,783.09** are approved.

15 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

16 A service (or incentive) fee award to a named class representative must be
17 supported by evidence that quantifies the time and effort expended by the individual and
18 a reasoned explanation of financial or other risks undertaken by the class representative.
19 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
20 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
21 [“Criteria courts may consider in determining whether to make an incentive award
22 include: (1) the risk to the class representative in commencing suit, both financial and
23 otherwise; (2) the notoriety and personal difficulties encountered by the class
24 representative; (3) the amount of time and effort spent by the class representative; (4) the
25

1 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
2 class representative as a result of the litigation. (Citations.)”].

3 Here, the Class Representatives request enhancement awards of **\$5,000 each**,
4 totaling **\$10,000**. (MFA at 16:14-17.) In nearly identical declarations, each Plaintiff
5 represents that their contributions to the action included: providing knowledge and
6 documentation as to Defendants’ practices, ownership and corporate structure, and wage
7 and hour policies and practices; assisting in reviewing time and payroll records, and
8 Defendants’ policies, with their counsel; answering their attorneys’ questions; being
9 available for mediation by telephone; and working with their attorneys on the settlement
10 agreement. Plaintiff Rincon estimates spending approximately 24 hours on the action,
11 while Plaintiff Cedillos estimates spending approximately 17 hours. (Declaration of
12 Salvador Rincon ISO Final ¶¶ 8-17; Declaration of Saul Ernesto Cedillos ISO Final ¶¶ 8-
13 17.)

14 In light of the above-described contributions to this action, and in
15 acknowledgment of the benefits obtained on behalf of the class, a **\$5,000** service award
16 to each Plaintiff is reasonable and approved.

17 **F. SETTLEMENT ADMINISTRATION COSTS**

18 The Settlement Administrator, Phoenix Settlement Administrators, requests
19 **\$10,000** in compensation for its work in administering this case. (Lee Decl. ¶17.) At the
20 time of preliminary approval, costs of settlement administration were estimated at
21 \$10,000 (¶19.d). Class Members were provided with notice of this amount and did not
22 object. (Lee Decl. ¶9, Exhibit A thereto.)

23 Accordingly, settlement administration costs are approved in the amount of
24 **\$10,000**.

1 **IV. CONCLUSION AND ORDER**

2 The Court hereby:

- 3 (1) Grants class certification for purposes of settlement;
- 4 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 5 (3) Awards **\$308,333.33** in attorney fees to Class Counsel, Bibiyan Law Group,
- 6 P.C.;
- 7 (4) Awards **\$14,783.09** in litigation costs to Class Counsel;
- 8 (5) Approves payment of **\$15,000** (75% of \$20,000 PAGA penalty) to the LWDA;
- 9 (6) Awards **\$5,000 each (\$10,000 total)** in Class Representative Service Awards to
- 10 Salvador Rincon and Saul Ernesto Cedillos;
- 11 (7) Awards **\$10,000** in settlement administration costs to Phoenix Settlement
- 12 Administrators;
- 13 (8) Enters the Judgment lodged July 17, 2022;
- 14 (9) Orders class counsel to provide notice to the class members pursuant to
- 15 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
- 16 Code §2699 (1)(3); and
- 17 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
- 18 Settlement Funds for June 7, 2023 at 8:30 a.m. Final Report is to be filed by
- 19 May 31, 2023. If there is unpaid residue or unclaimed or abandoned class
- 20 member funds and/or interest thereon to be distributed to Legal Aid at Work,
- 21 Plaintiffs' counsel shall also submit an Amended Judgment pursuant to Cal. //

22 //

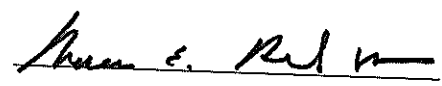
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1 Code of Civ. Pro. § 384 and give notice of the Judicial Council of California upon
2 entry of the Amended Judgment, when entered, pursuant to Cal. Code of Civ. Pro.
3 §384.5.
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5 Dated: 8/19/2022



6 MAREN E. NELSON

7 Judge of the Superior Court
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