

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

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

ANDREW BARROSO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

UMG RECORDINGS, INC. dba DEF JAM RECORDINGS, a Delaware Corporation; CORPORATE MANAGEMENT SOLUTIONS, INC., a California Corporation; ANTHONY LOW, an individual; and DOE 1 through and including DOE 10,

Defendants.

Case No.: 20STCV37535

[TENTATIVE] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: November 7, 2022  
Time: 9:00 a.m.  
Dept.: SSC-17

**I. BACKGROUND**

Plaintiff Andrew Barroso sues Defendants UMG Recordings, Inc. (“UMG”) and Corporate Management Solutions, Inc. (“CMS”) (collectively, “Defendants”) for

1 alleged wage and hour violations. Plaintiff alleges that he was employed by Defendants  
2 as a crew member on the music video production “Yummy” (also known as “Dinner  
3 Party”) produced by Doomsday Entertainment, Inc. (“Doomsday”) in November 2019  
4 (the “Production”). He seeks to represent a class of persons similarly situated.

5 Defendants contend that the crew members on the Production were exclusively  
6 employed by Doomsday and that Defendants were not the employer or joint employer  
7 and deny violating any Labor Code statutes.

8 Plaintiff filed the action on September 30, 2020. On July 5, 2022, pursuant to  
9 joint stipulation between the parties, Plaintiff filed the operative First Amended  
10 Complaint alleging causes of action for: (1) continuing wages (Labor Code §§ 201.5,  
11 203); (2) failure to provide compliant pay stubs (Labor Code § 226(a)); (3) failure to  
12 pay overtime (Labor Code §§ 510, 515, 1198); (4) failure to pay minimum wages  
13 (Labor Code §§ 1194, 1197, 1197.1); (5) unfair competition (Bus. & Prof. Code §  
14 17200); (6) the Private Attorneys General Act (“PAGA”) (Labor Code §§ 2698, et  
15 seq.); (7) the Fair Labor Standards Act (“FLSA”) (19 U.S.C. § 201, et seq.); (8) failure  
16 to provide meal breaks (Labor Code §§ 226.7, 512); and (9) failure to provide rest  
17 breaks (Labor Code §§ 226.7, 512).

18 The parties reached a settlement on behalf of a proposed class, the terms of  
19 which were finalized in the long-form Class Settlement Agreement which was [resented  
20 to the Court for approval.

21 On July 12, 2022, the Court issued a “checklist” to the parties pertaining to  
22 deficiencies in the proposed settlement. In response, the parties filed further briefing,  
23 including a First Amended Settlement Agreement attached to the Declaration of David  
24 Garrett (“Garrett Decl.”) as Exhibit 1.

1 Now before the Court is Plaintiff’s motion for preliminary approval of the  
2 settlement. For the reasons set forth below, the Court preliminarily grants approval for  
3 the settlement.

4  
5 **II. THE TERMS OF THE SETTLEMENT**

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

7 “Settlement Class” or “Settlement Class Member” means and refers to the  
8 Persons who were issued itemized wage statements for services on the Production  
9 during the Release Period, except for SAG-AFTRA union members. Excluded from the  
10 Settlement Class are all Persons who properly and timely elect to opt out. (¶2.31)

11 “Release Period” means and refers to the period between November 1, 2019 and  
12 February 14, 2020. (¶2.25)

13 “Person” means and refers to any individual, proprietorship, corporation,  
14 personal loan-out corporation, partnership, association, trustee, unincorporated  
15 association, or any other type of legal entity, except a governmental entity. (¶2.22)

16 “Aggrieved Employees” means and refers to all Persons who were issued  
17 itemized wage statements for services on the Production during the PAGA Period.  
18 (¶2.2)

19 “PAGA Period” means and refers to the period between November 1, 2019 and  
20 February 14, 2020. (¶2.16)

21 “Participating Class Member” means and refers to a Settlement Class Member  
22 who does not timely and validly opt-out of the Settlement Class. (¶2.18)

23  
24 **B. THE MONETARY TERMS OF SETTLEMENT**

25 The essential monetary terms are as follows:

- 1 • The Total Maximum Settlement Payment (“TMSP”) is **\$100,000** (¶9.1). This  
2 includes payment of a PAGA penalty of **\$10,000** to be paid 75% to the LWDA  
3 (\$7,500) and 25% to the Aggrieved Employees (\$2,500) (¶10.7).
- 4 • The Net Settlement Amount (“Net”) (**\$41,667**) is the GSA less:
- 5 ○ Up to **\$33,333** (33.33%) for attorney fees (¶11.1);
  - 6 ○ Up to **\$5,000** for attorney costs (*Ibid.*);
  - 7 ○ Up to **\$5,000** for a service award to the proposed class representative  
8 (¶11.2); and
  - 9 ○ Estimated **\$5,000** for settlement administration costs (¶6.2).
- 10 • The Parties determined and agreed that none of the settlement proceeds payable  
11 to the Class Members and Aggrieved Employees are properly classified as  
12 wages, therefore, there are no employer taxes to be paid from the Gross  
13 Settlement Amount. (Garrett Decl. ¶7.)
- 14 • Assuming the Court approves all maximum requested deductions, approximately  
15 \$41,667 will be available for distribution to participating class members.  
16 Assuming full participation, the average settlement share will be approximately  
17 \$299.76. ( $\$41,667 \text{ Net} \div 139 \text{ class members} = \$299.76$ ). In addition, each  
18 PAGA member will receive a portion of the PAGA penalty, estimated to be  
19 \$17.98 per PAGA member. ( $\$2,500 \text{ or } 25\% \text{ of } \$10,000 \text{ PAGA penalty} \div 139$   
20  $\text{PAGA members} = \$17.98$ ).
- 21 • There is no Claim Requirement. (Notice p. 1)
- 22 • The settlement is not reversionary (¶9.1).
- 23 • Individual Settlement Share Calculation: After the Settlement Class Counsel’s  
24 Fees, Costs, and Expenses, all costs of claims administration (including a  
25 reasonable reserve for reasonably anticipated future expenses), all incentive

1 payments to the Settlement Class Representative, and the payment to the LWDA  
2 have been satisfied from the Settlement Fund (or reserved for such purpose if not  
3 yet paid), the remainder (the “Remainder”) shall be available to pay Participating  
4 Class Members. All Participating Class Members shall receive a payment based  
5 on their Participating Class Member Allocation Amount. (§10.2)

6 ○ Calculation of Participating Class Member Allocation Amount: Each  
7 Participating Class Member shall be notified of their Participating Class  
8 Member Allocation Amount. The Participating Class Member Allocation  
9 Amount for each Participating Class Member shall be calculated as  
10 follows: (a) the number of Compensable Pay Periods the Participating  
11 Class Member worked; divided by (b) the aggregate number of  
12 Compensable Pay Periods worked by all Participating Class Members,  
13 which will result in the Participating Class Member’s “Pay Period  
14 Factor.” The Participating Class Member’s Pay Period Factor shall then  
15 be multiplied by (c) (100%) of the Remainder to determine the Class  
16 Member Allocation Amount. (§10.2.1)

17 ○ PAGA Payments: Twenty-five percent (25%) of the PAGA Payment (the  
18 “Aggrieved Employees’ PAGA Share”) shall be payable to the Aggrieved  
19 Employees based upon the Aggrieved Employee’s pro rata share of work  
20 weeks worked during the PAGA Period. The Aggrieved Employees’  
21 individual awards will be determined by first dividing the PAGA  
22 Payment by the total number of work weeks worked by the Aggrieved  
23 Employees during the PAGA Period, resulting in the PAGA Work Week  
24 Value. The PAGA Work Week Value will then be multiplied by the  
25

1 number of work weeks worked by each Aggrieved Employee during the  
2 PAGA Period to arrive at their individual Settlement awards. (§10.7)

- 3 ○ Tax Withholdings: Settlement Class Counsel determined that all  
4 payments to the Participating Class Members will be treated as penalties  
5 and interest and shall not be subject to Employment Taxes. (§10.5) Class  
6 Counsel represents that they believe there are no outstanding wages due,  
7 only penalties, interest and/or liquidated damages. (Garrett Decl. ¶7.)

- 8 ● Funding of Settlement: Within ten (10) calendar days after the entry of the  
9 Preliminary Approval Order, Defendants shall mail or wire to the Settlement  
10 Administrator the sum of \$3,000 to pay for the notice program and initial  
11 administrative expenses. (§9.2) Within ten (10) calendar days after the Final  
12 Effective Date, Defendants shall mail or wire to the Settlement Administrator the  
13 sum sufficient to pay Settlement Class Counsel's Fees, Costs, and Expenses, the  
14 incentive payments to the Settlement Class Representative, the payment to the  
15 LWDA, any unpaid notice and administration costs incurred to date, and the  
16 payments to the Participating Class Members. (§9.3)

- 17 ○ Within fifteen (15) calendar days after all of the checks distributed by the  
18 Settlement Administrator to Participating Class Members are cashed,  
19 deposited, and/or expired (based on a 180-day stale date), the Settlement  
20 Administrator shall notify the Parties in writing as to the total additional  
21 amount, if any, needed to pay the Settlement Administrator's final invoice  
22 for fees and expenses. Within twenty (20) calendar days after receipt of  
23 any notice under Section 9.5, Defendants shall deposit such additional  
24 amount into the Settlement Fund. In no circumstances will Defendants be  
25 responsible for more than the TMSP, however. (§9.5)

- 1 • Distribution: Within ten (10) calendar days after receipt of the funds described in  
2 Section 9.3, the Settlement Administrator shall wire the amount of Settlement  
3 Class Counsel’s Fees, Costs, and Expenses to Settlement Class Counsel from the  
4 Settlement Fund, unless the Agreement is terminated. (¶9.4)
- 5 • Uncashed Settlement Payment Checks: All settlement checks sent to  
6 Participating Class Members and not cashed within one hundred eighty (180)  
7 calendar days of issuance shall be sent to the California State Controller’s  
8 Office: Unclaimed Property Fund. Any cash benefit owed to any Participating  
9 Class Member whose addresses cannot be located (after use of the search  
10 processes described in Section 6.1) shall also be sent to the California State  
11 Controller’s Office: Unclaimed Property Fund. (¶10.6.1)

### 12 13 **C. TERMS OF RELEASES**

- 14 • Release. Except for the obligations and rights created by this Agreement, the  
15 Releasing Parties hereby release and absolutely and forever discharge  
16 Defendants and all other Released Parties and Persons of and from any and all  
17 Settled Claims upon the date that Defendants fully fund the Settlement. (¶13.2)
- 18 • “Settled Claims” means and refers, in connection with the work or services  
19 performed by the Settlement Class Member on the Production during the Release  
20 Period, to any and all claims, liabilities, rights, demands, suits, matters,  
21 obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of  
22 action, which in any way arises out of, is based on, or relates in any way to the  
23 facts alleged in the Complaint, which specifically includes: (a) minimum,  
24 regular, and/or overtime wages allegedly due; (b) meal or rest periods allegedly  
25 missed, not provided, and/or denied; (c) check stubs, wage statements,

1 documentation, information, or records provided, delivered, or maintained, or  
2 not provided, delivered, or maintained; (d) the payment, non-payment, or  
3 timeliness of payment of wages or premiums due or allegedly due; (e) record-  
4 keeping obligations; (f) the payment or non-payment of reimbursements required  
5 under California Labor Code Section 2802; (g) any penalties allegedly arising  
6 from the classification of certain workers on the Production as independent  
7 contractors; (h) violation or alleged violation of California Labor Code Sections  
8 201.5, 203, 204, 210, 226, 226.7, 510, 515, 558. 558.1, 1193.6, 1194, 1194.2,  
9 1197, 1197.1, 1198, 2810.3, or 2698 et seq., the Business & Professions Code,  
10 the federal Fair Labor Standards Act, any California Industrial Commission  
11 Wage Order, and/or any other statute or regulation regarding the payment of  
12 minimum, regular, and/or overtime wages, meal or rest period premiums, timing  
13 of payments, check stubs or wage statements, record-keeping obligations, and/or  
14 reimbursement of expenses; (i) attorneys' fees due or allegedly due under  
15 California Labor Code Section 218.5 or any other statute, regulation, or  
16 contractual provision; (j) any other claims that Releasing Party has arising out of,  
17 based upon, or relating to the allegations contained in the Complaint or in the  
18 PAGA Letter; and (k) penalties or other payments which in any way arise out of,  
19 are based on, or relate in any way to any of the foregoing, including but not  
20 limited to penalties, premiums, or payments under California Labor Code  
21 Sections 201.5, 203, 204, 210, 226, 226.7, 226.8, 510, 512, 515, 558, 558.1,  
22 1194, 1194.2, 1197, 1198, 2802, or 2698 et seq. the federal Fair Labor Standards  
23 Act, any California Industrial Commission Wage Order, and/or any other statute  
24 or regulation regarding the payment of minimum, regular, and/or overtime  
25 wages, meal or rest period premiums, timing of payments, check stubs or wage



1 statements, record-keeping obligations, worker classification, and/or  
2 reimbursement of expenses. Without in any way limiting the foregoing, Settled  
3 Claims shall include all claims, liabilities, rights, demands, suits, matters,  
4 obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of  
5 action under statutes and regulations set forth in this Section, whether enforced  
6 directly or pursuant to California Labor Code Section 2699, California Business  
7 and Professions Code Section 17200, et seq., or any other mechanism. The  
8 Release of the Settled Claims will only become effective on the date upon which  
9 Defendants fully fund the Settlement. (§2.28)

10 ○ “Complaint” means and refers to the operative complaint in the Action.  
11 (§2.6)

12 ● “PAGA Settled Claims” means and refers to any and all claims raised in the  
13 PAGA Letter. The Release of the PAGA Settled Claims will only become  
14 effective on the date upon which Defendants fully fund the Settlement. (§2.17)

15 “PAGA Letter” means and refers to the letter sent by or on behalf of the  
16 Settlement Class Members to the LWDA regarding the allegations in the  
17 Complaint, specifically including the February 13, 2020 letter from Settlement  
18 Class Counsel to the LWDA regarding Settlement Class Representative.

19 [Attached as Exhibit 5 to Decl. of Garrett.] (§2.15)

20 ● Release of FLSA Claims: Without conceding that any release of claims under  
21 the Fair Labor Standards Act (“FLSA”) requires any affirmative conduct or opt-  
22 in by the Releasing Parties, the Parties agree that the cashing of checks by the  
23 Releasing Parties shall be deemed an opt-in to an FLSA collective action, the  
24 settlement of which includes the FLSA releases specified in Section 2.28.

25 However, nothing in this Section or elsewhere in this Agreement shall preclude

1 the Releasing Parties from being bound by the releases in this Agreement  
2 whether or not they receive or cash their checks. Each Releasing Party's check  
3 will include the following language, or words to that effect, immediately above  
4 the endorsement signature line: "I understand and acknowledge that, by cashing  
5 or depositing this check, I reiterate my agreement to the release set forth in the  
6 Settlement, including release of wage and hour claims, and to opt into the  
7 Settlement for purposes of the Fair Labor Standards Act (FLSA), and forever  
8 release any FLSA claims related to the claims asserted in the Action." (§13.4)

- 9 • "Released Party" and "Released Parties" means and refers to: (a) Defendants and  
10 each and all of Defendants' past or present partners, parents, subsidiaries, or  
11 related entities (regardless of whether such partners, parents, subsidiaries, or  
12 related entities are individuals, corporations, partnerships, limited partnerships,  
13 limited liability companies, or other forms of entity); (b) each and all of the  
14 predecessor or successor entities of any of those entities identified in  
15 subparagraph (a); (c) any other individuals or entities of any kind, including but  
16 not limited to any payroll companies employed or used by the Released Parties,  
17 which have been or could be alleged to be in any manner responsible (whether  
18 on an alter ego, joint employer, statutory employer, integrated enterprise, or any  
19 other theory) for any actual or alleged violations described in Section 2.28  
20 (specifically including, but not limited to, Doomsday Entertainment, Inc.); and  
21 (d) all past and present owners, directors, officers, representatives, insurers,  
22 agents, shareholders, partners, members, lawyers, and employees of any of the  
23 individuals or entities identified in subparagraphs (a), (b), or (c) (specifically  
24 including, but not limited to, Anthony Low). (§2.26)

- 1 • “Releasing Party” and “Releasing Parties” means and refers to the Settlement  
2 Class and its members, agents, partners, joint venturers, affiliates, predecessors,  
3 successors, heirs, assigns, insurers, personal loan-out corporations, and any other  
4 Persons or entities claiming by or through the Settlement Class, in their  
5 capacities as such. (¶2.27)
- 6 • The named Plaintiff will also provide a general release and a waiver of the  
7 protections of Cal. Civ. Code §1542. (¶13.3)
- 8 • The releases are effective on the date upon which Defendants fully fund the  
9 Settlement (¶13.1), which is to occur within ten (10) calendar days after the Final  
10 Effective Date (¶9.3).

11

12 **D. SETTLEMENT ADMINISTRATION**

- 13 • The proposed Settlement Administrator is Phoenix Class Action Administration  
14 Solutions, which has provided evidence that no counsel are affiliated with it and  
15 that it has adequate procedures in place to safeguard the data and funds to be  
16 entrusted to it. (See Declaration of Jodey Lawrence.)
- 17 • Settlement administration costs are estimated to be \$5,000 (¶6.2).
- 18 • Notice: The manner of giving notice is described below.
- 19 • Opt Out/Objection Dates: “Opt Out Period” means and refers to the period of time  
20 between the commencement of the Notice Program and an agreed date certain  
21 sixty (60) calendar days later during which members of the Settlement Class may  
22 exercise the right to opt out of the Settlement Class. (¶2.14) The Settlement Class  
23 shall also have 60 calendar days from the commencement of the Notice Program  
24 to send objections regarding this Agreement to the Claims Administrator. (¶5.2)  
25 The same deadline applies to the submission of pay period disputes. (¶10.2.2)

- Whether or not a Class Member excludes himself/herself from the Settlement, he/she will receive a check for his/her portion of the PAGA Payment and he/she shall release the PAGA Settled Claims. (§7.2)
- If more than ten percent (10%) of Settlement Class Members opt out of the Settlement Class, Defendants shall have the right to terminate this Agreement. (§8.2)
- Notice of Final Judgment will be posted on the Settlement Administrator’s website (§15.16).

### **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 dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)

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

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

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

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

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

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

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

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

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

18 Class Counsel represents that the parties engaged in investigation and informal  
19 discovery beginning on or about January 11, 2021, and continuing through on or about  
20 July 6, 2021, when the matter was settled. The parties chose not to use a mediator to  
21 save on costs, as Class Counsel represents that counsel for both parties have experience  
22 in mediating and settling similar class actions. (Garrett Decl. ¶6.) There is no indicia  
23 of collusion.

24 //

25 //

1   **2. The investigation and discovery were sufficient**

2                   Class Counsel represents that pursuant to the settlement and mediation privilege,  
3 Counsel reviewed payroll records for all 139 Class Members and prepared a damages  
4 analysis with its wage and hour expert Stephen Moses. In addition to the payroll data  
5 provided, Class Counsel conducted interviews with class members, reviewed payroll  
6 documents for Plaintiff and other class members and collective bargaining agreement  
7 for the applicable unions, e.g. the “2019 Commercial Production Agreement and  
8 Northeast Corridor Appendix” for I.A.T.S.E – A.I.C.P. and the Studio Transport  
9 Drivers, Teamsters Local #399 2017 Commercials Agreement. Plaintiff’s counsel  
10 reviewed publicly-available Film Permits from FilmLA for the project, which  
11 Plaintiff’s counsel utilized to cross-check the class data. Plaintiff’s counsel also  
12 researched public records on Defendants, Releasees and its principals, including  
13 property reports, asset searches, business filings with the California Secretary of State,  
14 Westlaw company profiles and federal records regarding the amount of Paycheck  
15 Protection Program (“PPP”) loans received by Defendants (if any) during the pandemic.  
16 Plaintiff also consulted a second expert, Jon Katzman, a former production executive at  
17 NBC, Warner Brothers and New Regency, to assist in analysis of payroll procedures,  
18 defenses and potential liability. (*Ibid.*)

19                   This is sufficient to value the case for settlement purposes.

20  
21   **3. Counsel is experienced in similar litigation**

22                   Class Counsel represent that they are experienced in class action litigation,  
23 including wage and hour class actions. (Harris Decl. ¶¶ 3-7.)

24                   //

25                   //

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

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

6  
7                   **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**  
8                   **FAIR, ADEQUATE, AND REASONABLE**

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

19  
20                   **1. Amount Offered in Settlement**

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

23                   Class Counsel estimated Defendant’s maximum exposure at \$169,355, based on  
24 the following analysis:  
25



<b>Violation</b>	<b>Maximum Exposure</b>
Wage Statements	\$8,050
Unfair Competition	\$470
PAGA Penalties	\$27,000
Failure to Maintain Accurate Records	\$500
Continuing Wages	\$122,500
Failure to Pay Overtime	\$1,000
Failure to Pay Minimum Wage	\$1,000
Fair Labor Standards Act	\$3,360
Meal Penalties	\$1,000
Rest Periods	\$3,475
Failure to Reimburse Expenses	\$1,000
<b>Total</b>	<b>\$169,355</b>

(Harris Decl. ¶¶ 12, 14-18.)

Class Counsel obtained a gross settlement valued at \$100,000. This is approximately 59% of Defendant’s maximum exposure.

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

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining

1 successive motions on certification if the court subsequently discovers that the propriety  
2 of a class action is not appropriate.”].) Further, the settlement was negotiated and  
3 endorsed by Class Counsel who, as indicated above, are experienced in class action  
4 litigation. Based upon their investigation and analysis, the attorneys representing  
5 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and  
6 adequate. (Harris Decl. ¶18.)

7 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,  
8 which was sent a copy of the Settlement Agreement on October 10, 2022 and has not yet  
9 objected. (Garrett Decl., Exhibit 6.) Any objection by it will be considered at the final  
10 fairness hearing.

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

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

### 18 19 **4. Conclusion**

20 Class Counsel estimated Defendant’s maximum exposure at \$169,355. Class  
21 Counsel obtained a gross settlement valued at \$100,000. This is approximately 59% of  
22 Defendant’s maximum exposure, which, given the uncertain outcomes, including the  
23 potential that the class might not be certified, that liability is a contested issue, and that  
24 the full amount of penalties would not necessarily be assessed even if the class is certified  
25 and liability found, the settlement is within the “ballpark of reasonableness.”

1  
2 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

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

5 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party  
6 advocating class treatment must demonstrate the existence of an ascertainable and  
7 sufficiently numerous class, a well-defined community of interest, and substantial  
8 benefits from certification that render proceeding as a class superior to the alternatives.”  
9 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

11 There are 139 putative Class Members. (Harris Decl. ¶12.) Numerosity is  
12 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25  
13 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*  
14 *class action is liberally construed,*” and citing examples wherein classes of as little as  
15 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*  
16 (1972) 28 Cal.App.3d 1017, were upheld).

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

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

23 The class is defined above. Class Members are ascertainable through a search of  
24 Doomsday’s records. (MPA at 7:24-25.)

25 //

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

2                   “The community of interest requirement involves three factors: ‘(1) predominant  
3 common questions of law or fact; (2) class representatives with claims or defenses typical  
4 of the class; and (3) class representatives who can adequately represent the class.’”  
5 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

6                   As to predominant questions of law or fact, Plaintiff contends that issues of fact  
7 and law are common across the Settlement Class, as he alleges the Class Members are  
8 employees who all worked on the same Production during the Release Period, were  
9 subject to the same payroll practices and received similar wage statements. (MPA at  
10 7:28-8:13.)

11                   As to typicality, Plaintiff contends, as the putative class representative, that his  
12 claims are similar to those of absent Class Members, all of whom worked on the  
13 Production, and all of whom were subject to the same employment procedures and  
14 received substantially similar wage statements. Plaintiff argues that all members of the  
15 Settlement Class have a common interest in holding Defendants responsible for any  
16 amounts that may be allegedly owed to them under the provisions of the Labor Code.  
17 (MPA at 8:16-28.)

18                   As to adequacy, Plaintiff represents that he is aware of his fiduciary responsibility  
19 and the risks of serving as class representative, and has participated in the litigation.  
20 (Declaration of Andrew Barroso ¶¶ 5-13.) As previously stated, Class Counsel have  
21 experience in class action litigation.

22                   **4. Substantial Benefits Exist**

23  
24                   Given the relatively small size of the individual claims, a class action is superior to  
25 separate actions by the class members.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

**D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS OF DUE PROCESS**

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

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**1. Method of class notice**

Within twenty (20) calendar days after entry of the Preliminary Approval Order, Defendants shall submit to the Settlement Administrator, in electronic form, a list of all Settlement Class Members. The list shall include each Settlement Class Member's name, last known address, social security number, and the number of pay periods on the Production during the Release Period for which the Settlement Class Member received an itemized wage statement, which the Settlement Administrator shall use to calculate the total number of Compensable Pay Periods. Within fifteen (15) calendar days after receipt of the foregoing list, the Settlement Administrator and/or its designee shall run a national change of address update and send by first class postage prepaid U.S. mail a copy of the Class Notice approved by the Court to each Settlement Class Member on the final list. Such Class Notice to each Settlement Class Member shall contain the Settlement Class Member's Compensable Pay Periods calculated from records and the estimated Participating Class Member Allocation Amount. (¶6.1)

1 Any Class Notices returned to the Claims Administrator as undeliverable on or  
2 before the deadline for postmarking the opt outs shall be sent promptly via First-Class  
3 U.S. Mail to the forwarding address affixed thereto, and the Settlement Administrator  
4 shall indicate the date of such re-mailing on the Notice Packets. If no forwarding  
5 address is provided, the Settlement Administrator shall promptly attempt to determine  
6 the correct address using a single skip-trace or other search using the name, address  
7 and/or Social Security Number of the Settlement Class Member involved, and it shall  
8 then perform a single re-mailing within five (5) days of receiving notice that the Class  
9 Notice was undeliverable. If, after performing a skip-trace search, the Class Notice is  
10 still returned to the Settlement Administrator as undeliverable, that Person will be  
11 deemed a Settlement Class Member. Those Settlement Class Members who receive a  
12 re-mailed Class Notice shall have their deadline for postmarking an opt out or objecting  
13 to the Settlement extended by fifteen (15) calendar days from the date of re-mailing or  
14 until the original deadline for postmarking an opt out, whichever is later. (*Ibid.*)

15 **2. Content of class notice.**

16 A copy of the proposed class notice is attached to the Decl. of Garrett as Exhibit  
17 3. The notice includes information such as: a summary of the litigation; the nature of  
18 the settlement; the terms of the settlement agreement; the maximum deductions to be  
19 made from the gross settlement amount (i.e., attorney fees and costs, the enhancement  
20 award, and claims administration costs); the procedures and deadlines for participating  
21 in, opting out of, or objecting to, the settlement; the consequences of participating in,  
22 opting out of, or objecting to, the settlement; and the date, time, and place of the final  
23 approval hearing. See Cal Rules of Court, rule 3.766(d). Notice is to be given in  
24 English only, as all Settlement Class Members are fluent in English (§6.4).

25 //

1                   **3. Settlement Administration Costs**

2                   Settlement administration costs are estimated at **\$5,000**, including the cost of  
3 notice (§6.2). Prior to the time of the final fairness hearing, the settlement administrator  
4 must submit a declaration attesting to the total costs incurred and anticipated to be  
5 incurred to finalize the settlement for approval by the Court.

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

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

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

24                   The question of class counsel’s entitlement to **\$33,333** (33.33%) in attorney fees  
25 will be addressed at the final fairness hearing when class counsel brings a noticed

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

5 Class counsel should also be prepared to justify the costs sought (capped at  
6 **\$5,000**) by detailing how they were incurred.

7  
8 **F. SERVICE AWARD**

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

18 The Court will decide the issue of the enhancement award at the time of final  
19 approval. Counsel should specifically address why any incentive was needed for  
20 Plaintiff to bring this action and whether the proposed award is unfairly  
21 disproportionate to the average payment to proposed class members.

22  
23 **V. CONCLUSION AND ORDER**

24 The Court hereby:  
25



- 1 (1) Grants preliminary approval of the settlement as fair, adequate, and  
2 reasonable;
- 3 (2) Grants conditional class certification;
- 4 (3) Appoints Andrew Barroso as Class Representative;
- 5 (4) Appoints Harris & Ruble as Class Counsel;
- 6 (5) Appoints Phoenix Class Action Administration Solutions as Settlement  
7 Administrator;
- 8 (6) Approves the proposed notice plan; and
- 9 (7) Approves the proposed schedule of settlement proceedings as follows:

- 10 • Preliminary approval hearing: November 7, 2022
- 11 • Deadline for Defendant to provide class list to settlement administrator:  
12 November 27, 2022 (within 20 calendar days from preliminary approval)
- 13 • Deadline for settlement administrator to mail notices: December 12, 2022  
14 (within 15 calendar days from receipt of the class list)
- 15 • Deadline for class members to opt out: February 10, 2023 (60 calendar days  
16 from the initial mailing of the Notice Packets)
- 17 • Deadline for class members to object: February 10, 2023 (60 calendar days from  
18 the initial mailing of the Notice Packets)
- 19 • Deadline for class counsel to file motion for final approval:  
20 \_\_\_\_\_, 2023 (16 court days prior to final fairness hearing)
- 21 • Final fairness hearing: \_\_\_\_\_, 2023, at \_\_\_\_\_.
- 22

23 Dated: \_\_\_\_\_

24 MAREN E. NELSON

25 Judge of the Superior Court