

FILED
LOS ANGELES SUPERIOR COURT

DEC 22 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY *N. Navarro* Deputy
NANCY NAVARRO

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MARCOS GARNICA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

SOCAL RETAIL SERVICES, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 21STCV08762

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

I. BACKGROUND

Plaintiff Marcos Garnica sues his former employer, Defendant So Cal Retail Services, Inc. (“Defendant” or (“SCR”), for alleged wage and hour violations.

Defendant is a corporation that employs individuals to perform construction jobs for

1 various retail and commercial businesses in California. Plaintiff seeks to represent a
2 class of Defendant's current and former non-exempt employees.

3 Plaintiff's class action complaint alleges causes of action for: (1) minimum wage
4 violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (2) failure to pay all overtime
5 wages (Labor Code §§ 204, 510, 558, 1194, 1198); (3) meal period violations (Labor
6 Code §§ 226.7, 512); (4) rest period violations (Labor Code §§ 226.7, 516); (5) failure
7 to reimburse for necessary business expenses (Labor Code § 2802); (6) wage statement
8 violations (Labor Code § 226, et seq.); (7) waiting time penalties (Labor Code §§ 201-
9 203); and (8) unfair competition (Bus. & Prof. Code § 17200, et seq.). On May 28,
10 2021, Plaintiff amended his complaint to add an additional cause of action for: (9) civil
11 penalties under the Private Attorneys General Act (Labor Code § 2698, et seq.)
12 ("PAGA").

13 On March 23, 2022, the parties participated in a full-day mediation with Tripper
14 Ortman, Esq., which resulted in a settlement. The parties subsequently finalized the
15 long-form Stipulation of Settlement which was presented for approval by motion filed
16 July 22, 2022. By Order of August 12, 2022 a "checklist" of issues to be addressed was
17 issued and the matter set for hearing on December 21, 2022.

18 Supplemental papers and an amended Stipulation of Settlement were filed
19 November 29, 2022. See Exhibit A to Supplemental D Declaration of Daniel J. Brown.
20 All references below are to the Amended Settlement Agreement.

21 For the reasons set forth below, and as discussed on the record, the Court
22 preliminarily grants approval for the settlement.

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24 //

25 //

1 **II. THE TERMS OF THE SETTLEMENT**

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

3 “Settlement Class” is defined as: All individuals who worked for Defendant So
4 Cal Retail Services, Inc. (“Defendant”) in California as non-exempt employees from
5 March 5, 2017 through March 31, 2022. (§1)

6 “Class Period” is defined as: From March 5, 2017 through March 31, 2022. (§1)

7 “Aggrieved Employees” is defined as: Every non-exempt employee who worked
8 for Defendant from March 5, 2020 through March 31, 2022. (§2.B)

9 “PAGA Period” is defined as: From March 5, 2020 through March 31, 2022.
10 (§2.B)

11
12 **B. THE MONETARY TERMS OF SETTLEMENT**

13 The essential monetary terms are as follows:

- 14 ● The Maximum Settlement Amount (“MSA”) is **\$250,000** (§3). This includes
15 payment of a PAGA penalty of **\$5,000** to be paid 75% to the LWDA (\$3,750)
16 and 25% to the Aggrieved Employees (\$1,250) (§3.B.5).
 - 17 ○ Escalator Clause: SCR represents that as of March 23, 2022, there were
18 approximately 118 putative class members that worked a combined 7,685
19 work weeks during the class period. If either the actual number of class
20 members is ten percent (10%) more than 118 or the number of work
21 weeks worked during the class period is ten percent (10%) more than
22 7,685 work weeks, SCR shall increase the MSA on a pro-rata basis equal
23 to the increase in the number of class members and/or work weeks if the
24 number of class members or number of work weeks is greater than 10%
25 (e.g., if the number of work weeks or class members increases by 11%,

1 SCR will increase the MSA by 1%; e.g., if the number of work weeks or
2 class members increases by 25%, SCR will increase the MSA by 15%).
3 (§3.D)

- 4 • The Net Settlement Fund (“Net”) (**\$130,167**), after payment of the PAGA
5 amount, is the GSA less:
 - 6 ○ Up to **\$83,333** (33 1/3%) for attorney fees (§3.B.4);
 - 7 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
 - 8 ○ Up to **\$5,000** for a service award to the proposed class representative
9 (§3.B.3); and
 - 10 ○ Up to **\$6,500** for settlement administration costs (§3.B.2).
- 11 • Defendant’s share of payroll taxes shall be paid by Defendant separate and apart
12 from the Maximum Settlement Amount. (§3.C)
- 13 • Assuming the Court approves all maximum requested deductions, approximately
14 \$130,167 will be available for distribution to participating class members.
15 Assuming full participation, the average settlement share will be approximately
16 \$1,109.46. ($\$130,167 \text{ Net} \div 118 \text{ class members} = \$1,103.11$). In addition, each
17 PAGA member will receive a portion of the PAGA penalty. ($\$1,250$ or 25% of
18 $\$5,000$ PAGA penalty $\div 58$ PAGA members = $\$21.55$).
- 19 • There is no Claim Requirement (§4).
- 20 • The settlement is not reversionary (§3.B).
- 21 • Individual Settlement Share Calculation: From the Net Settlement Fund, the
22 Settlement Administrator will calculate each Settlement Class Member’s
23 Individual Settlement Award. Settlement Awards shall be based on the following
24 formula: (§4.B)

- 1 ○ Waiting Time Amount: Twenty percent (20%) of the Net Settlement Fund
2 shall be designated as the “Waiting Time Amount.” Each participating
3 Settlement Class Member who separated their employment from SCR at
4 any time from March 5, 2018 through March 31, 2022 (“Waiting Time
5 Period”), shall receive an equal, pro-rata share of the Waiting Time
6 Amount. (§4.B.i)
- 7 ○ Wage Statement Amount: Fifteen percent (15%) of the Net Settlement
8 Fund shall be designated as the “Wage Statement Amount.” Each
9 participating Settlement Class Member who was employed by SCR at any
10 time from March 5, 2020 through March 31, 2022 shall receive a portion
11 of the Wage Statement Amount proportionate to the number of pay
12 periods that he or she worked during the period from March 5, 2020
13 through March 31, 2022 (“Wage Statement Period”). (§4.B.ii)
- 14 ○ The remainder of the Net Settlement Fund shall be distributed to each
15 participating Settlement Class Member based on their proportionate share
16 of Eligible Workweeks during the Class Period, by multiplying the
17 remaining Net Settlement Fund by a fraction, the numerator of which is
18 the participating Settlement Class Member’s Eligible Workweeks during
19 the Class Period, and the denominator of which is the total Eligible
20 Workweeks of all participating Settlement Class Members during the
21 Class Period. (§4.B.iii)
- 22 ○ An “Eligible Workweek” shall be any workweek in which the Class
23 Member worked at least one day during the workweek based on SCR’s
24 records. (§4.B.iii)

1 ○ PAGA Amount: Each Aggrieved Employee who was employed by SCR
2 at any time from March 5, 2020 through March 31, 2022, shall receive a
3 portion of the One Thousand Two Hundred Fifty Dollars and Zero Cents
4 (\$1,250.00) of the Net Settlement Fund that has been designated as the
5 “PAGA Amount” proportionate to the number of pay periods that he or
6 she worked during the period from March 5, 2020 through March 31,
7 2022 (“PAGA Period”). (§4.C)

8 ● Tax Withholdings: Individual Settlement Award shall be designated as 20%
9 wages, 80% penalties and interest. 100% of the PAGA Amount paid to
10 Aggrieved Employees shall be designated as penalties and interest subject to IRS
11 Form 1099 reporting with no withholdings. (§4.E)

12 ● Funding of Settlement: The Maximum Settlement Amount shall be deposited
13 with the Settlement Administrator in two (2) installments as follows: (i) SCR
14 shall make the first installment payment of \$50,000.00 within fifteen (15) days
15 of the date of Preliminary Approval and (ii) SCR shall pay the remainder of the
16 MSA and its share of payroll taxes within thirty (30) days of the date of Final
17 Approval (which, for this purpose, shall be defined as the date on which the
18 Court enters an Order granting Final Approval, or solely in the event that there
19 are any objections to the settlement, the filing of an objection being a
20 prerequisite to the filing of an appeal, the later of: (i) the last date on which any
21 appeal might be filed, or (ii) the successful resolution of any appeal(s) –
22 including expiration of any time to seek reconsideration or further review); The
23 Settlement Administrator shall hold all portions of the Maximum Settlement
24 Amount in an interest-bearing account for the benefit of the Settlement Class
25 until the time for disbursement as called for in this Settlement Agreement. (§3.A)

- 1 • Distribution: Within ten (10) days following the full funding of the Maximum
2 Settlement Amount with the Settlement Administrator by SCR, the Settlement
3 Administrator will calculate Individual Settlement Award amounts and mail
4 Individual Settlement Awards to participating Settlement Class Members and
5 transfer to Class Counsel its attorney's fees and verified costs. (§4.D)
- 6 • Uncashed Settlement Payment Checks: Each Settlement Class Member who
7 receives an Individual Settlement Award must negotiate the settlement check
8 within one hundred eighty (180) days from the date of issuance. The one
9 hundred eight (180) day expiration of the settlement checks will be pre-printed
10 on the front of the settlement check. Any funds payable to Settlement Class
11 Members whose checks are not negotiated within one hundred eighty (180) days
12 period will not be reissued and will be transferred by the settlement
13 administrator to Inner City Law Center as cy pres recipient. (§4.F)

14
15 **C. TERMS OF RELEASES**

- 16 • Class Releases by Settlement Class Members: Plaintiff and every member of the
17 Settlement Class (except those who opt out) will fully release and discharge
18 Defendant, its past or present officers, directors, shareholders, and managers,
19 supervisors, owners, agents, principals, heirs, representatives, and its respective
20 successors, predecessors in interest, insurers, and attorneys (collectively the
21 "Released Parties") from all Released Claims. (§2.A)
- 22 ○ "Released Claims" means all claims that were alleged, or reasonably could
23 have been alleged, based on the Class Period facts stated in the Operative
24 Complaint and ascertained in the course of the Action, including, any and all
25 claims for: (a) failure to pay all regular wages, minimum wages, and overtime

1 wages due; (b) failure to provide meal periods or compensation in lieu thereof;
2 (c) failure to provide rest periods or compensation in lieu thereof; (d) failure to
3 reimburse necessary business expenses; (e) failure to provide complete, accurate
4 wage statements; (f) failure to pay wages timely at time of termination or
5 resignation; and (g) unfair business practices that could have been premised on
6 all claims that were alleged, or reasonably could have been alleged, based on the
7 Class Period facts stated in the Operative Complaint and ascertained in the
8 course of the Action. Except as set forth above, Participating Class Members do
9 not release any other claims, including claims for vested benefits, wrongful
10 termination, violation of the Fair Employment and Housing Act, unemployment
11 insurance, disability, social security, workers' compensation, or claims based on
12 facts occurring outside the Class Period. This release shall apply to all
13 Participating Class Members and all claims arising during the Class Period.

14 (§2.A)

- 15 ○ For members of the Settlement Class who do not validly opt out, the
16 release period shall run from March 5, 2017 through March 31, 2022
17 (“Class Period”). (§§ 1, 2.A)
- 18 ● PAGA Release by Aggrieved Employees: Plaintiff and every non-exempt
19 employee who worked for Defendant from March 5, 2020 through March 31,
20 2022 (“Aggrieved Employees”) will fully release and discharge the Released
21 Parties from all claims for civil penalties under the California Labor Code Private
22 Attorneys General Act of 2004 (“PAGA”), for claims that were alleged, or reasonably
23 could have been alleged, based on the PAGA Period facts stated in the Operative
24 Complaint and ascertained in the course of the Lawsuit and the March 5, 2022 letter
25 Plaintiff sent to the California Labor and Workforce Development Agency (“LWDA”)

1 (“PAGA Notice”), including any and all claims for civil penalties for violations of
2 Labor Code sections 201 - 204, 210, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12,
3 1194, 1194.2, 1197, 1198, and 2699 (collectively, the “PAGA Released Claims”),
4 regardless of whether the Aggrieved Employee opts out from the Settlement
5 Agreement. The release period shall run from March Page 3 of 15 5, 2020 through
6 March 31, 2022 (“PAGA Period”). Except as set forth above, Aggrieved Employees do
7 not release any other claims, including claims for vested benefits, wrongful termination,
8 violation of the Fair Employment and Housing Act, unemployment insurance,
9 disability, social security, workers’ compensation, or claims based on facts occurring
10 outside the Class Period. (¶2.B)

- 11 • The named Plaintiff will also provide a general release and a waiver of the
12 protections of Cal. Civ. Code §1542. (¶¶ 2.A, 2.C)
- 13 • The releases are effective upon full payment of the Maximum Settlement
14 Amount. ¶ 2D.

15 16 **D. SETTLEMENT ADMINISTRATION**

- 17 • The proposed Settlement Administrator is Phoenix Settlement Administrators,
18 which has provided evidence that no counsel are affiliated with it and that it has
19 adequate procedures in place to safeguard the data and funds to be entrusted to it.
20 (See Declaration of Jodey Lawrence.)
- 21 • Settlement administration costs are estimated to be \$6,500 by the administrator
22 (Lawrence Decl. ¶17).
- 23 • Notice: The manner of giving notice is described below.
- 24 • Opt Out/Objection Dates: Settlement Class Member who wishes to opt-out of the
25 Settlement must complete and mail a Request for Exclusion to the Settlement

1 Administrator within sixty (60) days of the date of the initial mailing of the Notice
2 Packets (the "Response Deadline"). (§9.E) The Response Deadline also applies to
3 the submission of written objections (§9.F) and award challenges (§9.G).

- 4 ○ Any Settlement Class Member who requests to be excluded from the
5 Settlement Class will not be entitled to any recovery under this Settlement
6 Agreement and will not be bound by the terms of the settlement (although
7 the PAGA settlement and release provisions will apply to each such
8 individual, and such individual shall be entitled to that individual's share of
9 the PAGA Amount) or have any right to object, intervene, appeal or
10 comment thereon. (§9.E.i)
- 11 ○ If ten percent (10%) or more of the Class Members submit valid requests
12 for exclusion, Defendant at its sole option may withdraw from this
13 Settlement. (§13)
- 14 ● Notice of Final Judgment will be posted on the Settlement Administrator's website
15 (Notice, Page 7).

17 **III. SETTLEMENT STANDARDS AND PROCEDURE**

18 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
19 of an entire class action, or of a cause of action in a class action, or as to a party,
20 requires the approval of the court after hearing." "Any party to a settlement agreement
21 may serve and file a written notice of motion for preliminary approval of the settlement.
22 The settlement agreement and proposed notice to class members must be filed with the
23 motion, and the proposed order must be lodged with the motion." See Cal. Rules of
24 Court, rule 3.769(c).
25

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

14 “The burden is on the proponent of the settlement to show that it is fair and
15 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
16 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
17 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
18 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
19 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

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

1 circumstances before it in order to determine whether the settlement is in the best
2 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
3 In that determination, the court should consider factors such as “the strength of
4 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
5 the risk of maintaining class action status through trial, the amount offered in
6 settlement, the extent of discovery completed and stage of the proceedings, the
7 experience and views of counsel, the presence of a governmental participant, and the
8 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
9 factors is not exclusive and the court is free to engage in a balancing and weighing of
10 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
11 245.

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

19 20 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

21 22 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

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25 //

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

2 On March 23, 2022, the parties participated in a full-day mediation with Tripper
3 Ortman, Esq., which resulted in a settlement. The parties subsequently finalized the
4 long-form Settlement Agreement. (Brown Initial Decl. ¶11.)

5
6 **2. The investigation and discovery were sufficient**

7 Class Counsel represents that after agreeing to participate in early mediation,
8 Defendant informally produced all its relevant time and pay records as well as its wage
9 and hour policies and other documents and information relevant to the claims alleged in
10 advance of mediation. (*Id.* at ¶8.) Class Counsel transmitted Defendant’s mediation
11 production to their expert, Bennett Berger, a Partner and Senior Data Analyst at Berger
12 Consulting Group. (*Id.* at ¶9.) Counsel requested the expert to confirm the date range
13 of the data provided, and extrapolate: (i) the number of pay periods and shifts and pay
14 periods worked by the class during the PAGA period, (ii) the average rate of pay for the
15 class, (iii) the number of shifts worked over 3.5 hours, over 5.0 hours, over 6.0 hours,
16 over 8.0 hours, over 10.0 hours, and over 12.0 hours, (iv) the first and second meal
17 period violation rate based on the produced time records, and (v) total amount of
18 unreimbursed business expenses. Counsel also requested that Mr. Berger review the
19 time data produced by Defendant to determine the amount of unpaid overtime due to a
20 failure to properly calculate the regular rate of pay and the amount of unpaid off-the-
21 clock work. (*Id.* at ¶10.) No sample was used.

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

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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. (*Id.* at ¶4.)
4

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

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

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

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

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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 \$2,411,045.10 and
5 realistic exposure at \$345,799.86, based on the following analysis:

6

Violation	Maximum Exposure	Realistic Exposure
Unpaid Wages	\$139,915.90	\$27,983.18
Meal Period Violations	\$161,112.20	\$28,194.64
Rest Period Violations	\$817,753.00	\$85,864.07
Underpayment of Overtime	\$32,354.00	\$11,647.44
Unreimbursed Expenses	\$176,250.00	\$19,828.13
Wage Statement Penalties	\$232,000.00	\$32,480.00
Waiting Time Penalties	\$518,160.00	\$72,542.40
PAGA Penalties	\$333,500.00	\$67,260.00
Total	\$2,411,045.10	\$345,799.86

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(Brown Initial Decl. ¶¶15-23.)

17 Class Counsel obtained a gross settlement valued at \$250,000. This is
18 approximately 10.4% of Defendant’s maximum exposure and 72.3% of Defendant’s
19 realistic exposure.
20

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

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

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. (Brown Initial Decl. ¶23.)

10 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
11 which was sent a copy of the Settlement Agreement on July 21, 2022 and has not yet
12 objected. The amended settlement agreement was likewise provided to the LWDA.
13 (Brown Initial Decl., Exhibit C; Brown Supp. Dec. ¶7.) Any objection by it will be
14 considered at the final fairness hearing.

15 **3. The Releases Are Limited**

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

22 **4. Conclusion**

23
24 Class Counsel estimated Defendant’s maximum exposure at \$2,411,045.10 and
25 realistic exposure at \$345,799.86. Class Counsel obtained a gross settlement valued at

1 \$250,000. This is approximately 10.4% of Defendant’s maximum exposure and 72.3%
2 of Defendant’s realistic exposure, which, given the uncertain outcomes, including the
3 potential that the class might not be certified, that liability is a contested issue, and that
4 the full amount of penalties would not necessarily be assessed even if the class is certified
5 and liability found, the settlement is within the “ballpark of reasonableness.”

6
7 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

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

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

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

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

16 There are 118 putative Class Members. (Brown Initial Decl. ¶13.) Numerosity
17 is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
18 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
19 *class action is liberally construed,*” and citing examples wherein classes of as little as
20 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
21 (1972) 28 Cal.App.3d 1017, were upheld).

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

23 “A class is ascertainable, as would support certification under statute
24 governing class actions generally, when it is defined in terms of objective
25 characteristics and common transactional facts that make the ultimate identification

1 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
2 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

3 The class is defined above. Class Members are ascertainable through
4 Defendant’s personnel and employment records. (MPA at 5:23-24.)

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

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

10 As to predominant questions of law or fact, Plaintiff’s claims are predicated on,
11 among other issues, Defendant’s alleged failure to pay for all hours worked or a proper
12 overtime rate of pay, failure to reimburse necessary business expenses, and its meal and
13 rest period policies/practices, which he contends are the types of claims are commonly
14 held to be proper for class certification. (MPA at 6:3-12.)

15 As to typicality, Plaintiff contends that his claims are typical of those held by the
16 members of the proposed Settlement Class, because like other Settlement Class
17 Members, Plaintiff was employed by Defendant as a non-exempt hourly employee and
18 was compensated via Defendant’s pay plans during the Class Period. Plaintiff alleges
19 that he did not receive all legally compliant meal or rest periods or premium pay in lieu
20 thereof. Moreover, Plaintiff alleges he was not paid all hours worked or always paid at a
21 proper overtime rate of pay for overtime hours worked. Plaintiff further asserts that he
22 did not receive all earned wages at the time of his separation of employment, received
23 non-compliant wage statements, and was not reimbursed for all necessary business
24 expenses. (MPA at 6:14-27.)

1 As to adequacy, Plaintiff represents that he is aware of the risks of serving as class
2 representative and has participated in the litigation. (Declaration of Marcos Garnica ¶¶ 3-
3 6.) As previously stated, Class Counsel have experience in class action litigation.

4 **4. Substantial Benefits Exist**

5
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**

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 fifteen (15) days after entry of an order preliminarily approving this
21 Settlement Agreement, SCR will provide the Settlement Administrator with a class list
22 including the names, last known addresses, and social security numbers (in electronic
23 format) of Settlement Class Members, as well as the total workweeks worked by each
24 member of the Settlement Class during the Class Period. (¶9.A)

1 Within seven (7) days from receipt of the class list information, the Settlement
2 Administrator shall: (i) run the names of all Settlement Class Members through the
3 National Change of Address (“NCOA”) database to determine any updated addresses
4 for Settlement Class Members; (ii) update the addresses of any Settlement Class
5 Member for whom an updated address was found through the NCOA search; and (iii)
6 mail the Notice Packet to each Settlement Class Member in English and Spanish at their
7 last known address or at the updated address found through the NCOA search, and
8 retain proof of mailing. (§9.B)

9 The Settlement Administrator shall use its best professional efforts, including
10 utilizing a “skip trace,” to track any Settlement Class Member’s mailing returned as
11 undeliverable, and will re-send the Notice Packet promptly upon identifying updated
12 mailing addresses through such efforts. The address identified by the Settlement
13 Administrator as the current mailing address shall be presumed to be the best mailing
14 address for each Settlement Class Member. (§9.C)

15 Any Notice Packets returned to the Settlement Administrator as non-delivered on
16 or before the Response Deadline shall be re-mailed to the forwarding address affixed
17 thereto. If no forwarding address is provided, the Settlement Administrator shall make
18 reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing
19 address within five (5) business days of receiving the returned Notice Packet. If an
20 updated mailing address is identified, the Settlement Administrator shall resend the
21 Notice Packet to the Settlement Class Member immediately, and in any event within
22 three (3) business days of obtaining the updated address. Settlement Class Members to
23 whom Notice Packets are resent after having been returned as undeliverable to the
24 Settlement Administrator shall have twenty (20) days from the date of re-mailing, or
25

1 until the Response Deadline has expired, whichever is later, to mail a Request for
2 Exclusion, challenge or objection. (¶9.D)

3 **2. Content of class notice.**

4 A copy of the proposed class notice is attached to the Supplemental Decl. of
5 Daniel J. Brown as Exhibit D. The notice includes information such as: a summary of
6 the litigation; the nature of the settlement; the terms of the settlement agreement; the
7 maximum deductions to be made from the gross settlement amount (i.e., attorney fees
8 and costs, the enhancement award, and claims administration costs); the procedures and
9 deadlines for participating in, opting out of, or objecting to, the settlement; the
10 consequences of participating in, opting out of, or objecting to, the settlement; and the
11 date, time, and place of the final approval hearing. See Cal Rules of Court, rule
12 3.766(d). It is to be given in both English and Spanish. (Brown Decl. ¶11.)

13 **3. Settlement Administration Costs**

14 Settlement administration costs are estimated at \$ 6,500, including the cost of
15 notice (Brown Supp. Dec. ¶9). Prior to the time of the final fairness hearing, the
16 settlement administrator must submit a declaration attesting to the total costs incurred
17 and anticipated to be incurred to finalize the settlement for approval by the Court.
18

19 **E. ATTORNEY FEES AND COSTS**

20 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
21 implied, that has been entered into with respect to the payment of attorney fees or the
22 submission of an application for the approval of attorney fees must be set forth in full in
23 any application for approval of the dismissal or settlement of an action that has been
24 certified as a class action.”
25

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

12 The question of class counsel’s entitlement to **\$83,333** (33 1/3%) in attorney fees
13 will be addressed at the final fairness hearing when class counsel brings a noticed
14 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
15 the court with current market tested hourly rate information and billing information so
16 that it can properly apply the lodestar method and must indicate what multiplier (if
17 applicable) is being sought.

18 Class counsel should also be prepared to justify the costs sought (capped at
19 **\$20,000**) by detailing how they were incurred.

21 **F. SERVICE AWARD**

22 The Settlement Agreement provides for a service award of up to **\$5,000** for the
23 class representative. Trial courts should not sanction enhancement awards of thousands
24 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
25 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of

1 quantification of time and effort expended on the litigation, and in the form of reasoned
2 explanation of financial or other risks incurred by the named plaintiffs, is required in
3 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
4 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
5 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

6 The Court will decide the issue of the enhancement award at the time of final
7 approval.

8
9 **V. CONCLUSION AND ORDER**

10 The Court hereby:

- 11 (1) Grants preliminary approval of the settlement as fair, adequate, and
12 reasonable;
- 13 (2) Grants conditional class certification;
- 14 (3) Appoints Marcos Garnica as Class Representative;
- 15 (4) Appoints Stansbury Brown Law, PC as Class Counsel;
- 16 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
17 Administrator;
- 18 (6) Approves the proposed notice plan; and
- 19 (7) Approves the proposed schedule of settlement proceedings as follows:
- 20 ● Preliminary approval hearing: December 21, 2022
 - 21 ● Deadline for Defendant to provide class list to settlement administrator: January
22 12, 2023
 - 23 ● Deadline for settlement administrator to mail notices: January 19, 2023
 - 24 ● Deadline for class members to opt out: March 20, 2023 (60 calendar days from
25 the initial mailing of the Notice Packets)

- 1 • Deadline for class members to object: March 20, 2023 (60 calendar days from
- 2 the initial mailing of the Notice Packets)
- 3 • Deadline for class counsel to file motion for final approval: April 3, 2023 (16
- 4 court days prior to final fairness hearing)
- 5 • Final fairness hearing: April 25, 2023 at 9:00 a.m.

6
7 Dated: 12/22/2022



8 MAREN E. NELSON

9 Judge of the Superior Court