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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MARIA ROCHA,

Plaintiff,

v.

YOUNG HORIZONS; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 19STCV34339

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

I. BACKGROUND

Plaintiff Maria Rocha sues her former employer, Defendant Young Horizons, for alleged wage and hour violations. Defendant is a non-profit that provides childcare and preschool programs. Plaintiff seeks to represent a class of Defendant’s current and former non-exempt employees.

The operative complaint alleges causes of action for: (1) failure to pay all wages including minimum wages and overtime wages (Labor Code §§ 510, 1194); (2) failure

1 to provide rest periods (Labor Code §§ 226.7, 512); (3) failure to provide meal periods
2 (Labor Code §§ 226.7, 512); (4) failure to timely pay wages at separation (Labor Code
3 §§ 201, 202, 203); and (5) unfair business practices (Bus. & Prof. Code § 17200, *et*
4 *seq.*).

5 On December 22, 2020, the parties participated in a mediation before Michelle
6 Reinglass, Esq., which did not result in settlement. The parties continued settlement
7 discussions and subsequently finalized a Joint Stipulation and Settlement Agreement, a
8 copy of which was filed with the Court.

9 On October 6, 2021, the Court issued a “checklist” to the parties pertaining to
10 deficiencies in the proposed settlement and continuing the matter to March 7, 2022. No
11 papers were timely submitted.

12 The parties filed further briefing, including an Amended Settlement Agreement
13 attached to the Supplemental Declaration of Kevin Mahoney (“Mahoney Decl.”) as
14 Exhibit A and filed March 17, 2022. The matter came on for hearing on July 8, 2022.

15 At hearing on July 8, 2022, lead counsel for plaintiff was not present. The
16 matter was continued to July 14, 2022. Counsel were ordered to submit further papers
17 and a red-lined version of the settlement no later than July 22, 2022, at which time the
18 matter was to stand submitted.

19 No red-lined copy was submitted until July 28, 2022, after inquiry by the Court
20 via Case Anywhere.

21 Now before the Court is Plaintiff’s motion for preliminary approval of the
22 settlement as reflected in the Second Amended Joint Stipulation of Settlement and
23 release of Claims, attached as Exhibit A to the Declaration of Mahoney filed July 21,
24 2022.

1 For the reasons set forth below, the Court preliminarily grants approval for the
2 settlement, on condition that prior to August 10, 2022:

3 (1) Counsel providing an appropriate declaration confirming that Phoenix
4 Settlement Administrators, the declarant in this action, and Phoenix Class Action
5 Administration Solutions, are the same entity; and

6 (2) Counsel submit a revised form of notice accurately setting forth the release
7 language, requirements for opting out, and Court social distancing policies, and
8 approved prior to notice being mailed; and

9 (3) Both documents are approved before notice is mailed.

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

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

13 "Class" and "Settlement Class" means all current and former non-exempt
14 employees employed by Defendant in California on or after September 27, 2015
15 through the Date of Preliminary Approval of the Stipulation. (¶4)

16 "Class Period" shall mean September 27, 2015 through the Date of Preliminary
17 Approval of the Stipulation. (¶6)

18 "Settlement Class Member" means a Class Member who has not timely
19 submitted a valid Opt-Out Form to the Class Action Administrator on or before the
20 close of the Opt-Out Period. (¶27)

21
22 **B. THE MONETARY TERMS OF SETTLEMENT**

23 The essential monetary terms are as follows:

24 The Maximum Settlement Amount ("MSA") is **\$200,000** (¶18).

1 Class Size: The Maximum Settlement Amount specifically contemplates a total
2 class size of approximately one hundred seventy-one (171) Class Members ("Class Size")
3 and is based on this Class Size. The Parties agree this is a material term of the Settlement.
4 The Maximum Settlement Amount will not be increased unless there is ultimately 10%
5 more than one hundred seventy-one (171) total Class Members (i.e., more than seventeen
6 (17) total Class Members), in which case the Gross Settlement Amount shall be increased
7 proportionally, for example, the settlement would increase by twenty thousand
8 (\$20,000.00) should the increase be 10%. (¶50). This term of the settlement is interpreted
9 to mean that if the number of class members exceeds 188 then the settlement amount to
10 be paid by Defendant will increase proportionate to the increase in class members,
11 without regard to their corresponding workweek increase.

12 The Net Settlement Amount ("NSA") (**\$107,333.34**) is the MSA less:

- 13 ○ Up to **\$66,666.66** (33 1/3%) for attorney fees (¶41.1);
- 14 ○ Up to **\$15,000** for attorney costs (¶41.2);
- 15 ○ Up to **\$5,000** for a service award to the proposed class representative
16 (¶41.3); and
- 17 ○ Estimated **\$6,000** for settlement administration costs (¶41.4).
- 18 ● Employer-side payroll taxes will be paid by Defendant outside of the MSA
19 (¶41.5).
- 20 ● Assuming the Court approves all maximum requested deductions, approximately
21 **\$107,333.34** will be available for distribution to participating class members.
22 Assuming full participation, the average settlement share will be approximately
23 **\$627.68**. ($\$107,333.34 \text{ Net} \div 171 \text{ class members} = \627.68).
- 24 ● There is no Claim Requirement (Notice pg. 1).
- 25 ● The settlement is not reversionary (¶41).

1 • Individual Class settlement Payment:

2 To calculate the Individual Class Settlement Payment, the Class Action
3 Administrator shall divide the Net Settlement Amount by the total number of
4 workweeks Settlement Class Members worked during the Class Period in order to
5 determine the amount each Settlement Class Member is entitled to for each workweek
6 he or she was employed by Defendant Young Horizons (the “Weekly Amount”) during
7 the Class Period. The Class Action Administrator will multiply the Weekly Amount by
8 the estimated total number of workweeks that each Settlement Class Member worked
9 during the Class Period. The product of each calculation represents the gross Individual
10 Class Settlement Payment for the respective Settlement Class Member out of the Class
11 Allocation. The Class Action Administrator will then deduct Employee Taxes
12 attributable to wages to arrive at the net Individual Settlement Payment for each
13 respective Class Member.(¶29)

- 14 • Tax Withholdings: 20% to wages, 40% to penalties, 40% to interest (¶42).
- 15 • Funding and Distribution of Settlement: Defendant shall deposit with the Class
16 Action Administrator the total settlement amount of two hundred thousand
17 dollars (\$200,000.00) not later than seven (7) calendar days from the date of
18 Final Approval of the Settlement is ordered granted by the Court. Defendant
19 shall deposit the additional funds necessary for the employer payroll taxes with
20 the Class Action Administrator no later than (15) calendar days from the
21 Effective Date. The Class Action Administrator shall distribute Class Member
22 Settlement Payments, Enhancement Payment and Class Counsel Fees and Costs
23 as approved by the Court within thirty (30) days of Defendant fully funding the
24 Settlement including Defendant’s share of employer payroll taxes. (¶45)

- 1 • **Uncashed Settlement Payment Checks:** Any settlement checks that remain
2 uncashed one hundred and eighty (180) or more calendar days after issuance by
3 the Class Action Administrator shall be voided. The entire amount of each
4 Settlement Class Members' uncashed settlement check(s) shall be turned over to
5 Controller of the State of California to be held pursuant to the Unclaimed
6 Property Law, California Code of Civil Procedure § 1500, et seq. in the names of
7 those Participating Class Members who did not cash their settlement checks until
8 such time they claim their property. (¶70)

9
10 **C. TERMS OF RELEASES**

- 11 • **Releases.** As of the Effective Date, all Settlement Class Members, including
12 Plaintiff, who do not opt out of the Settlement, will be deemed to have fully,
13 finally and forever released, settled, compromised, relinquished, and discharged
14 the Released Parties from the Released Class Claims for the period of September
15 27, 2015 to the Preliminary Approval Date. (¶62)

- 16 ○ "Effective Date" of this Stipulation shall mean the date that the Court
17 grants final approval of the Settlement and the Settlement is fully funded.
18 (¶15)

- 19 • "Settlement Class Member Released Class Claims" shall be the following
20 claims, which are being released for the time period September 27, 2015 to the
21 Date of Preliminary Approval: All claims and causes of action that were
22 alleged, or reasonably could have been alleged, based on the Class Period facts
23 stated in the operative Complaint or ascertained in the course of the Action
24 including, but not limited to, (1) Any claims for unpaid wages (including but not
25 limited to overtime pay, minimum wage, regular wages, salary, missed meal

1 period premium pay, missed rest period premium pay, failure to pay wages of
2 terminated or resigned employees), alleged or which could have been alleged
3 under the facts pleaded in the operative complaint; (2) Any claims for failure to
4 provide or make available meal and rest periods as required under California
5 Labor Code §§226.7, 512 and IWC Wage Orders; and (3) Any claims under
6 California Business and Professions Code section 17200 et seq. Settlement Class
7 Member Released Claims does not include any other claims, including claims
8 for vested benefits, wrongful termination, violation of the Fair Employment and
9 Housing Act, unemployment insurance, disability, social security, workers'
10 compensation, or claims based on facts occurring outside the Class Period (¶28)

11 ○ "Complaint" shall mean the operative complaint in the Action which was
12 filed on or about September 27, 2019. (¶17)

- 13 ● "Released Parties" means Defendant Young Horizon, and each of its past,
14 present and/or former parents, subsidiaries, successors and predecessors,
15 officers, directors, shareholders, members, managers, and agents. (¶26)
- 16 ● The named Plaintiff will also provide a general release and a waiver of the
17 protections of Cal. Civ. Code §1542. (¶¶ 8, 62)
- 18 ● The entry of the Final Order and Judgment shall permanently bar all
19 Participating Class Members from prosecuting against Defendant the same or
20 similar legal claims which were or could have been brought based on the factual
21 allegations as alleged in the operative Complaint, whether known or unknown,
22 as well as all claims included in the definition of Settlement Class Member
23 Released Class Claims as set forth in the Section I of this Agreement, up though
24 [sic] the date of Final Approval. (¶47)

- The releases are effective as of the Effective Date, defined as the date that the Court grants final approval of the Settlement and the Settlement is fully funded. (¶15) Funding will occur no later than seven (7) calendar days from the date of Final Approval of the Settlement is ordered granted by the Court. (¶45)

D. SETTLEMENT ADMINISTRATION

- The proposed Class Action Administrator is Phoenix Class Action Administration Solutions (¶2). An entity known as Phoenix Settlement Administrators (PSA) has provided evidence that no counsel are affiliated with it and that it has adequate procedures in place to safeguard the data and funds to be entrusted to it. (See Declaration of Michael E. Moore.) There is no information as to the relationship of PSA to the proposed Class Action Administrator. Conditional approval of the settlement is contingent upon counsel confirming not later than August 10, 2022, by sworn declaration from appropriate personnel at PSA, that the two entities are the same.
- Settlement administration costs are estimated to be \$6,000. (Moore Decl., Exhibit B.)
- Notice: The manner of giving notice is described below.
- Opt Out/Objection Dates: "Opt-Out Period" shall mean a period of sixty (60) calendar days from the date the Class Action Administrator mails the Settlement Documents to Settlement Class Members. If the sixtieth day falls on a Sunday or holiday, the Opt-Out Period shall end on the next business day that is not a Sunday or holiday. (¶22) The same deadline applies to the submission of workweek disputes (¶61) and written objections.(¶63).

- Class Members to whom Class Notice and Opt-Out Forms are resent after having been returned undeliverable to the Class Action Administrator shall have an additional fourteen (14) calendar days from the date of re-mailing or until the Response Deadline has expired, whichever is later, to mail the Request for Exclusion or a Notice of Objection. (¶58) “Response Deadline” is an undefined term, which the Court interprets to mean 60 days after initial mailing based on the revisions to Paragraph 59 of the Settlement Agreement.
- Either Party has the right in its sole and exclusive discretion to terminate and withdraw from the Settlement at any time prior to the Date of Final Approval if more than 10% of the Settlement Class Members timely and validity [sic] opt out of the Settlement. (¶49)

- Notice of Final Judgment will be posted on the Settlement Administrator’s website (Notice pg. 6).

III. SETTLEMENT STANDARDS AND PROCEDURE

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

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or

1 dismissal of a class action. The purpose of the requirement [of court review] is the
2 protection of those class members, including the named plaintiffs, whose rights may not
3 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
4 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
5 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
6 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
7 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
8 agreement to the extent necessary to reach a reasoned judgment that the agreement is
9 not the product of fraud or overreaching by, or collusion between, the negotiating
10 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
11 concerned.”] [internal quotation marks omitted].

12 “The burden is on the proponent of the settlement to show that it is fair and
13 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
14 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
15 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
16 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
17 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

18 Notwithstanding an initial presumption of fairness, “the court should not give
19 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
20 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
21 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
22 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
23 members, the court must independently and objectively analyze the evidence and
24 circumstances before it in order to determine whether the settlement is in the best
25 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.

1 In that determination, the court should consider factors such as “the strength of
2 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
3 the risk of maintaining class action status through trial, the amount offered in
4 settlement, the extent of discovery completed and stage of the proceedings, the
5 experience and views of counsel, the presence of a governmental participant, and the
6 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
7 factors is not exclusive and the court is free to engage in a balancing and weighing of
8 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
9 245.

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

17 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

18 **A. THERE IS A PRESUMPTION OF FAIRNESS**

19
20 The settlement is entitled to a presumption of fairness for the following reasons:

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

22
23 On December 22, 2020, the parties participated in a mediation before Michelle
24 Reinglass, Esq., which did not result in settlement. The parties continued settlement
25

1 discussions and subsequently finalized the Settlement Agreement. (Mahoney Decl.
2 dated May 21, 2021, ¶29.)

3
4 **2. The investigation and discovery were sufficient**

5 No formal discovery was undertaken. Plaintiff's Counsel represents that he and
6 others in his firm conducted informal discovery that yielded information and
7 documentation concerning the claims set forth in the litigation, such as Defendant's
8 policies and procedures regarding the payment of wages, meal and rest breaks, time
9 keeping, as well as information regarding the number of putative class members and the
10 mix of current versus former employees, the average number of hours worked, the
11 wage rates in effect, and length of employment for the average putative class member.
12 (*Id.* at ¶21.) Defendant informally produced the entire personnel file for Plaintiff,
13 information regarding the class size, Defendant's policies including, but not limited to
14 pay, meal and rest breaks and timekeeping policies, all class members' time records and
15 corresponding payroll records, and average regular hourly rate of pay. Plaintiff's
16 Counsel engaged an expert to provide a damage analysis. (*Id.* at ¶28; Supp. Mahoney
17 Decl. filed March 17, 2022 ¶4.) Plaintiff's counsel represents that although the records
18 showed some meal and rest break violations they were not substantial. Mahoney Dec.
19 ¶34). From what is represented the Court infers that counsel determined that the
20 discovery was sufficient to determine that the claim that the facility was understaffed so
21 as to regularly prohibit full meal and rest breaks was not substantiated nor was the
22 "rounding" claim. The discovery, while not fulsome, is sufficient to value the claims
23 for settlement purposes.

1 **3. Counsel is experienced in similar litigation**

2 Class Counsel represent that they are experienced in class action litigation,
3 including wage and hour class actions and endorse the settlement as fair and reasonable.
4 (Mahoney Decl. ¶4.)
5

6 **4. Percentage of the class objecting**

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

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

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

1 **1. Amount Offered in Settlement**

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

4 Class Counsel estimated Defendant’s maximum exposure at \$2,034,197 and
5 realistic exposure at \$409,973, based on the following analysis:

6

Violation	Maximum Exposure	“Realistic” Exposure
7 Unpaid Wages Claims	\$544,056	\$108,811
8 Rest Break Violations	\$441,553	\$44,155
9 Meal Break Violations	\$441,553	\$44,155
10 Waiting Time Penalties	\$302,200	\$60,440
11 Reimbursement Claim	\$304,835	\$152,412
12 Total	\$2,034,197	\$409,973

13 Plaintiff’s counsel represents that the failure to pay wages was based on an “off-
14 the-clock” theory. Plaintiff’s expert prepared an analysis with an assumption that
15 Plaintiff and Class Members were often required to clock out for lunch, but would
16 continue to perform their job duties as well as time spent opening and closing the
17 facilities. As a result, there was an assumption of approximately one (1) hour per week
18 multiplied by total workweek count per year for the total hours multiplied by the
19 average overtime rate per year to get the believed damages resulting for the failure to
20 pay claim. As counsel notes, however, there was no concrete evidence of the actual
21 time spent working “off-the-clock, performing duties.” He also opines that there would
22 be difficulty certifying a class under *Brinker Rest. Corp. v. Superior Court* (2012) 53
23 Cal. 4th 1004. (Mahoney Second Supp. Dec. ¶4 (a)) Plaintiff’s counsel believed that
24 the value of this claim was approximately twenty percent (20%), simply based on the
25 difficulty in proving this claim at certification and/or trial.

1 The claim Failure to Provide Meal Periods was also based on an assumption that
2 plaintiff and members of the class worked during meal periods three hours per week.
3 There is no discussion of any evidence to support that claim and the Court assumes
4 there was none.

5 As to the rest break claims, it was determined that this claim along with *Brinker*,
6 was virtually impossible to prove whether at certification or trial. *Id.* at ¶4(c).

7 The derivative claims under the UCL and for failure to pay wages were similarly
8 unlikely to prevail.

9 Counsel for plaintiff also notes that defendant's financial condition is an issue.
10 Plaintiff's counsel was provided audited financial statements, which demonstrated that
11 Defendant was primarily funded by the California Department of Education and an
12 opinion letter from the California Department of Education stating that Defendant was
13 not permitted to use state funding to fund litigation or pay any settlement or judgment.
14 *Id.* at ¶4.

15 In short, there was little evidence to support the claims or to suggest that a class
16 could be certified, much less a judgment paid.

17 Class Counsel obtained a gross settlement valued at \$200,000. This is
18 approximately 9.8% of Defendant's maximum exposure and 48.8% of Defendant's
19 claimed realistic exposure. Given the paucity of evidence and Defendant's financial
20 situation the gross settlement amount appears to be fair and reasonable.

21 **2. The Risks of Future Litigation**

22
23 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
24 motion practice and appeals) are also likely to prolong the litigation as well as any
25 recovery by the class members. Even if a class is certified, there is always a risk of

1 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
2 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
3 conducting class actions, which means, under suitable circumstances, entertaining
4 successive motions on certification if the court subsequently discovers that the propriety
5 of a class action is not appropriate."].) Further, the settlement was negotiated and
6 endorsed by Class Counsel who, as indicated above, are experienced in class action
7 litigation. Based upon their investigation and analysis, the attorneys representing
8 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
9 adequate. (Mahoney Decl. ¶40.)

10 11 **3. The Releases Are Limited**

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

17 18 **4. Conclusion**

19 Class Counsel estimated Defendant's maximum exposure at \$2,034,197 and
20 realistic exposure at \$409,973. Class Counsel obtained a gross settlement valued at
21 \$200,000. This is approximately 9.8% of Defendant's maximum exposure and 48.8% of
22 Defendant's realistic exposure, which, given the uncertain outcomes, including the
23 potential that the class might not be certified, that liability is a contested issue on which
24 there is little evidence, and that the full amount of penalties would not necessarily be
25

1 assessed even if the class is certified and liability found, the settlement is within the
2 “ballpark of reasonableness.”

3 4 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

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

7 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
8 advocating class treatment must demonstrate the existence of an ascertainable and
9 sufficiently numerous class, a well-defined community of interest, and substantial
10 benefits from certification that render proceeding as a class superior to the alternatives.”

11 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

13 There are 171 putative Class Members. (Mahoney Decl. ¶40.) Numerosity is
14 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
15 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
16 *class action is liberally construed,*” and citing examples wherein classes of as little as
17 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
18 (1972) 28 Cal.App.3d 1017, were upheld).

19 **2. The Proposed Class Is Ascertainable**

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

1 The class is defined above. Class Members are ascertainable through
2 Defendant's records. (Amended MPA at 12:13-14.)

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

4 "The community of interest requirement involves three factors: '(1) predominant
5 common questions of law or fact; (2) class representatives with claims or defenses typical
6 of the class; and (3) class representatives who can adequately represent the class.'"

7 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

8 As to predominant questions of law or fact, the Parties agree that common factual
9 and legal issues include, among other things: (1) whether Defendant engaged in a
10 common course of failing to authorize and permit and/or compensate employees based on
11 the Labor Code and applicable Wage Order requirements for meal and rest periods; (2)
12 whether Defendant underpaid wages to employees including minimum wages and
13 overtime wages; and (3) whether these alleged violations resulted in ancillary violations
14 of Lab. Code, § 203. Furthermore, all Class Members suffer from, and seek redress for,
15 the same alleged injuries. (Amended MPA at 13:3-10.)

16 As to typicality, Plaintiff asserts that, like all Class Members, she worked for
17 Defendant and suffered damages as a result of Defendant's alleged violations of
18 California's wage and hour laws and regulations, and since all members of the Class
19 would need to demonstrate the same elements to recover on their claims, their interests
20 are sufficiently aligned. (Amended MPA at 13:17-23.)

21 As to adequacy, Plaintiff represents that she is aware of the risks and fiduciary
22 duties of serving as a class representative, and does not have conflicts of interest with the
23 class. (Declaration of Maria Rocha ¶¶ 6-14.)

24 As previously stated, Class Counsel have experience in class action litigation. In
25 ordinary circumstances there would be no question that they are adequate to represent the

1 class. However, the extraordinary delays in presenting an appropriate settlement in this
2 case gives the Court pause. Any further delays may result in a finding that other counsel
3 are needed to assist in assuring the class is adequately represented.

4 5 **4. Substantial Benefits Exist**

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

8 9 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 10 OF DUE PROCESS; THE NOTICE REQUIRES REVISIONS**

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

19 **1. Method of class notice**

20 Within fourteen (14) calendar days after the Court Order granting Preliminary
21 Approval of the Stipulation, Defendant will provide to the Class Action Administrator
22 with the Class Data. Class Data shall be used by the Class Action Administrator solely
23 for the purpose of calculating settlement shares, notifying the Settlement Class
24 Members of the Settlement and tax reporting. The names, last known address, e-mail
25 address, Social Security numbers and dates of employment for members of the Class

1 shall not be disclosed to Class Counsel, the Plaintiff, other Settlement Class Members
2 or any other third party, including agents and subcontractors, without Defendant's prior
3 written consent. The Class Action Administrator shall run the Class Data list through
4 the National Change of Address database and will use the most recent address for each
5 Settlement Class Member - either from Defendant's records or the National Change of
6 Address database - when mailing the Class Notice. The Class Action Administrator
7 shall also take reasonable steps to locate any Settlement Class Member whose Class
8 Notice is returned as undeliverable. (§54)

9 Within seven (7) calendar days of receiving the Class Data list, the Class Action
10 Administrator shall send via United States First Class Mail the Court-approved Class
11 Notice of the Class Action Settlement ("Class Notice") and the Court-approved Opt-Out
12 Form. (§57) For each Settlement Class Member whose Notice is returned, there will be
13 one skip trace by the Class Action Administrator, via an approved method, using a
14 Social Security number, which shall be provided by Defendant. One (1) supplemental
15 Notice may be mailed to each Settlement Class Member whose Notice is returned as
16 undeliverable to the Class Action Administrator within five (5) business days of the
17 Class Action Administrator receiving notice that the mail was undeliverable. Settlement
18 Class Members to whom Class Notice and Opt-Out Forms are resent after having been
19 returned undeliverable to the Class Action Administrator shall have an additional
20 fourteen (14) calendar days from the date of re-mailing or until the Response Deadline
21 has expired, whichever is later, to mail the Request for Exclusion or a Notice of
22 Objection. Any requests by the Class Action Administrator for documents or
23 information from Defendant must be responded to within a reasonable amount of time
24 by Class Counsel and counsel for Defendant. (§58)

25 //

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

2 A copy of the proposed class notice is attached to the Settlement Agreement as
3 Exhibit B. The notice includes information such as: a summary of the litigation; the
4 nature of the settlement; the terms of the settlement agreement; the maximum
5 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
6 the enhancement award, and claims administration costs); the procedures and deadlines
7 for participating in, opting out of, or objecting to, the settlement; the consequences of
8 participating in, opting out of, or objecting to, the settlement; and the date, time, and
9 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
10 given in both English and Spanish. (¶57)

11 The form of Notice is ambiguous as presently worded, stating that is ambiguous
12 as it both states that the class “will release Defendant Young Horizon... from any and
13 all claims, which are being released for the time period September 27, 2015 to the Date
14 of Court preliminarily approval. “ There then follows an incomplete sentence listing
15 certain claims. There is also an extra period at the end of the paragraph.

16 In addition, the Notice references a Request for Exclusion and indicates that
17 same must be timely signed, dated and mailed with “all required information.” (Page 1
18 and Para.10). However, there is no Request for Exclusion form included nor is the
19 “required information” delineated.

20 Paragraph 17 requires updating as to current social distancing policies.

21 A revised form of notice correcting these issues shall be submitted no later than
22 August 10, 2022 and approved prior to notice being mailed.

23 //

24 //

25 //

1 **3. Settlement Administration Costs**

2 Settlement administration costs are estimated at **\$6,000**, including the cost of
3 notice (¶52). 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.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
16 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 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.5th 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.4th 123, 128.

24 The question of class counsel’s entitlement to **\$66,666.66** (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. Counsel should address, in particular, why the agreed upon
2 33/13% fee award in this case should not be reduced to take into account the
3 extraordinary delay occasioned by Class Counsel’s filings in this case and to properly
4 compensate the class for that delay. If a lodestar analysis is requested class counsel
5 must provide the court with current market tested hourly rate information and billing
6 information so that it can properly apply the lodestar method and must indicate what
7 multiplier (if applicable) is being sought.

8 Class counsel should also be prepared to justify the costs sought (capped at
9 \$15,000) by detailing how they were incurred.

10
11 **F. SERVICE AWARD**

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

21 The Court will decide the issue of the enhancement award at the time of final
22 approval.

23
24 **V. CONCLUSION AND ORDER**

25 Contingent upon the following occurring prior to August 10, 2022:

1 (1) Counsel providing an appropriate declaration confirming that Phoenix
2 Settlement Administrators, the declarant in this action, and Phoenix Class Action
3 Administration Solutions, are the same entity; and

4 (2) Submitting a revised form of notice accurately setting forth the release
5 language, requirements for opting out, and Court social distancing policies,
6 and both documents being approved prior to notice being mailed,
7 the Court hereby:

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

10 (2) Grants conditional class certification;

11 (3) Appoints Maria Rocha as Class Representative;

12 (4) Appoints Mahoney Law Group, APC as Class Counsel;

13 (5) Appoints Phoenix Settlement Administrators as Settlement Administrator;

14 (6) Approves the proposed notice plan; and

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

- 16 • Deadline for Defendant to provide class list to settlement administrator: August
17 16, 2022 (within 14 calendar days from preliminary approval)
- 18 • Deadline for settlement administrator to mail notices: August 23, 2022 (within
19 21 calendar days from preliminary approval)
- 20 • Deadline for class members to opt out: October 24, 2022 (60 calendar days from
21 the initial mailing of the Notice Packets)
- 22 • Deadline for class members to object: October 24, 2022 (60 calendar days from
23 the initial mailing of the Notice Packets)
- 24 • Deadline for class counsel to file motion for final approval:
25 _____, 2022 (16 court days prior to final fairness hearing)

- Final fairness hearing: _____, 2022, at _____.

Any failure to fully and timely comply with the contingencies may result in the revocation of this Order in its entirety.

Dated: 8/4/2022



MAREN E. NELSON

Judge of the Superior Court

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